

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202 720-865-8301	<p style="text-align: right; color: blue;"> DATE FILED: April 6, 2016 11:30 AM FILING ID: 1C7BC2C7CD566 CASE NUMBER: 2016CV31215 </p> <p style="text-align: center; font-weight: bold;">COURT USE ONLY</p>
PLAINTIFF: URI SKORSKI, Derivatively, and on behalf of CHIPOTLE MEXICAN GRILL, INC. v. DEFENDANTS: STEVE ELLS, MONTGOMERY F. MORAN, JACK HARTUNG, MARK CRUMPACKER, PATRICK J. FLYNN, JOHN S. CHARLESWORTH, DARLENE J. FRIEDMAN, ALBERT S. BALDOCCHI, NEIL W. FLANZRAICH, STEPHEN GILLETT, AND KIMBAL MUSK, and NOMINAL DEFENDANT: CHIPOTLE MEXICAN GRILL, INC.	
Attorneys for Plaintiff: Karen Cody-Hopkins Atty. Reg. # 35367 CODY-HOPKINS LAW FIRM 4610 S. Ulster St #150 Denver, CO 80237 Phone Number: 303-221-4666 Fax Number: 303-221-4374 Email: karen@codyhopkinslaw.com Additional attorneys listed below	Case No.: Div.:
VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT AND JURY DEMAND	

Plaintiff Uri Skorski (“Plaintiff”), derivatively and on behalf of nominal defendant Chipotle Mexican Grill, Inc. (“Chipotle” or the “Company”), by and through his attorneys, alleges the following based upon his personal knowledge as to himself and his own acts [See Exhibit A – Verification], and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys:

INTRODUCTION

Plaintiff, derivatively and on behalf of Chipotle, files this Verified Shareholder Derivative Complaint against individual defendants Steve Eells, Montgomery F. Moran, Jack Hartung, Mark Crumpacker, Patrick J. Flynn, John S. Charlesworth, Darlene J. Friedman, Albert S. Baldocchi, Neil W. Flanzraich, Stephen Gillett, and Kimbal Musk (collectively, the “Individual Defendants”) for breaches of their fiduciary duties as directors and/or officers of Chipotle, gross mismanagement, abuse of control, unjust enrichment, and waste of corporate assets and alleges the following based upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Chipotle, news reports, securities analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a shareholder derivative action which seeks to remedy wrongdoing committed by Chipotle’s directors and officers.

2. Chipotle, by itself and through subsidiaries, operates Mexican food restaurants in the United States, United Kingdom, Canada, Germany, and France that serve a menu of burritos, tacos, burrito bowls (a burrito without the tortilla), and salads. Today, Chipotle has over 2,000 restaurant locations.

3. At all relevant times, Chipotle has managed its network through two active co-Chief Executive Officers (“co-CEOs”) and an eight to nine member board of directors.

4. Between April 6, 2011 and December 31, 2015, the Individual Defendants abused their control of the Company, and dealt themselves excessive compensation worth hundreds of millions of dollars through a corrupt stock incentive plan. Specifically, in that time period, Chipotle’s board of directors and/or executive officers awarded and received shares of the Company’s stock pursuant to an incentive plan in which awards of Chipotle’s shares could be made to officers, directors, employees, consultants and advisors of the Company as part of their annual “compensation” without any meaningful limit on the number of shares granted.

5. Moreover, between February 4, 2015 and continuing through the date of the filing of this Complaint, the Individual Defendants caused the Company to issue false and misleading statements and omissions of material fact.

6. While Chipotle’s restaurants are categorized in the “fast-casual” segment of the restaurant industry, the Company advertises that it uses “high-quality raw ingredients, classic cooking methods and a distinctive interior design, and [that it has] friendly people to take care of

each customer—features that are more frequently found in the world of fine dining.” To that end, Chipotle continuously represented that it adhered to, at least, industry standards for food-safety.

7. Chipotle’s misrepresentations began to unravel when a viral outbreak occurred at a Chipotle restaurant in Simi Valley, California around August 18, 2015 and forced the store’s closure. The Company concealed the true nature behind the Simi Valley incident and the restaurant’s closure. But the Simi Valley incident was the first of many contaminations that followed in Chipotle restaurants across the United States. Hundreds of Americans became sick with viral and bacterial infections that were caused by Chipotle food. Despite the ongoing contaminations, Chipotle maintained that its food was safe to eat and that it had controls in place to ensure that only fresh, high-quality, clean food was served at Chipotle restaurants.

8. Eventually, the Company was forced to admit that its food safety programs were not as effective as represented. The Company then doubled-down on their false and misleading statements and omissions, however, and represented that it was instituting new procedures, “which go beyond the industry-standard food safety practices that [it was] previously following.” Despite these assurances, pathogenic contamination of food at Chipotle restaurants continued.

9. Chipotle’s image of a company that serves fresh, healthy, high-quality and clean food may never revive.

10. To make matters worse, throughout the period when the Defendants made materially false and misleading statements and omissions to keep the stock price artificially inflated and before the Individual Defendants’ scheme to defraud the public was exposed, the Defendants initiated several rounds of repurchase programs that forced the Company to purchase up to \$1.9 billion worth of Chipotle common stock. The Individual Defendants initiated these programs even though they knew that Chipotle would need its cash on-hand as sales continued falling due to the contamination issues.

11. Given that during the period when the Company misstated and omitted material facts, and before the scheme to defraud the public was exposed, it purchased 1,448,000 shares of Company common stock and expended approximately \$756 million on such purchases (leading to an average purchase price of \$522), and given that the price of the Company’s common stock as of the close of trading on April 4, 2016 was \$465.00, the Individual Defendants caused the Company to purchase its own stock from undisclosed sellers for over \$84 million more than the stock was actually worth $((522-465.00) \times 1,488,000 \text{ shares})$.

12. Beginning on February 4, 2015 and continuing through the date of the filing of this Complaint, the investing public was under a false impression of the Company’s commitment to and control of food safety at Chipotle restaurants, compliance with healthy authority regulations, and the purpose and effect of the many repurchase programs. During this period, the Company and the Individual Defendants intentionally and/or recklessly made materially false and misleading statements and/or omissions regarding the Company’s business, operations, and finances.

13. The Company's public statements were materially false and misleading at all relevant times, and caused an artificial inflation of Chipotle's stock price. During the period when the price of Chipotle stock was artificially inflated, a majority of the board of directors (and a supermajority of the Individual Defendants) engaged in lucrative insider sales, reaping millions of dollars in net proceeds.

14. In breach of their fiduciary duties owed to Chipotle, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and/or misleading statements and/or omissions of material fact regarding, at least, (1) the Company's commitment to and control of food safety at Chipotle restaurants; (2) Chipotle's quality controls being in compliance with consumer and workplace safety regulations, (3) Chipotle's quality controls being inadequate to safeguard consumer and employee health, (4) Chipotle's adherence to "industry-standard food safety practices," (5) Chipotle's adoption of procedures that went "beyond the industry-standard food safety practices," (6) the purpose and effect of the Individual Defendants' grossly excessive compensation, and (7) the purpose and effect of the Company's many repurchase programs. These facts pertained to the Company's business, operations, and prospects and were known to the Individual Defendants or recklessly disregarded by them. Moreover, a supermajority of the Individual Defendants engaged in lucrative insiders sales, receiving in excess of \$224.6 million, while the price of the Company common stock was artificially inflated due to the false and misleading statements of material fact.

15. The Individual Defendants' breaches of fiduciary duty and other misconduct have subjected the Company, the Company's co-CEO-Chairman, co-CEO, and Chief Financial Officer to federal securities fraud class action lawsuits pending in the United States District Court for the Southern District of New York (the "Securities Fraud Class Actions") and led to the Company's involvement in a federal criminal investigation, the need to undertake internal investigations, overpayment of over \$84 million that the Company overpaid for its own stock through several repurchase programs, losses due to the unjust enrichment of Individual Defendants who were improperly over-compensated by the Company, loss of revenues caused by customers' loss of trust in the Company's business, and great difficulty and increased cost in getting new business or financing for the Company.

16. The Company has been substantially damaged as a result of the Individual Defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct.

17. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, most of whom are the Company's current directors, of the collective engagement in fraud, of the substantial likelihood of the directors' liability in this derivative action and of certain of them in the Securities Fraud Class Actions and the criminal investigation and prosecution, and of their not being disinterested and/or independent directors, a majority of the board of directors cannot consider a demand to commence litigation against themselves on behalf of the Company with the requisite level of disinterestedness and independence.

JURISDICTION AND VENUE

18. This Court has jurisdiction over each Defendant named herein. Chipotle is a corporation that conducts business and maintains its principal headquarters and operations in this County. Each individual Defendant has sufficient minimum contacts with Colorado so as to render the exercise of jurisdiction by the Colorado courts permissible under traditional notions of fair play and substantial justice.

19. Additionally, this Court has personal jurisdiction over each Defendant named herein pursuant to Colorado's long-arm statute, Colorado Revised Statutes § 13-1-124, because each Defendant transacts business within the state and committed a tortious act, as explained herein, in this state.

20. Venue is proper in this Court pursuant to Colorado Rules of Civil Procedure 98(c) because one or more of the Defendants either resides in or maintains executive offices in this County, a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in the wrongful acts detailed herein and aiding and abetting the Individual Defendants' breaches of their fiduciary duties owed to Chipotle common stockholders, occurred in this County, and the Individual Defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County. Venue and jurisdiction are additionally proper in this County because many of the acts complained of herein, including the dissemination of materially false and misleading statements and reports prepared by or with the participation, acquiescence, encouragement, cooperation, or assistance of the Individual Defendants, occurred, at least in part, in this County.

PARTIES

21. Plaintiff is a current shareholder of Chipotle stock. Plaintiff has continuously held Chipotle common stock at all relevant times.

22. Nominal Defendant Chipotle is a Delaware corporation with principal executive offices located at 1401 Wynkoop Street, Suite 500, Denver, Colorado 80202. The Company's shares trade on the New York Stock Exchange ("NYSE") under the ticker symbol "CMG."

Defendant Ells

23. Defendant Steve Ells ("Ells") founded Chipotle in 1993, has been a director of the Company since 1996 and the Chairman of the Board since 2005. He is the Company's co-CEO. According to the Company's Schedule 14A filed with the SEC on March 26, 2015 (the "2015 Proxy Statement"), as of March 16, 2015, Defendant Ells beneficially owned 371,802 shares of the Company's common stock, which was 1.19% of the Company's issued and outstanding common stock. According to the Company's Schedule 14A filed with the SEC on March 24, 2016 (the "2016 Proxy Statement"), as of March 14, 2016, Defendant Ells beneficially owned 359,302 shares of the Company's common stock, which was 1.21% of the Company's issued and

outstanding common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Ells beneficially owned about \$280.4 million worth of Chipotle stock.

24. For the fiscal year ended December 31, 2015, Defendant Ells received \$13,837,894 in compensation from the Company. This included about \$1.8 million in cash (\$1.5 million salary) and over \$12 million in stock. For the fiscal year ended December 31, 2014, Defendant Ells received \$28,924,270 in compensation from the Company on a \$1.4 million salary. For the fiscal year ended December 31, 2013, Defendant Ells received \$25,116,871 in compensation from the Company, on a \$1.4 million salary. For the fiscal year ended December 31, 2012, Defendant Ells received \$19,741,296 in compensation from the Company, on a \$1.38 million salary. Defendant Ells received 175,000 SOSARs (Chipotle options) by the Compensation Committee for 2014. According to the Company, such awards were "above the top end of our restaurant peer group." For 2014, 2013 and 2012, the grant date fair value of the SOSARs received by Defendant Ells was \$23,698,500, \$12,304,500 and \$15,742,500, respectively.

25. The Company's 2016 Proxy Statement stated the following about Defendant Ells:

Mr. Ells founded Chipotle in 1993. He is Co-Chief Executive Officer and was appointed Chairman of the Board in 2005. Prior to launching Chipotle, Mr. Ells worked for two years at Stars restaurant in San Francisco. Mr. Ells's vision – that food served fast doesn't have to be low quality and that delicious food doesn't have to be expensive – is the foundation on which Chipotle is based. This visionary thinking has led Chipotle to extraordinary accomplishments, such as growing from a single restaurant to over 2,000 and serving more responsibly-raised meat than any other restaurant company. This thinking has also resulted in Mr. Ells remaining a principal driving force behind making our company innovative and striving for constant improvement, and he continues to provide important leadership to our executive officers, management team, and Board. He is also one of the largest individual shareholders of our company. Mr. Ells graduated from the University of Colorado with a Bachelor of Arts degree in art history, and is also a 1990 Culinary Institute of America graduate.

26. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Ells made the following sales of Company stock (and made no purchases of Company stock). On February 19, 2015, Defendant Ells sold 5,635 shares of Company stock for \$674.71 per share. On March 16, 2015, Defendant Ells sold 5,675 shares of Company stock for \$680.03 per share. On March 20, 2015, Defendant Ells sold 5,714 shares of Company stock for \$685.74 per share. On April 21, 2015, Defendant Ells sold 11,583 shares of Company stock for \$691.92 per share, on average. Also on April 21, 2015, Defendant Ells sold 14,910 shares of Company stock for \$699 per share. On May 18, 2015, Defendant Ells sold approximately 7,103 shares of Company stock for \$632.20 per share, on average. On May 19, 2015, Defendant Ells sold approximately 8,211 shares of Company stock for \$636.05 per share, on average. On May 20, 2015, Defendant Ells

sold approximately 20,711 shares of Company stock for \$630.65 per share, on average. On May 21, 2015, Defendant Ells sold approximately 20,711 shares of Company stock for \$627.25 per share, on average. On May 22, 2015, Defendant Ells sold 8,714 shares of Company stock for \$632.93 per share, on average. On July 22, 2015, Defendant Ells sold 10,090 shares of Company stock for \$695.91 per share, on average. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 119,057 Company shares on inside information, for which he received over \$78.3 million.

27. Moreover, during the same period of time when the Company materially misrepresented information to keep the stock price inflated, and before the scheme was exposed, Defendant Ells made the following dispositions of Company stock under Form 4's Transaction-Code-F.¹ On March 20, 2015, Defendant Ells disposed of 6,786 shares of Company stock at a price of \$684.58 per share. On April 21, 2015, Defendant Ells disposed of 13,417 shares of Company stock at an average price of \$692.50 per share. On May 18, 2015 Defendant Ells disposed of 9,807 shares of Company stock at a price of \$636.10 per share. On May 19, 2015, Defendant Ells disposed of 8,753 shares of Company stock at a price of \$636.75 per share. On May 20, 2015, Defendant Ells disposed of 8,799 shares of Company stock at a price of \$633.36 per share. On May 21, 2015, Defendant Ells disposed of 8,701 shares of Company stock at a price of \$633.36 per share. On May 22, 2015, Defendant Ells disposed of 8,786 shares of Company stock at a price of \$634.31 per share. Thus, in total, while the stock price was inflated and before the fraud was exposed, he disposed of 65,049 Company shares and received over \$42.4 million to use for the payment of exercise prices or tax liabilities.

28. Defendant Ells' insider sales and other beneficial dispositions of Company common stock made with knowledge of material non-public information before the misrepresentations and omissions of material fact were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Moran

29. Defendant Montgomery F. Moran ("Moran") has been a director of the Company since 2006 and the co-CEO, together with Defendant Ells, since January 1, 2009. Prior to becoming co-CEO, Defendant Moran had been the President and Chief Operating Officer ("COO") of Chipotle since March 2005. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Moran beneficially owned 599,755 shares of the Company's common stock, which was 1.9% of the Company's issued and outstanding common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Moran beneficially owned 492,255 shares of the Company's common stock, which was 1.65% of the Company's issued and outstanding common stock. Given that the price per share of the Company's common stock at

¹ Form 4's Transaction-Code-F reflects the form-filer's "[p]ayment of [an] exercise price or tax liability by delivering or withholding securities." In other words, the form-filer disposes of securities and uses the proceeds therefrom to pay for tax liabilities or other benefits.

the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Moran beneficially owned over \$452.2 million worth of Chipotle stock.

30. For the fiscal year ended December 31, 2015, Defendant Moran received \$13,561,077 in compensation from the Company. This included over \$1.5 million in cash (\$1.3 million salary) and over \$12 million in stock. For the fiscal year ended December 31, 2014, Defendant Moran received \$28,153,203 in compensation from the Company on a \$1.2 million salary. For the fiscal year ended December 31, 2013, Defendant Moran received \$24,397,054 in compensation from the Company, on a \$1.2 million salary. For the fiscal year ended December 31, 2012, Defendant Moran received \$19,146,450 in compensation from the Company, on a \$1.18 million salary. Defendant Moran received 60,000 SOSARs by the Compensation Committee for 2014. According to the Company, such awards were “above the top end of our restaurant peer group.” For 2014, 2013 and 2012, the grant date fair value of the SOSARs received by Defendant Moran was \$23,698,500, \$12,304,500 and \$15,742,500, respectively.

31. The Company’s 2016 Proxy Statement stated the following about Defendant Moran:

Mr. Moran is our Co-Chief Executive Officer and Secretary. He was appointed as Co-Chief Executive Officer on January 1, 2009, after serving as our President and Chief Operating Officer since March 2005. Mr. Moran previously served as chief executive officer of the Denver law firm Messner & Reeves, LLC, where he was employed since 1996, and as general counsel of Chipotle. His experience as our outside general counsel from the time we had only a few restaurants through our growth to several hundred restaurants at the time he joined us as an employee has given him an in-depth knowledge and understanding of every aspect of our business. His legal experience ran from trial and employment matters to real estate and other transactional matters, as well as general corporate counseling. As a result he has an outstanding skill set in such areas as risk management and crisis handling, and also is thoroughly familiar with management personnel throughout our organization. In addition, Mr. Moran was the visionary and creator of our Restaurateur program and other aspects of instilling a culture of high performers throughout Chipotle, and his leadership in this area has been critical to our success. He is also one of the largest individual shareholders of our company. Mr. Moran holds a Bachelor of Arts degree in communications from the University of Colorado and a J.D., cum laude, from Pepperdine University School of Law.

32. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Moran made the following sales of Company stock (and made no purchases of Company stock). On May 19, 2015 Defendant Moran sold 58,407 shares of Company stock for \$635.64 per share, on average. On May 20, 2015, Defendant Moran sold 86,218 shares of Company stock for \$630.55 per share, on average. On July 13, 2015, Defendant Moran sold 2,146 shares of Company stock for \$651.13 per share. On July 15, 2015, Defendant Moran sold 2,197 shares of Company stock for

\$662.52 per share. On July 20, 2015, Defendant Moran sold 4,502 shares of Company stock for \$676.24 per share. On July 22, 2015, Defendant Moran sold 14,323 shares of Company stock for \$720.41 per share, on average. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 167,793 Company shares on inside information, for which he received over \$107.7 million.

33. Moreover, during the same period of time when the Company materially misrepresented information to keep the stock price inflated, and before the scheme was exposed, Defendant Moran made the following dispositions of Company stock under Form 4's Transaction-Code-F. On May 19, 2015, Defendant Moran disposed of 11,422 shares of Company stock at a price of \$636.10 per share. On May 20, 2015, Defendant Moran disposed of 63,782 shares of Company stock at a price of \$632 per share. On July 13, 2015, Defendant Moran disposed of 2,854 shares of Company stock at a price of \$651.11 per share. On July 15, 2015, Defendant Moran disposed of 2,803 shares of Company stock at a price of \$663.05 per share. On July 20, 2015, Defendant Moran disposed of 5,498 shares of Company stock at a price of \$676 per share. On July 22, 2015, Defendant Moran disposed of 15,677 shares of Company stock at a price of \$711.18 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he disposed of 102,036 Company shares and received almost \$66.2 million to use for the payment of exercise prices or tax liabilities.

34. Defendant Moran's insider sales and other beneficial dispositions of Company common stock made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Hartung

35. Defendant Jack Hartung ("Hartung") has been the Chief Financial Officer ("CFO") of the Company since 2002 and is responsible for all financial and reporting functions, as well as overseeing IT; safety, security and risk; and compensation and benefits. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Hartung beneficially owned 125,464 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Hartung beneficially owned 110,464 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Hartung beneficially owned over \$94.6 million worth of Chipotle stock.

36. For the fiscal year ended December 31, 2015, Defendant Hartung received \$6,033,309 in compensation from the Company. This included about \$1 million in cash (\$745,769 salary) and over \$5 million in stock. For the fiscal year ended December 31, 2014, Defendant Hartung received about \$10.3 million in compensation from the Company on a \$700,000 salary. For the fiscal year ended December 31, 2013, Defendant Hartung received about \$9.9 million in compensation from the Company, on a \$645,719 salary. For the fiscal year ended December 31, 2012, Defendant Hartung received about \$6.8 million in compensation from the Company, on a \$597,888 salary. Included in Defendant Hartung's compensation for 2014,

2013 and 2012, is the amount of the grant date fair value of SOSAR awards in the amounts of \$8,125,200, \$4,101,500 and \$5,247,500, respectively.

37. The Company's 2016 Proxy Statement stated the following about Defendant Hartung:

John R. (Jack) Hartung, 58, is Chief Financial Officer and has served in this role since 2002. In addition to having responsibility for all of our financial and reporting functions, Mr. Hartung also oversees IT; safety, security and risk; and compensation and benefits. Mr. Hartung joined Chipotle after spending 18 years at McDonald's where he held a variety of management positions, most recently as Vice President and Chief Financial Officer of its Partner Brands Group. Mr. Hartung has a Bachelor of Science degree in accounting and economics as well as an MBA from Illinois State University.

38. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Hartung made the following sales of Company stock (and made no purchases of Company stock). On March 16, 2015 Defendant Hartung sold 3,030 shares of Company stock for \$680.44 per share. On March 20, 2015, Defendant Hartung sold 3,044 shares of Company stock for \$686.39 per share. On April 21, 2015, Defendant Hartung sold 9,194 shares of Company stock for \$694.67 per share, on average. On July 14, 2015, Defendant Hartung sold 2,177 shares of Company stock for \$660.08 per share. On July 20, 2015, Defendant Hartung sold 4,537 shares of Company stock for \$674.20 per share, on average. On July 22, 2015, Defendant Hartung sold 9,692 shares of Company stock for \$716.96 per share, on average. On July 23, 2015, Defendant Hartung sold 2,465 shares of Company stock for \$731.34 per share. On July 30, 2015, Defendant Hartung sold 2,485 shares of Company stock for \$740.08 per share. On August 5, 2015, Defendant Hartung sold 2,522 shares of Company stock for \$750.01 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 39,146 Company shares on inside information, for which he received over \$27.5 million.

39. Moreover, during the same period of time when the Company materially misrepresented information to keep the stock price inflated, and before the scheme was exposed, Defendant Hartung made the following dispositions of Company stock under Form 4's Transaction-Code-F. On March 16, 2015, Defendant Hartung disposed of 1,970 shares of Company stock at a price of \$682.35 per share. On March 20, 2015, Defendant Hartung disposed of 1,956 shares of Company stock at a price of \$686.99 per share. On April 21, 2015, Defendant Hartung disposed of 5,806 shares of Company stock at an average price of \$694.67 per share. On July 14, 2015, Defendant Hartung disposed of 2,823 shares of Company stock at a price of \$658.43 per share. On July 20, 2015, Defendant Hartung disposed of 5,463 shares of Company stock at an average price of \$680.39 per share. On July 22, 2015, Defendant Hartung disposed of 10,308 shares of Company stock at an average price of \$720.73 per share. On July 23, 2015, Defendant Hartung disposed of 2,535 shares of Company stock at a price of \$733.09 per share. On July 30, 2015, Defendant Hartung disposed of 2,515 shares of Company stock at a

price of \$738.94 per share. On August 5, 2015, Defendant Hartung disposed of 2,478 shares of Company stock at a price of \$750 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he disposed of 35,854 Company shares and received over \$25.3 million to use for the payment of exercise prices or tax liabilities.

40. Defendant Hartung's insider sales and other beneficial dispositions of Company common stock made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Crumpacker

41. Defendant Mark Crumpacker ("Crumpacker") was appointed Chief Marketing Officer in January 2009 and as Chief Development Officer in October 2012. On March 12, 2015, Defendant Crumpacker's title was changed to Chief Creative and Development Officer. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Crumpacker beneficially owned 21,428 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Crumpacker beneficially owned 26,000 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Crumpacker beneficially owned over \$16.1 million worth of Chipotle stock.

42. For the fiscal year ended December 31, 2015, Defendant Crumpacker received \$4,282,588 in compensation from the Company. This included about \$700,000 in cash (\$532,077 million salary) and over \$3.6 million in stock. For the fiscal year ended December 31, 2014, Defendant Crumpacker received \$5,335,191 in compensation from the Company on a \$500,000 salary. For the fiscal year ended December 31, 2013, Defendant Crumpacker received \$5,892,862 in compensation from the Company, on a \$402,580 salary. For the fiscal year ended December 31, 2012, Defendant Crumpacker received \$2,453,600 in compensation from the Company, on a \$354,517 salary. Included in Defendant Crumpacker's compensation for 2014, 2013 and 2012, is the amount of the grant date fair value of SOSAR awards in the amounts of \$4,062,600, \$1,692,400 and \$1,679,200, respectively.

43. The Company's 2016 Proxy Statement stated the following about Defendant Crumpacker:

Mark Crumpacker, 53, was appointed Chief Marketing Officer in January 2009 and as Chief Development Officer in October 2013, and on March 12, 2015, his title was changed to Chief Creative and Development Officer. From December 2002 until December 2008 Mr. Crumpacker was Creative Director for Sequence, LLC, a strategic design and marketing consulting firm he co-founded in 2002, and prior to that served as creative director and in other leadership roles for a variety of design and media companies. Mr. Crumpacker attended the University of Colorado and received his B.F.A. from the Art College of Design in Pasadena,

California.

44. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Crumpacker made the following sales of Company stock (and made no purchases of Company stock). On April 29, 2015, Defendant Crumpacker sold 7,306 shares of Company stock for \$630.29 per share, on average. On May 1, 2015, Defendant Crumpacker sold 2,428 shares of Company stock for \$630.62 per share. On July 29, 2015, Defendant Crumpacker sold 998 shares of Company stock for \$729,817 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 10,732 Company shares on inside information, for which he received about \$6.9 million.

45. Moreover, during the same period of time when the Company materially misrepresented information to keep the stock price inflated, and before the scheme was exposed, Defendant Crumpacker made the following dispositions of Company stock under Form 4's Transaction-Code-F. On April 29, 2015, Defendant Crumpacker disposed of 8,694 shares of Company stock at a price of \$635.13 per share. On July 29, 2015, Defendant Crumpacker disposed of 1,002 shares of Company stock at a price of \$730.78 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he disposed of 9,696 Company shares and received about \$6.3 million to use for the payment of exercise prices or tax liabilities.

46. Defendant Crumpacker's insider sales and other beneficial dispositions of Company common stock made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Flynn

47. Defendant Patrick J. Flynn ("Flynn") has been a director of the Company since 1998 and is the Chairman of the Nominating and Corporate Governance Committee and a member of the Compensation Committee. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Flynn beneficially owned 7,624 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Flynn beneficially owned 6,313 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Flynn beneficially owned about \$5.8 million worth of Chipotle stock.

48. For the fiscal year ended December 31, 2014, Defendant Flynn received \$226,513 in compensation from the Company. This included \$106,500 in cash, and \$ 120,013 in stock. For the fiscal year ended December 31, 2015, Defendant Flynn received \$237,825 in compensation from the Company. This included \$117,750 in cash, and \$120,075 in stock.

49. The Company's 2016 Proxy Statement stated the following about Defendant Flynn:

Prior to retiring in 2001, Mr. Flynn spent 39 years at McDonald's where he held a variety of executive and management positions, most recently as Executive Vice President responsible for strategic planning and acquisitions. From his background as a senior-level restaurant industry executive, Mr. Flynn developed strong capabilities in guiding corporate strategy, and tremendous knowledge of the operational aspects of the restaurant business as well. In addition, Mr. Flynn's past experience as a director of a publicly-held financial institution, and his background in analyzing financial statements of businesses he has led and companies he has considered for acquisition, have given him strong financial analysis skills.

50. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Flynn made the following sales of Company stock (and made no purchases of Company stock). On February 13, 2015, Defendant Flynn sold 892 shares of Company stock for \$671.18 per share. On August 4, 2015, Defendant Flynn sold 1,500 shares of Company stock for \$748.38 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 2,392 Company shares on inside information, for which he received over \$1.7 million. His insider sales made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Charlesworth

51. Defendant John S. Charlesworth ("Charlesworth") has been a director of the Company since 1999 and is a member of the Audit Committee. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Charlesworth beneficially owned 5,274 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Charlesworth beneficially owned 3,403 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Charlesworth beneficially owned about \$4 million worth of Chipotle stock.

52. For the fiscal year ended December 31, 2014, Defendant Charlesworth received \$216,513 in compensation from the Company. This included \$96,500 in cash and \$ 120,013 in stock. For the fiscal year ended December 31, 2015, Defendant Charlesworth received \$215,075 in compensation from the Company. This included \$95,000 in cash and \$120,075 in stock.

53. The Company's 2016 Proxy Statement stated the following about Defendant Charlesworth:

Mr. Charlesworth is currently the sole owner/member of Hunt Business Enterprises LLC and EZ Street LLC, which own commercial properties and own and operate car care facilities. Before retiring in 2000, Mr. Charlesworth worked for McDonald's for 26 years, most recently as President of the Midwest Division

of McDonald's USA from July 1997 to December 2000. Prior to that, he served as a Senior Vice President in Southeast Asia from April 1995 to July 1997. His international experience included strategic planning and risk assessment for the growth and development of McDonald's across Southeast Asia, as well as serving as the McDonald's partner representative to seven Southeast Asian joint ventures. His experience with McDonald's included responsibility for managing a large and diverse employee workforce similar in many ways to Chipotle's, and also gave him a detailed knowledge of restaurant operations and food safety, site selection and related matters. He also has developed strong financial acumen through his experience at McDonald's as well as running his own business interests. He holds a Bachelor of Science degree in business, majoring in economics, from Virginia Polytechnic Institute.

54. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Charlesworth made the following sales of Company stock (and made no purchases of Company stock). On August 6, 2015, Defendant Charlesworth sold 2,000 shares of Company stock for \$750.12 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, he sold 2,000 Company shares on inside information, for which he received over \$1.5 million. His insider sales made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

Defendant Friedman

55. Defendant Darlene J. Friedman ("Friedman") has been a director of the Company since 1995 and is a member of the Compensation Committee and the Nominating and Corporate Governance Committee. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Friedman beneficially owned 6,054 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Friedman beneficially owned 4,864 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Friedman beneficially owned about \$4.6 million worth of Chipotle stock.

56. For the fiscal year ended December 31, 2014, Defendant Friedman received \$231,513 in compensation from the Company. This included \$111,500 in cash, and \$ 120,013 in stock. For the fiscal year ended December 31, 2015, Defendant Friedman received \$237,825 in compensation from the Company. This included \$117,750 in cash, and \$120,075 in stock.

57. The Company's 2016 Proxy Statement stated the following about Defendant Friedman:

Prior to retiring in 1995, Ms. Friedman spent 19 years at Syntex Corporation, an international pharmaceutical company, where she held a variety of management

positions, most recently as Senior Vice President of Human Resources. While at Syntex, Ms. Friedman was a member of the corporate executive committee and the management committee, and was responsible for the analysis, recommendation and administration of the company's executive compensation programs and worked directly with the compensation committee of Syntex's board. This experience and Ms. Friedman's talent in the areas of people management and compensation are invaluable in connection with her service as a director and as a member of our Compensation Committee. Ms. Friedman holds a Bachelor of Arts degree in psychology from the University of California at Berkeley and an MBA from the University of Colorado.

58. During the period of time when the Company materially misstated information to keep the stock price inflated, and before the scheme was exposed, Defendant Friedman made the following sales of Company stock (and made no purchases of Company stock). On July 23, 2015, Defendant Friedman sold 1,379 shares of Company stock for \$729.22 per share. Thus, in total, while the stock price was artificially inflated and before the fraud was exposed, she sold 1,379 Company shares on inside information, for which she received over \$1 million. Her insider sales made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate her motive in facilitating and participating in the scheme.

Defendant Baldocchi

59. Defendant Albert S. Baldocchi ("Baldocchi") has been a director of the Company since 1997 and is Chairman of the Audit Committee. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Baldocchi beneficially owned 72,729 shares of the Company's common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Baldocchi beneficially owned 72,918 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Baldocchi beneficially owned over \$54.8 million worth of Chipotle stock.

60. For the fiscal year ended December 31, 2014, Defendant Baldocchi received \$236,513 in compensation from the Company. This included \$116,500 in cash, and \$ 120,013 in stock. For the fiscal year ended December 31, 2015, Defendant Baldocchi received \$235,825 in compensation from the Company. This included \$115,750 in cash and \$120,075 in stock.

61. The Company's 2016 Proxy Statement stated the following about Defendant Baldocchi:

Mr. Baldocchi has been self-employed since 2000 as a financial consultant and strategic advisor for and investor in a variety of privately-held companies. His extensive involvement with restaurant companies over a period of 17 years has given Mr. Baldocchi an in-depth knowledge of restaurant company finance, operations and strategy. He also has considerable experience with high-growth

companies in the restaurant industry and in other industries, and his experience as a senior investment banker at a number of prominent institutions, including Morgan Stanley, Salomon Brothers and Montgomery Securities, helped him develop solid capabilities in accounting and finance as well. Mr. Baldocchi holds a Bachelor of Science degree in chemical engineering from the University of California at Berkeley and an MBA from Stanford University.

Defendant Flanzraich

62. Defendant Neil W. Flanzraich (“Flanzraich”) has been a director of the Company since 2007 and is the Chairman of the Compensation Committee and a member of the Audit Committee. According to the 2015 Proxy Statement, as of March 16, 2015, Defendant Flanzraich beneficially owned 3,442 shares of the Company’s common stock. According to the 2016 Proxy Statement, as of March 14, 2016, Defendant Flanzraich beneficially owned 3,631 shares of the Company’s common stock. Given that the price per share of the Company’s common stock at the close of trading on August 17, 2015, the day before the first contamination issue was made public, was \$754.03, Flanzraich beneficially owned about \$2.6 million worth of Chipotle stock.

63. For the fiscal year ended December 31, 2014, Defendant Flanzraich received \$216,513 in compensation from the Company. This included \$96,500 in cash, and \$120,013 in stock. For the fiscal year ended December 31, 2015, Defendant Flanzraich received \$243,325 in compensation from the Company. This included \$123,250 in cash, and \$120,075 in stock.

64. The Company’s 2016 Proxy Statement stated the following about Defendant Flanzraich:

Mr. Flanzraich has been a private investor since February 2006. He is also the Executive Chairman of Cantex Pharmaceuticals, Inc. (formerly ParinGenix, Inc.), a privately-owned biotech company. From 1998 through its sale in January 2006 to TEVA Pharmaceuticals Industries, Ltd., he served as Vice Chairman and President of IVAX Corporation, an international pharmaceutical company. From 1995 to 1998, Mr. Flanzraich served as Chairman of the Life Sciences Legal Practice Group of Heller Ehrman LLP, a law firm, and from 1981 to 1994, served as the Senior Vice President and Chief Counsel and member of the Operating and Executive Committees of Syntex Corporation, an international pharmaceutical company. Mr. Flanzraich’s executive experience has helped him develop outstanding skills in leading and managing strong teams of employees, and in oversight of the growth and financing of businesses in a rapidly-evolving market. His legal background also is valuable to us in the risk management area, and Mr. Flanzraich brings to us extensive experience serving as an independent director of other public and privately-held companies. He is a director of Equity One Inc. (NYSE:EQY). Mr. Flanzraich was a director of BELLUS Health Inc. until May 2012, a director of Continucare Corporation until October 2011, and a director of Javelin Pharmaceuticals, Inc. until July 2010. Mr. Flanzraich received an A.B.

from Harvard College and a J.D. from Harvard Law School.

Defendant Gillett

65. Defendant Stephen Gillett (“Gillett”) has been a director of the Company since March 12, 2015 and is a member of the Audit Committee. Defendant Gillett’s beneficial ownership of Company stock was not reported in the 2015 or 2016 Proxy Statements.

66. For the fiscal year ended December 31, 2015, Defendant Gillett received \$174,816 in compensation from the Company. This included \$78,247 in cash and \$96,569 in stock.

67. The Company’s 2016 Proxy Statement stated the following about Defendant Gillett:

Mr. Gillett was appointed to our Board on March 12, 2015. In March 2016, he became a senior executive leader at Google [x], and since October 2015 has been an active advisor to Google Ventures, an affiliate of Alphabet Inc. and Google Inc., where he provides leadership resources and mentoring to portfolio companies. Prior to his roles with Google, he served as Executive Vice President and Chief Operating Officer of Symantec Corporation (Nasdaq: SYMC) until December 31, 2014. In this role, he was responsible for corporate strategy, business segment management, eBusiness, IT, marketing, communications, sales and marketing operations, customer care, product renewals and cloud platform engineering. Mr. Gillett also served as a member of Symantec’s Board of Directors from January 2012 to December 2012. Prior to joining Symantec, Mr. Gillett was Executive Vice President and President, Best Buy Digital, Global Marketing and Strategy of Best Buy Co., Inc., from March 2012 to December 2012. From May 2008 to March 2012, Mr. Gillett was Executive Vice President, Digital Ventures and Chief Information Officer at Starbucks, Inc. His background also includes senior technology positions with companies including Yahoo! Inc. and CNET Networks. Mr. Gillett’s extensive experience with technology and cybersecurity is valuable to the Board in exercising its oversight of our IT systems and related security matters. He also has extensive leadership experience, including with global organizations, and considerable financial planning experience, all of which are also assets to our Board. He received a Bachelor’s degree from University of Oregon and an MBA from San Francisco State University.

Defendant Musk

68. Defendant Kimbal Musk (“Musk”) has been a director of the Company since 2013. Defendant Musk’s beneficial ownership of Company stock was not reported in the 2015 or 2016 Proxy Statements.

69. For the fiscal year ended December 31, 2014, Defendant Musk received \$203,013 in compensation from the Company. This included \$83,000 in cash and \$120,013 in stock. For

the fiscal year ended December 31, 2015, Defendant Musk received \$203,825 in compensation from the Company. This included \$83,750 in cash and \$120,075 in stock.

70. The Company's 2016 Proxy Statement stated the following about Defendant Musk:

Mr. Musk is an entrepreneur and restaurateur who has helped found and advise several companies and non-profits including: The Kitchen Restaurant Group, a restaurant company with restaurants in Boulder and Denver, CO and Chicago, IL; The Kitchen Community; Zip2 Corporation (acquired by Compaq Computer Corporation); PayPal, Inc. (acquired by eBay Inc.); Everdream Corporation (acquired by Dell Inc.); Tesla Motors, Inc.; Space Exploration Technologies Corp. (SpaceX); OneRiot (acquired by Wal Mart Stores, Inc.) and SolarCity Corporation. Mr. Musk has been Chief Executive Officer of The Kitchen Restaurant Group since April 2004, and Executive Director of The Kitchen Community, a non-profit organization that creates learning gardens in schools across the United States, since November 2010. After success in the technology business, Mr. Musk decided to pursue his passion for food and cooking and attended the French Culinary Institute in New York City. His extensive experience with fast-growing and innovative companies as well as restaurants and other retail operations, and his experience on numerous boards of directors, are an asset to our Board. Mr. Musk is a member of the board of directors of Tesla Motors, Inc. (Nasdaq:TSLA) as well as a number of privately-held companies and charitable organizations. He has served as an Adjunct Professor at New York University, and is a graduate of Queen's Business School in Canada and the French Culinary Institute.

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

71. By reason of their positions as officers, directors and/or fiduciaries of Chipotle and because of their ability to control the business and corporate affairs of Chipotle, the Individual Defendants owed Chipotle and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Chipotle in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Chipotle and its shareholders so as to benefit all shareholders equally.

72. Each director and officer of the Company owes to Chipotle and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company and in the use and preservation of its property and assets and the highest obligations of fair dealing.

73. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Chipotle, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

74. To discharge their duties, the officers and directors of Chipotle were required to exercise reasonable and prudent supervision over the management, policies, controls, and operations of the Company.

75. Each Individual Defendant, by virtue of his or her position as a director and/or officer, owed to the Company and to its shareholders the highest fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Chipotle, the absence of good faith on their part, or a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and directors of the Company has been ratified by the remaining Individual Defendants who collectively comprised Chipotle's board of directors ("Board")² at all relevant times.

76. As senior executive officers and directors of a publicly-traded company whose common stock was registered with the SEC pursuant to the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NYSE, the Individual Defendants had a duty to prevent and not to effect the dissemination of inaccurate and misleading information with respect to, *inter alia*, the food-safety at Chipotle restaurants, and had a duty to cause the Company to include in its regulatory filings with the SEC a non-misleading depiction of the subpar food safety standards adhered to at various Chipotle restaurants, so that the market price of the Company's common stock would be based upon truthful and accurate information.

77. To discharge their duties, the officers and directors of Chipotle were required to exercise reasonable and prudent supervision over the management, policies, practices, and internal controls of the Company. By virtue of such duties, the officers and directors of Chipotle were required to, among other things:

- (a) ensure that the Company was operated in a diligent, honest, and prudent manner in accordance with the laws and regulations of Delaware, the United States, and pursuant to Chipotle's own Code of Conduct, Corporate Governance Guidelines, and internal guidelines;
- (b) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

² The "Board" refers to the board of directors of Chipotle at the relevant time. At all relevant times, the Board consisted of Defendants Ells, Moran, Baldocchi, Charlesworth, Flanzraich, Flynn, Friedman, and Musk. Defendant Gillett joined the Board on March 12, 2015 and has served as a director since his joining and through the date of the filing of this Complaint.

- (c) remain informed as to how Chipotle conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices;
- (d) establish and maintain systematic and accurate records and reports of the business and internal affairs of Chipotle and procedures for the reporting of the business and internal affairs to the Board and to periodically investigate, or cause independent investigation to be made of, said reports and records;
- (e) maintain and implement an adequate and functioning system of internal legal, financial, and management controls, such that Chipotle's operations would comply with all laws and Chipotle's financial statements and regulatory filings filed with the SEC and disseminated to the public and the Company's shareholders would be accurate;
- (f) exercise reasonable control and supervision over the public statements made by the Company's officers and employees and any other reports or information that the Company was required by law to disseminate;
- (g) refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and
- (h) examine and evaluate any reports of examinations, audits, or other financial information concerning the financial affairs of the Company and to make full and accurate disclosure of all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

78. Each of the Individual Defendants further owed to Chipotle and its shareholders the duty of loyalty requiring that each favor Chipotle's interest and that of its shareholders over their own while conducting the affairs of the Company and refrain from using their position, influence or knowledge of the affairs of the Company to gain a personal advantage.

79. At all times relevant hereto, the Individual Defendants were the agents of each other and of Chipotle and were at all times acting within the course and scope of such agency.

80. Because of their advisory, executive, managerial, and directorial positions with Chipotle, each of the Individual Defendants had access to adverse, non-public information about the Company.

81. The Individual Defendants, because of their positions of control and authority, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by Chipotle.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

82. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

83. The purpose and effect of the conspiracy, common enterprise, and/or common course of conduct was, among other things, to: (i) facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, insider selling, and unjust enrichment; (ii) to conceal adverse information concerning the Company's operations, financial condition, competitors, future business prospects, and internal controls; and (iii) to artificially inflate the Company's stock price while a supermajority of the Individual Defendants made illegal lucrative sales of Company stock based on material non-public information and the Company repurchased its own stock.

84. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company purposefully, recklessly, or negligently to conceal material facts, make materially misleading statements, fail to correct such misrepresentations, and violate applicable laws. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants who are directors of Chipotle was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

85. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each of the Individual Defendants acted with actual or constructive knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was or should have been aware of his or her overall contribution to and furtherance of the wrongdoing.

86. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Chipotle, and was at all times acting within the course and scope of such agency.

CODE OF CONDUCT

87. Pursuant to the Company's Code of Conduct (the "Code of Conduct"), the conduct of all employees, Officers, and all members of the Board is governed by the Code of Conduct.

88. The Code of Conduct begins by representing that "Chipotle is committed to the highest standards of integrity in all of our activities and compliance with both the letter and spirit of the law. We expect that you will reflect these standards in your day-to-day dealings on our behalf." The Code of Conduct explains that it "is a guide to ethical behavior."

89. The Code of Conduct provides, as to “Compliance with the Code,” that:

If you become aware of a breach or violation of this Code or any other Company policy, you should report the breach or violation in the manner described in this Code under “Chipotle Confidential.” Chipotle will do its best to protect the anonymity of any reporting employee who so requests it, as well as the confidentiality of matters associated with a report or investigation, consistent with the Company’s obligation to investigate reported matters and comply with applicable law. Employees are expected to preserve the confidentiality of investigative matters.

Chipotle will take necessary steps to stop unlawful and unethical behavior and may take appropriate disciplinary action, up to and including termination, against those who violate the Code or other Company policies, including individuals responsible for the failure to reasonably detect a violation or to supervise employees in the fulfillment of their responsibilities in a manner consistent with the Code and Company policies.

90. The Code of Conduct provides, as to “Chipotle’s Ethics and Conflicts of Interest Policy,” that:

Chipotle is a company based on integrity. Integrity is about being real and being honest. It means doing the right thing even when no one is watching. These values permeate the way we do, and do not do, business.

You are expected to use good judgment, adhere to high ethical standards, and avoid situations that create an actual or perceived conflict between your personal interests and those of Chipotle. Chipotle requires that the transactions you participate in are ethical and within the law, both in letter and in spirit. When in doubt, consult with your Manager/Director or the People Support Department (Officers and members of the Board of Directors should consult with Chipotle’s General Counsel). They will determine if a conflict exists and establish controls to prevent abuse or, if such control is not feasible, they may require that you terminate the activity in question or divest your interest in any relevant transaction. No matter what, each of us must accept personal responsibility for doing the right thing.

Conflicts of interests or unethical behavior may take many forms. In the simplest terms, you should act for the long-term benefit of our customers and Chipotle, never for personal gain, or to favor family or friends. What follows are some of the key principles of ethical and conflict-free conduct. There is no way to develop a single set of rules to cover all situations. Rather, this policy outlines basic guidelines for ethical behavior at Chipotle. It does not replace good judgment.

91. The Code of Conduct provides, as to “Protection and Use of Company Assets,” that:

In a nutshell, you may not use Company property, information, or your position for personal gain, nor should you use assets or labor for personal use. All employees should endeavor to protect Chipotle’s assets and ensure their efficient use. Theft, carelessness, and waste have a direct impact on our profitability. Any suspected incident of fraud or theft of Company property should be immediately reported for investigation. Company equipment and supplies should not be used for non-business purposes, though incidental personal use may be permitted.

92. The Code of Conduct provides, as to “Outside Business Investments,” that:

As an employee, you must avoid financial involvement, outside employment, or any other business undertaking that is competitive with, or prejudicial to, the best interests of Chipotle. You are also prohibited from engaging in business or investment opportunities that are discovered through the use of Chipotle’s property, information, or your position. Notwithstanding, ownership by you or your family of less than 1% of a class of securities issued by a publicly traded company is not considered to be a financial involvement in violation of this policy.

93. The Code of Conduct provides, as to “Chipotle’s Confidential Information,” that:

You may not use proprietary or confidential information for personal gain or to Chipotle’s detriment. The improper use of Chipotle’s name, trademarks, or other intellectual property is prohibited. Confidential information must not be disclosed to anyone outside of Chipotle, and should not be discussed with Chipotle employees who do not have a real need to know this information in order to do their jobs. Confidential information comes in many forms and is information not generally known to the public at large or to the industry you are in and provides you with a competitive advantage. As stated in the Confidentiality and Non-Disclosure Agreement you sign when you start working for Chipotle, these standards are so important that they must be observed even after employment ends. If you have doubts about whether information is confidential, treat it as confidential and seek the advice of your Manager/Director or Chipotle’s Corporate Compliance Counsel before disclosing it. The intentional or inadvertent disclosure of confidential information could seriously damage the Company.

94. The Code of Conduct provides, as to “Communicating with the Public,” that:

Whenever Chipotle communicates with the public, including the media and government agencies, accuracy and thoroughness are critical. In general, only Officers or the Director of Public Relations are authorized to make or approve public statements made on behalf of Chipotle. Public statements should be

sufficiently candid, clear, and complete so that they neither mislead nor lend themselves to misinterpretation. To ensure that accurate and appropriate information is relayed to the public, all public statements made on behalf of Chipotle or our business must be made in accordance with the 'Regulation FD External Communication Policy,' or if not subject to that policy, must first be reviewed by the Director of Public Relations. This applies to all public statements made on behalf of Chipotle, including those made on internet bulletin boards and chat rooms. Likewise, you are requested to refer any requests for information about Chipotle to an Officer or the Director of Public Relations.

95. The Code of Conduct provides, as to "Recording and Reporting Information," that:

Chipotle maintains a system of internal controls that we believe provides reasonable assurance that transactions are executed in accordance with management's authorization and are properly recorded. The system is characterized by a control-oriented environment that includes written policies and procedures. All employees are expected to adhere strictly to these policies.

Our records are critical in meeting our financial, legal, and business obligations. All records, including employment, payroll and financial data, checks and payments, as well as other essential data, must therefore be prepared with accuracy and care. Dishonesty or carelessness in recording or reporting information, either inside or outside the Company, is not only strictly prohibited, but could lead to civil and criminal liability for you and for Chipotle.

Following are important guidelines to adhere to:

- All books and financial records must be kept in such a way as to fully and accurately reflect, in reasonable detail, all receipts, expenditures, transactions, assets, and liabilities in conformity with Chipotle's internal controls and generally accepted accounting principles.
- No false or artificial information may be recorded for any reason.
- Employees are prohibited from making false or misleading statements in connection with any audit or examination of Chipotle's financial statements and records, business operations, or for compliance with laws or regulations.
- Each employee is personally accountable for the Company funds over which he or she has control. No payment may be made, or invoice issued, on behalf of Chipotle with the intention or understanding that any part of such payment or receipt is to be used for a purpose other than that described in the supporting documents.
- No secret funds or unrecorded or undisclosed accounts may be maintained or

established for any purpose.

- No employee may influence, coerce, manipulate, or mislead independent or internal auditors regarding our financial statements, accounting practices, disclosures, or our internal controls or processes.

Company records are to be treated as confidential information in conformity with this Code.

96. The Code of Conduct provides, as to “Securities Laws,” that:

These laws forbid individuals and corporations from profiting from material non-public information, or “inside” information, that could influence decisions to buy, sell, or hold particular securities. Such information may relate to the financial condition of a company, its products and the market for its securities, or its investment intentions or plans for a merger, acquisition, or divestiture. You may not make trades of securities based on material inside information or give such information to others. For additional information, you should refer to the Company’s “Insider Trading Policy,” which can be found in Public Folders/Store-Staff Info/Insider Trading Information.

97. The Code of Conduct provides, as to “Antitrust and Trade Regulation Laws,” that:

These laws prohibit actions that restrain competition. They are designed to protect the free enterprise system from corruption and abuse. It is your duty as a corporate citizen to comply with these laws. Chipotle will compete vigorously on the merits of our products and services and will not engage in unlawful methods of competition.

98. The Code of Conduct provides, as to “Whistleblower Policy,” that:

We want you to report any complaints or concerns you have about our business and operations, including but not limited to accounting and internal **accounting controls, audit matters, and any violations of the Code of Conduct**.

Each complaint will be treated as confidential and the anonymity of the complainant, if requested, will be preserved to the fullest extent reasonably possible in light of Chipotle’s need to investigate the complaint, the requirements of applicable law, and other Company policies.

Chipotle’s Audit Committee, which is a committee of the Board of Directors, has full access to the complaint log, complaint reports, and related materials.

(Emphasis in original)

99. In violation of the Code of Conduct, the Individual Defendants (as key officers and as members of the Company's Board) conducted little, if any, oversight of the Company's internal controls over public reporting and of the Company's engagement in the Individual Defendants' schemes to grant grossly excessive compensation to management, initiate fraudulent and corrupt repurchase programs, issue materially false and misleading statements to the public, and facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, insider sales, and unjust enrichment. In violation of the Code of Conduct, the Individual Defendants consciously disregarded their duties to (1) comply with the applicable laws and regulations, (2) protect corporate assets, (3) engage in fair dealing and not engage in unfair competition and deceptive trade practices, (4) avoid using corporate opportunities for personal gain, (5) avoid conflicts of interest, (6) report violations of the Code of Conduct, (7) avoid insider trading, (8) refrain from inappropriately using confidential information, (9) appropriately maintain the Company's books, records, accounts, and financial statements, and (10) make accurate filings with the SEC.

CHIPOTLE'S CORPORATE GOVERNANCE

100. Pursuant to the Company's Corporate Governance Guidelines (the "Corporate Guidelines"), the entire Board is subject to the corporate governance practices contained therein.

101. The Corporate Guidelines provides, as to "Responsibilities of the Board of Directors," that:

The Board of Directors, elected by the shareholders, is the ultimate decision-making body of the Company, except with respect to matters reserved to the shareholders. The Board selects the Chief Executive Officer who is charged with overall responsibility for managing the Company's business. The primary function of the Board is oversight – defining and enforcing standards of accountability that enable senior management to execute their responsibilities fully and in the interests of shareholders. Consistent with that function, the following are the primary responsibilities of the Board:

Evaluating the performance of the Company and its senior management, which includes (i) overseeing the conduct of the Company's business to evaluate whether it is being effectively managed, including through regular meetings of the outside Directors without the presence of management; and (ii) selecting, regularly evaluating and planning for the succession of the Chief Executive Officer and other members of senior management as the Board deems appropriate, including fixing the compensation of such individuals;

- Evaluating the performance of the Company and its senior management, which includes (i) overseeing the conduct of the Company's business to evaluate whether it is being effectively managed, including through regular

- meetings of the outside Directors without the presence of management; and (ii) selecting, regularly evaluating and planning for the succession of the Chief Executive Officer and other members of senior management as the Board deems appropriate, including fixing the compensation of such individuals;
- Reviewing the Company’s strategic plans and objectives, including the principal risk exposures of the Company;
 - Providing advice and counsel to the Chief Executive Officer and other senior management of the Company;
 - Assisting management in the oversight of compliance by the Company with applicable laws and regulations, including the public reporting obligations of the Company;
 - Overseeing management with a goal of ensuring that the assets of the Company are safeguarded through the maintenance of appropriate accounting, financial and other controls;
 - Appointing the members of and overseeing any required or appropriate Committees of the Board established for purposes of the execution of any delegated responsibilities of the Board;
 - Establishing the form and amount of compensation for Directors, taking into account their responsibilities as such and as members of any Committee of the Board; and
 - Evaluating at least annually the overall effectiveness of the Board, as well as selecting and recommending to shareholders for election an appropriate slate of candidates for the Board.

In discharging their responsibilities, Directors must exercise their business judgment to act in a manner that they believe in good faith is in the best interests of the Company and its shareholders. Directors are expected to attend all or substantially all Board meetings and meetings of the Committees of the Board on which they serve. Directors are also expected to spend the necessary time to discharge their responsibilities appropriately and to ensure that other existing or future commitments do not materially interfere with their responsibilities as members of the Board.

102. The Corporate Guidelines provides, as to “Access to Management, Management Information and Counsel,” that:

Directors will have free access to management and management information. Management will be responsive to requests for information from Board members.

The Board encourages the Chairman of the Board to invite members of management to make presentations at Board meetings in order to provide particular insights into aspects of the Company's business or to provide individuals with exposure to the Board for purposes of management development. Directors may suggest possible guests to the Chairman.

103. In violation of the Corporate Guidelines, the Individual Defendants who are members of the Board conducted little, if any, oversight of the Company's internal controls over public reporting and of the Company's engagement in the Individual Defendants' schemes to grant grossly excessive compensation to management, initiate fraudulent and corrupt repurchase programs, issue materially false and misleading statements to the public, and facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, insider sales, and unjust enrichment. In violation of the Corporate Guidelines, the Individual Defendants who are members of the Board consciously disregarded their duties of loyalty, ethics, to act in the best interests of the Company, and to use their free access to management to obtain all information necessary to fulfill their duties.

CHIPOTLE'S ADDITIONAL INTERNAL GUIDELINES

104. Pursuant to the Company's Director Code of Conduct (the "Director Code of Conduct"), each Company director is subject to the standards and practices contained therein.

105. The Director Code of Conduct provides, in the "Introduction," that:

Chipotle Mexican Grill, Inc. (the "Company") is committed to the highest standards of integrity and fair dealing in all of its activities and compliance with both the letter and spirit of the law. We expect that all of our directors will reflect these standards in their day-to-day dealings on behalf of the Company. The attached Code of Business Conduct (the "Code") is for all directors and employees of the Company and is a guide to ethical behavior. The Company has an "open door" policy with respect to any concern relating to compliance with the Code and other Company policies, and no person will be subject to disciplinary or other retaliatory action by raising any concern in good faith.

106. The Director Code of Conduct provides in relevant part, as to "Director Responsibility," that:

The Company expects the members of its Board of Directors at all times to set the right tone by being mindful of their obligations as fiduciaries and by adhering to high standards of conduct, including the policies set out in this Code. Directors should seek to promote those standards in fulfilling their responsibilities to the Company and its shareholders.

Like our employees, directors are expected to act honestly, in compliance with law and in the best interests of the Company. They must conduct themselves in a

professional and respectful manner and act in good faith and with due care. In their oversight of management, directors should be vigorous in their inquiries and exercise independent judgment to promote the interests of the Company. Directors are also expected to maintain the confidentiality of Company information and to disclose any possible conflicts of interest that they may have with respect to matters being considered by the Board.

Any director who has concerns about compliance with the Code should direct his or her inquiry to the Chairman of the Nominating and Corporate Governance Committee or to the Company's chief legal officer.

107. On September 13, 2013, Defendants Ells, Moran, and Hartung each signed an individual Code of Ethics that bound each of them to a set of ethical conduct (the "Ethics Pledge"). The Ethics Pledge provided, in relevant part, that:

I acknowledge that the Company is committed to honesty and ethical conduct in all areas of its business and that officers with responsibility for the conduct or supervision of the Company's financial affairs play a special role in preserving and protecting shareholders' interests.

In furtherance of the above and to the best of my ability, I will adhere to the following principles and responsibilities:

- Act at all times in accordance with this Code of Ethics and the Company's Code of Business Conduct, a copy of which has been provided to me;
- Act at all times with integrity, avoiding actual or apparent conflicts of interest in personal and professional relationships;
- Address any apparent conflict of interest in personal and professional relationships in accordance with the highest ethical standards and promptly disclose to the Company's chief legal officer the nature of any such conflict of interest or any material transaction or relationship that reasonably could be expected to give rise to such a conflict of interest;
- Provide, in the Company's reports filed with the Securities and Exchange Commission and other public communications, disclosure that is full, fair, accurate, complete, objective, timely and understandable;
- Comply with rules and regulations of all U.S. and non-U.S. governmental entities and other private and public regulatory agencies to which the Company is subject, including any exchanges on which the Company's securities may be listed;
- Act in good faith, responsibly, with due care, competence and diligence, and

without misrepresenting material facts or circumstances;

- Act in what I reasonably and independently believe to be in the best interests of the Company;
- Respect the confidentiality of Company information, except when authorized or otherwise required to make any disclosure, and avoid the use of any Company information for personal advantage;
- Share my knowledge with others within the Company, to the extent appropriate and consistent with applicable law;
- Maintain my professional skills to improve the Company's communications to its constituents;
- Promote ethical behavior among employees under my supervision;
- Accept accountability for adherence to this Code of Ethics and the Company's Code of Business Conduct; and
- Achieve responsible use of and control over all assets and resources of the Company entrusted to me.

I acknowledge that the Company's Code of Business Conduct describe procedures for the internal reporting of violations of such Code. I will comply with those reporting requirements. I will also promote compliance with them by others under my supervision, as well as prompt reporting by them of violations of such Code. I further acknowledge that the consequences of my failure to adhere to this Code of Ethics or the Company's Code of Business Conduct may result in disciplinary action, up to and including termination for cause.

108. In violation of the Director Code of Conduct and the Ethics Pledge, the Individual Defendants who are directors, and especially Defendants Ells, Moran, and Hartung, conducted little, if any, oversight of the Company's internal controls over public reporting and the Company's engagement in the Individual Defendants' schemes to grant grossly excessive compensation to management, initiate fraudulent and corrupt repurchase programs, issue materially false and misleading statements to the public, and facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, insider sales, and unjust enrichment. In violation of the Director Code of Conduct and the Ethics Pledge, the Individual Defendants who are directors, and especially Defendants Ells, Moran, and Hartung, consciously disregarded their obligations as set forth, and agreed to, therein.³

³ The Code of Conduct, Corporate Guidelines, Director Code of Conduct, and the Ethics Pledge are hereinafter collectively referred to as the "Ethics Codes."

INDIVIDUAL DEFENDANTS' MISCONDUCT

A. The Directors Breached Their Fiduciary Duties and Were Unjustly Enriched When They Granted Themselves Excessive Compensation that Far Exceeds the Compensation of Their Peers and Ignores the Company's Increasingly Poor Financial Performance

109. Pursuant to the Company's 2011 Stock Incentive Plan (the "2011 SIP"), from 2011 to 2015 the Individual Defendants abused their power to grant stock awards to themselves and the Company's executive management by giving themselves and certain of the Company's executive management excessive stock awards worth hundreds of millions of dollars. Chipotle's Board and/or executive officers awarded and received shares of the Company's stock pursuant to an incentive plan in which awards of Chipotle's shares could be made to officers, directors, employees, consultants and advisors of the Company as part of their annual "compensation" without any meaningful limit on the number of shares granted.

110. On April 6, 2011, the Board approved the 2011 SIP, which was voted on and approved by the Company's shareholders at the 2011 Annual Meeting of Shareholders on May 26, 2011. The 2011 SIP, administered by the Compensation Committee, provides grants for "employees and non-employee directors" of the Company's stock in the form of options (also called stock-only stock appreciation rights ("SOSARs")), restricted stock units ("RSUs"), and other such devices.

111. The 2011 SIP provides no meaningful limit on the amount of shares that the Compensation Committee can award directors, officers and employees of the Company. Under the original terms of the 2011 SIP, a total of 3,360,000 shares of Chipotle were available to be distributed, with a total value of \$912,844,800 based on Chipotle's share price of \$271.68 per share at the time the 2011 SIP was approved. The 2011 SIP provides Defendants a mechanism to constantly receive large blocks of Chipotle shares and immediately sell hundreds of thousands of shares due to the short vesting period of SOSARs granted from previous quarters.

112. Since the 2011 SIP was adopted, the Company compensated its two co-CEOs and directors, Defendants Ells and Moran, in gross excess of the compensation range of CEOs at companies in Chipotle's peer group by awarding Defendants Ells and Moran approximately \$300 million in stock awards under the 2011 SIP between 2011 and 2014. In fact, the *Denver Post* reported that in 2013 alone, the pay packages for Defendants Ells and Moran, which totaled more than \$67 million, were 10 times the median pay for CEOs at peer companies.⁴

⁴ Alicia Wallace, *Chipotle executive pay under fire – again*, *The Denver Post*, available at http://www.denverpost.com/business/ci_28080041/chipotle-executive-pay-under-fire-again.

113. As a result of these SOSARs awards, which vest earlier than other long-term incentive plan awards and can be sold within a short time period, Defendants Ells and Moran sold approximately 289,225 shares of Chipotle, reaping proceeds of approximately \$188,111,055.80 in 2015 alone. For 2014, 2013, and 2012, Defendant Ells received \$23,698,500, \$12,304,500 and \$15,742,500, respectively, in SOSARs pursuant to the 2011 SIP, based on grant date value⁵. For 2014, 2013, and 2012, Defendant Moran received \$23,698,500, \$12,304,500 and \$15,742,500, respectively, in SOSARs pursuant to the 2011 SIP.

114. For 2014, 2013, and 2012, Defendant Crumacker received \$4,062,600, \$1,692,400 and \$1,679,200, respectively, in SOSARs pursuant to the 2011 SIP. For 2014, 2013 and 2012, Defendant Hartung received \$8,125,200, \$4,101,500 and \$5,247,500, respectively, in SOSARs pursuant to the 2011 SIP.

115. In addition to SOSARs, the 2011 SIP provides Defendants the ability to award RSUs in the same fashion, which the Board has used to compensate themselves since the adoption of the 2011 SIP. For 2014, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, Friedman, and Musk each received \$120,013 in RSUs pursuant to the 2011 SIP. For 2013, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, and Friedman each received \$85,161 in RSUs, and Defendant Musk received \$28,572 in RSUs pursuant to the 2011 SIP. For 2012, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, and Friedman each received \$85,092 in RSUs pursuant to the 2011 SIP. For 2011, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, and Friedman each received \$85,233 in RSUs pursuant to the 2011 SIP.

116. Shareholder opposition to the stock awards granted under the 2011 SIP, particularly the awards given out as executive compensation, grew continuously since Defendants implemented the 2011 SIP. Defendants sought to amend the 2011 SIP at the 2014 Annual Meeting of Shareholders to increase the amount of shares available under the 2011 SIP, which was met by severe shareholder opposition, with approximately 55% of the Company's outstanding shares rejecting the amendment and approximately 77% of the Company's outstanding shares rejecting the executive compensation package, which included mostly grants of SOSARs.

117. Defendants, in breach of their fiduciary duties, enacted the 2011 SIP which contains no meaningful limit for the purposes of awarding compensation through various forms of stock options, which were excessive. Although the Board is aware that the 2011 SIP contains no meaningful limit, the 2011 SIP remains in effect until March 16, 2021. Since the approval of the 2011 SIP, the Individual Defendants received a total value of \$130,425,480 in SOSARs and RSUs pursuant to the 2011 SIP between 2011 and 2014. The 2011 SIP was only changed after the say-on-pay vote at the 2014 Annual Meeting of Shareholders.

118. The changes to the 2011 SIP did not go into effect until January 1, 2015, meaning SOSARs and RSUs received by some Individual Defendants from 2013-2014 which had yet to vest, could still be sold even after changes to the 2011 SIP were made, and the Board has failed

⁵ All values based on grant date value unless otherwise noted.

to take action to recoup the awards. As a result, the aforementioned Individual Defendants are able to capitalize on the SOSARs and RSUs they received before January 1, 2015, when those shares vest in the coming years, despite the “changes” made to the 2011 SIP.

119. After informing shareholders that the Company made changes in the type of awards that certain Defendants would receive following the say-on-pay vote at the 2014 Annual Meeting of Shareholders, the Individual Defendants sought to increase the reserve total of shares available under the 2011 SIP once again. The Individual Defendants proposed in 2014 to increase the amount of shares available under the 2011 SIP, but that proposal was met with severe shareholder opposition and was not approved. The Individual Defendants informed shareholders of alleged changes in the 2011 SIP and then sought approval at the 2015 Annual Meeting of Shareholders. This time, the Individual Defendants were successful in obtaining the shareholder vote and six days later, Defendants filed a Form S-8 with the SEC registering an additional 2,200,000 shares to be included in the total available shares under the 2011 SIP.

120. Plaintiff brings this action to, *inter alia*, recoup the unfair and excessive compensation that the Individual Defendants awarded themselves under the 2011 SIP in outstanding SOSARs and RSUs and the value of shares already cashed in by Individual Defendants and impose a meaningful limit on the Individual Defendants’ ability to award themselves compensation going forward.

121. Since the Board received and/or approved the challenged compensation in the form of RSUs, SOSARs, and other devices, the Board stands on both sides of the transactions and the Individual Defendants must prove the entire fairness of the compensation awards.

122. On March 13, 2016, *Business Insider* issued an article entitled, “Chipotle’s CEOs’ insanely high pay was just cut in half.” The article stated, in pertinent part:

Chipotle co-CEOs Steve Ells and Monty Moran had their pay cut in half in 2015, compared to a year earlier.

Ells’ pay dropped to \$13.8 million in 2015 from \$28.9 million in 2014, and Moran’s pay dropped to \$13.6 million from \$28.1 million, according to a regulatory filing.

The declines came primarily from a lack of stock-option rewards.

The CEOs were awarded no stock options in 2015, while each received \$23.7 million in options the year before.

Chipotle’s shares lost 30% of their value in 2015, following E. coli outbreaks linked its restaurants in 14 states. The stock is up roughly 6% so far this year.

Going forward, Chipotle said it’s going to start partially tying executive bonuses to Chipotle’s stock price.

Share prices would have to exceed \$700 for 30 straight days to trigger the new stock awards, according to the filing.

The executives' pay packages in 2013, which totaled more than \$67 million, were 10 times the median pay for CEOs at peer companies, The Denver Post reports, citing CtW Investment Group.⁶

123. Despite the pay cuts in executive compensation and the changes made to the 2011 SIP, Defendants Ells and Moran still earned more than average executives among the Company's peer group. An article published in *USA Today* on March 14, 2016, stated in pertinent part:

Yet, even after the cuts in pay, the two CEOs are still paid higher than recent averages among top executives. CEOs in the Standard & Poor's 500 were paid \$10.6 million on average in 2014, says compensation firm Equilar...

Some wonder if the company is going far enough to curtail the lofty pay packages for Chipotle executives, even during time of crisis. "I don't think the co-CEOs should have earned bonuses, including long term stock awards which the summary compensation table estimates will amount to \$12 million each," says Eleanor Bloxham, CEO of The Value Alliance and Corporate Governance Alliance. "Although the (compensation) committee says they made the awards early in the year, *they should have clawed back all of the bonus.*"⁷

124. Although Defendants Ells and Moran did not receive stock options in 2015, the base salary for Defendants Ells and Moran increased by \$100,000 and each still has unvested options from 2013 and 2014 that they do not have to give back.

125. Furthermore, the Individual Defendants received RSUs pursuant to the 2011 SIP, which still contains no meaningful limits.

B. The Individual Defendants Caused the Company to Mislead the Investing Public

February 4, 2015 -- 2014 Annual Report

126. On February 4, 2015, the Company filed an annual report for the fiscal year ended December 31, 2014 on Form 10-K with the SEC (the "2014 10-K"), which was signed by the Board and Defendant Hartung.

⁶ See Hayley Peterson, "Chipotle CEOs' insanely high pay was just cut in half," *Business Insider* (Mar. 13, 2016), <http://www.businessinsider.com/chipotle-ceos-pay-cut-in-half-2016-3> (last accessed 3/27/16).

⁷ See Ahiza Garcia, "Big pay cut for Chipotle's bosses," *CNN Money* (Mar. 11, 2016), available at <http://money.cnn.com/2016/03/11/news/companies/chipotle-ceo-pay-cut/>.

127. Attached to the 2014 10-K were certifications pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act and the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Ells, Moran, and Hartung attesting to the accuracy of the 2014 10-K.

128. For the three month period ended December 31, 2014, the Company reported net income of \$121.23 million, or \$3.84 per diluted share, on revenue of \$1.07 billion, compared to net income of \$79.62 million, or \$2.53 per diluted share, on revenue of \$844.15 million for the same period the previous year. For the fiscal year ended December 31, 2014, the Company reported net income of \$445.37 million, or \$14.13 per diluted share, on revenue of \$4.11 billion, compared to net income of \$327.44 million, or \$10.47 per diluted share, on revenue of \$3.21 billion for 2013.

129. Importantly, in the 2014 10-K, the Company made repeated assurances about its compliance with food safety regulations and represented that it maintained high levels of hygiene and cleanliness. For instance, the Company stated the following in the 2014 10-K:

We focus on trying to find the highest quality ingredients we can to make great tasting food

We use high-quality raw ingredients, classic cooking methods and a distinctive interior design and have friendly people to take care of each customer—features that are more frequently found in the world of fine dining. Our approach is also guided by our belief in an idea we call “Food With Integrity.” Our objective is to find the highest quality ingredients we can—ingredients that are grown or raised with respect for the environment, animals and people who grow or raise the food.

Food With Integrity. Serving high quality food while still charging reasonable prices is critical to our vision to change the way people think about and eat fast food. As part of our Food With Integrity philosophy, we believe that purchasing fresh ingredients and preparing them by hand are not enough, so we spend time on farms and in the field to understand where our food comes from and how it is raised. Because our menu is so focused, we can concentrate on the sources of each ingredient, and this has become a cornerstone of our continuous effort to improve our food.

Quality Assurance and Food Safety. We are committed to serving safe, high quality food to our customers. Quality and food safety are integrated throughout our supply chain and everything we do; from the farms that supply our food all the way through to our front line. We have established close relationships with some of the top suppliers in the industry, and we actively maintain a limited list of approved suppliers from whom our distributors must purchase. *Our quality*

assurance department establishes and monitors our quality and food safety programs for our supply chain. Our training and risk management departments develop and implement operating standards for food quality, preparation, cleanliness and safety in the restaurants. *Our food safety programs are also designed to ensure that we comply with applicable federal, state and local food safety regulations.*

Importance of Methods and Culture. Although we have many restaurants, we believe that our departure from the automated cooking techniques and microwaves used by many traditional fast-food and fast-casual restaurants helps to set us apart. Our crews use classic cooking methods: they marinate and grill meats, hand-cut produce and herbs, make fresh salsa and guacamole, and cook rice in small batches throughout the day. They work in kitchens that more closely resemble those of high-end restaurants than they do a typical fast-food place. Despite our more labor-intensive method of food preparation, our focused menu creates efficiencies which allow us to serve high quality food made from ingredients typically found in fine dining restaurants.⁸

130. Notably, while several issues were disclosed relating to the “Food with Integrity” section (e.g., expenses), the Company did not mention any issue of food safety.

131. The Company disclosed, but misrepresented the gravity of, the possibility of food-borne illness. The Company represented that “[o]n a small number of occasions one or more Chipotle restaurants have been associated with customer illness.” The Company also represented that customers complained of illness or injury “occasionally.”

132. At the same time, the Company represented that it maintains “high levels of quality . . . in our restaurants [that contain] high-quality, fresh ingredients and other necessary supplies that meet our specifications from reliable suppliers.”

133. The 2014 10-K also disclosed the initiation of a new repurchase program on February 3, 2015, authorized by the Board, that allowed for the “expenditure of up to an additional \$100 million to repurchase shares of [the Company’s] common stock.” Specifically, the 2014 10-K disclosed the following:

Stock Repurchases. In accordance with stock repurchases authorized by our Board of Directors we purchased shares of our common stock with an aggregate total repurchase price of \$88.0 million during 2014. As of December 31, 2014, \$102.2 million was available to be repurchased under the current repurchase authorizations announced on February 5, 2013 and April 17, 2014. On February 3, 2015 we announced that our Board of Directors authorized the expenditure of up

⁸ Unless otherwise noted, emphasis added throughout.

to an additional \$100 million to repurchase shares of our common stock. We have entered into an agreement with a broker under SEC rule 10b5-1(c), authorizing the broker to make open market purchases of common stock from time to time, subject to market conditions.

134. The Company explained that it would use “a cash and short-term investment balance . . . along with cash flow from operations” in order “to repurchase additional shares of our common stock subject to market conditions (including up to \$102.2 million in repurchases under programs authorized as of December 31, 2014 and an additional \$100 million program announced on February 3, 2015)”

April 21-22, 2015 – First Quarter 2015 Results

135. On April 21, 2015, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung and attaching a press release issued by the Company the same day (“4/21/15 Press Release”).

136. The 4/21/15 Press Release summarized the financial results for the first quarter of 2015, the three month period ended March 31, 2015. The 4/21/15 Press Release contained the following highlights:

Highlights for the first quarter of 2015 as compared to the first quarter of 2014 include:

- Revenue increased 20.4% to \$1.09 billion
- Comparable restaurant sales increased 10.4%
- Restaurant level operating margin was 27.5%, an increase of 160 basis points
- Net income was \$122.6 million, an increase of 47.6%
- Diluted earnings per share was \$3.88, an increase of 47.0%
- Opened 49 new restaurants

137. In the 4/21/15 Press Release, investors were led to believe that adequate controls were in place to ensure that the Company’s “high standards” for food quality and safety were met. In quoting Defendant Ells, the 4/21/15 Press Release announced that “we suspended one of our primary pork suppliers and are exploring options to increase the supply of pork that meets our high standards . . . we remain confident that higher quality, Responsibly Raised[®] ingredients taste better and will continue to resonate with our customers.”

138. The 4/21/15 Press Release contained a section titled “About Chipotle” where it provided:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food. In order to achieve this vision, we focus on building a special people culture that is centered on creating teams of top performers empowered to achieve high standards.

139. On April 22, 2015, the Company filed a quarterly report for the three-month period ended March 31, 2015 on a Form 10-Q with the SEC (“1Q 2015 10-Q”), which was signed by Defendant Hartung.

140. Attached to the 1Q 2015 10-Q were SOX certifications, signed by Defendants Ells, Moran, and Hartung attesting to the accuracy of the 1Q 2015 10-Q.

141. The 1Q 2015 10-Q stated as follows about Chipotle and its food:

We use high-quality raw ingredients, classic cooking methods and distinctive interior design, and have friendly people to take care of each customer—features that are more frequently found in the world of fine dining. Our approach is also guided by our belief in an idea we call “Food With Integrity.” Our objective is to find the highest quality ingredients we can—ingredients that are grown or raised with respect for the environment, animals and people who grow or raise the food. A similarly focused people culture, with an emphasis on identifying and empowering top performing employees, enables us to develop future leaders from within.

Food With Integrity. In all of our restaurants, we endeavor to serve only meats that were raised without the use of non-therapeutic antibiotics or added hormones, and in accordance with criteria we’ve established in an effort to improve sustainability and promote animal welfare.

142. The 1Q 2015 10-Q disclosed that the Company discontinued its relationship with a pork supplier because it “was not meeting [the Company’s] standards related to the size and condition of the housing offered to some of the pigs.” The Company represented that “[o]ne of our primary goals is for all of our restaurants to continue serving meats that are raised to meet our standards.” This only further portrayed Chipotle as being a highly selective food-service provider that is committed to high standards.

143. In fact, the Company even represented that its use of “fresh” ingredients was a financial advantage, explaining “We haven’t required significant working capital because

customers pay using cash or credit cards and because our operations do not require significant receivables, nor do they require significant inventories *due, in part, to our use of various fresh ingredients.*”

July 21-22, 2015 – Second Quarter 2015 Results and Additional Repurchase Program

144. On July 21, 2015, the Company filed a Form 8-K (“7/21/15 8-K”) with the SEC, signed by Defendant Hartung and attaching a press release issued by the Company the same day (“7/21/15 Press Release”).

145. Aside from announcing a conference call to discuss the second quarter 2015 financial results, and attaching the 7/21/15 Press Release, the 7/21/15 8-K disclosed an additional Company stock repurchase program. Specifically, the 7/21/15 8-K provided the following: “On July 21, 2015 Chipotle Mexican Grill, Inc. announced that its Board of Directors has authorized repurchases of Chipotle common stock with a total aggregate purchase price of \$100 million, exclusive of commissions. This repurchase is in addition to previously announced repurchase authorizations totaling \$900 million.” Thus, the Company admitted that it was expanding its repurchase program to \$1 billion.

146. The 7/21/15 Press Release summarized the financial results for the second quarter of 2015, the three month period ended June 30, 2015. The 7/21/15 Press Release contained the following highlights:

Highlights for the second quarter of 2015 as compared to the second quarter of 2014 include:

- Revenue increased 14.1% to \$1.2 billion
- Comparable restaurant sales increased 4.3%
- Restaurant level operating margin was 28.0%, an increase of 70 basis points
- Net income was \$140.2 million, an increase of 27.1%
- Diluted earnings per share was \$4.45, an increase of 27.1%
- Opened 48 new restaurants

147. The 7/21/15 Press Release contained the same “About Chipotle” representations as the 4/21/15 Press Release, which provided:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better

food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food. In order to achieve this vision, we focus on building a special people culture that is centered on creating teams of top performers empowered to achieve high standards.

148. On July 22, 2015, the Company filed a quarterly report for the three-month period ended June 30, 2015 on a Form 10-Q with the SEC (“2Q 2015 10-Q”), which was signed by Defendant Hartung.

149. Attached to the 2Q 2015 10-Q were SOX certifications, signed by Defendants Ells, Moran, and Hartung attesting to the accuracy of the 2Q 2015 10-Q.

150. The 2Q 2015 10-Q stated the following about Chipotle and its food:

We use high-quality raw ingredients, classic cooking methods and distinctive interior design, and have friendly people to take care of each customer—features that are more frequently found in the world of fine dining. Our approach is also guided by our belief in an idea we call “Food With Integrity.” Our objective is to find the highest quality ingredients we can—ingredients that are grown or raised with respect for the environment, animals and people who grow or raise the food. A similarly focused people culture, with an emphasis on identifying and empowering top performing employees, enables us to develop future leaders from within.

Food With Integrity. In all of our restaurants, we endeavor to serve only meats that were raised without the use of non-therapeutic antibiotics or added hormones, and in accordance with criteria we’ve established in an effort to improve sustainability and promote animal welfare.

151. Like the 1Q 2015 10-Q, the 2Q 2015 10-Q mentioned that the Company discontinued its relationship with a pork supplier because it “was not meeting [the Company’s] standards related to the size and condition of the housing offered to some of the pigs.” The Company represented that “[o]ne of our primary goals is for all of our restaurants to continue serving meats that are raised to meet our standards.” This only further portrayed Chipotle as being a highly selective food-service provider that is committed to high standards.

152. The Company also reiterated that its use of “fresh” ingredients was a financial advantage, explaining “We haven’t required significant working capital because customers pay using cash or credit cards and because our operations do not require significant receivables, nor do they require significant inventories due, in part, *to our use of various fresh ingredients.*”

153. The 2Q 2015 10-Q disclosed that in 2015 alone, the Company had repurchased \$116.3 million worth of its stock. It also announced that out of the \$900 million that was made available through the Company’s previous repurchase programs, only \$85.9 million was left. Regarding the Company’s stock repurchase program, the Company disclosed the following:

Stock Repurchases. In accordance with stock repurchases authorized by our Board of Directors, we purchased stock with an aggregate total repurchase price of \$116.3 million during the first six months of 2015. As of June 30, 2015, \$85.9 million was available to be repurchased under the repurchase authorization announced on February 3, 2015. On July 21, 2015 we announced that our Board of Directors authorized the expenditure of up to an additional \$100 million to repurchase shares of our common stock. We have entered into an agreement with a broker under SEC rule 10b5-1(c), authorizing the broker to make open market purchases of common stock from time to time, subject to market conditions. The existing repurchase agreement and the Board’s authorization of the repurchases may be modified, suspended, or discontinued at any time.

154. Indeed, the 2Q 2015 10-Q explained that the Company was going to use its available cash, in part, “to repurchase additional shares of our common stock subject to market conditions (including up to \$85.9 million in repurchases under programs announced as of June 30, 2015 and an additional \$100 million program announced on July 21, 2015).”

155. The 2Q 2015 10-Q disclosed that in the three month period ended June 30, 2015, the Company repurchased over \$93 million worth of stock (149,129 shares at an average price of \$624 per share).

August 2015 – Widespread Viral Contamination in a California Chipotle

156. Between August 18-28, 2015 almost 100 customers fell ill after eating food served at a Chipotle restaurant in Simi Valley, California.

157. Beginning on August 18, reports were flowing out to the public regarding food poisoning at a Chipotle restaurant. Thereafter, the Company’s stock price began to drastically fall; ultimately falling \$47.32 or 6.3% in less than two weeks, from a close of \$754.03 on August 17 to a close of \$706.71 on September 1, 2015. The following chart summarizes the Company’s stock’s closing prices each day between August 17 and September 1, 2015.

Date	Closing Price
Sep 1, 2015	706.71
Aug 31, 2015	710.01
Aug 28, 2015	721.20
Aug 27, 2015	727.17

Aug 26, 2015	707.64
Aug 25, 2015	695.39
Aug 24, 2015	704.25
Aug 21, 2015	720.01
Aug 20, 2015	735.15
Aug 19, 2015	745.28
Aug 18, 2015	745.92
Aug 17, 2015	754.03

158. On August 22, 2015, the major news network CBS published a story about the food-poisoning at the Simi Valley Chipotle (the “8/22/15 CBS Report”).⁹ The 8/22/15 CBS Report recounted the experience of Kam Zreik (“Zreik”), who explained that after eating at Chipotle in Simi Valley on August 19, 2015, he threw up a lot, had a temperature of 101 degrees, received an IV for dehydration, and learned that 19 other people went to the emergency room complaining of food poisoning the same night. The report referred to the website, “Iwaspoisoned.com,” in supporting a claim that over a dozen people reported the same symptoms as Zreik after eating at the same Chipotle as Zreik on the same day as Zreik. After several reports similar to Zreik’s, the restaurant closed for a brief period of time, posting a sign on its door reading “We are closed for the rest of the day due to a severe staffing shortage.” Shockingly, despite the sign, the Chipotle location reopened shortly thereafter. According to the 8/22/15 CBS Report, the Company issued an official statement on August 22, 2015 stating:

The safety and well being of our customers is always our highest priority. When we were contacted by customers who reported feeling poorly after visiting our restaurant in Simi Valley, we immediately began a review of the incident, and have taken all of the necessary steps to ensure that it is safe to eat there.

159. On August 28, 2015, Josh Scherer published an article in *Los Angeles Magazine* that reported on the food-poisoning problem in Simi Valley (the “8/28/15 LAM Report”).¹⁰

160. The 8/25/15 LAM Report highlighted the “known facts” at the time as follows:

- Between August 18 and 19, at least 60 people who recently ate at the Chipotle on Simi Town Center way reported symptoms of food poisoning to local health

⁹ See <http://losangeles.cbslocal.com/2015/08/22/dozens-fall-ill-after-eating-at-simi-valley-chipotle/> (last accessed March 29, 2016).

¹⁰ Josh Scherer, “Valley Chipotle: Here’s What You Need to Know” (August 28, 2015), <http://www.lamag.com/digestblog/99-people-got-sick-from-a-simi-valley-chipotle-heres-what-you-need-to-know/> (last accessed March 29, 2016).

facilities.

- After the illnesses were reported to Chipotle on Friday afternoon, the location shut down, threw out all its food, and notified health department officials.
- The Ventura County Environmental Health Division launched an investigation and found numerous small-scale violations, including dirty restrooms; flies; equipment connected to sewer lines; unsanitary floors, walls or ceilings; and unclean utensils or equipment. However, the restaurant passed inspection and opened Saturday for lunch.
- To date, 99 people have reported food poisoning symptoms, which includes 17 employees. Though several people visited the emergency room, no one has needed longer-term hospital care.
- The root cause of the outbreak is still unknown, but Chipotle spokesperson Chris Arnold issued a statement assuring diners that all the proper steps were taken: “The safety and well being of our customers is always our highest priority. When we were contacted by customers who reported feeling poorly after visiting our restaurant in Simi Valley, we notified health department officials, immediately began a review of the incident, and have taken all of the necessary steps to ensure that it is safe to eat there.”

161. By September 1, 2015 reports surfaced that the illnesses were caused by a norovirus outbreak at the Simi Valley Chipotle restaurant.

162. With assurances from the Company that the issue was addressed, investors, relying on Chipotle’s representations, helped the Company’s stock begin to stabilize on September 2, 2015.

September 2015 – Widespread Bacterial Contamination in Minnesota Chipotles

163. On September 10, 2015, the Minnesota Department of Health (“MDH”) published a News Release titled, “Health officials investigating *Salmonella* cases linked to Chipotle restaurants in Minnesota” (“MDH Report”).¹¹

164. The MDH Report announced, in relevant part, that:

Forty-five (45) cases of *Salmonella* Newport infection have been reported to the Minnesota Department of Health (MDH) since Wednesday, Sept. 2. Since many cases of salmonellosis do not seek health care and get tested, the number of ill people that are part of this outbreak is likely to be larger than the identified

¹¹ See <http://www.health.state.mn.us/news/pressrel/2015/salmonella091015.html> (last accessed March 29, 2016)

number of cases. Consequently, health officials want to bring this outbreak to the attention of people who have become ill with symptoms of salmonellosis but who have not yet consulted a health care provider. These people should mention this outbreak to their health care provider should they consult one.

The investigation to date has found that the 45 cases were all infected with *Salmonella* Newport bacteria that have matching or very similar DNA fingerprints. Of the 34 people who have been interviewed to date, 32 ate or likely ate at 17 different Chipotle restaurant locations. Most of the restaurant locations are in the Twin Cities metro area, with one in St. Cloud and one in Rochester. Their meal dates range from Aug. 16 to Aug. 26 and they became ill between Aug. 20 and Aug. 29.

165. On September 16, 2015, the MDH published an update to the MDH Report, titled “Tomatoes identified as source of *Salmonella* outbreak in restaurant chain” (the “MDH Update”).¹²

166. The MDH Update announced, as the title suggests, that tomatoes were the source of the bacteria found in patrons of Chipotle restaurants in Minnesota. The MDH Update stated, in relevant part, as follows:

The Minnesota Department of Health (MDH) and the Minnesota Department of Agriculture (MDA) have identified tomatoes as the source of the *Salmonella* Newport outbreak that has sickened dozens of people who ate at Chipotle restaurants in Minnesota since late August. . . .

Since the outbreak was reported last week, additional illnesses have been confirmed by MDH. A total of 64 cases and 22 locations now have been linked to the outbreak [locations are listed below]. . . .

167. Based on representations from Chipotle that they “switched suppliers for its tomatoes” and an implication that the “product was removed from stores,” an epidemiologist at MDH was quoted as saying, “there is no longer a risk of *Salmonella* from this particular product at Chipotle.”

168. On September 24, 2015, Bruce Clark published an article on the *Food Poison Journal* website titled “Third Lawsuit Filed Against Chipotle for Salmonella-Tainted Tomatoes” (“9/24/15 FPJ Report”).¹³

¹² <http://www.health.state.mn.us/news/pressrel/2015/salmonella091615.html> (last accessed March 29, 2016)

¹³ Bruce Clark, “Third Lawsuit Filed Against Chipotle for Salmonella-Tainted Tomatoes” (September 24, 2015), <http://www.foodpoisonjournal.com/foodborne-illness-outbreaks/third->

169. Part of the headline for the 9/24/15 FPJ Report read “*Minnesota resident files lawsuit after falling ill from Salmonella poisoning.*” The 9/24/15 FPJ Report announced that on September 24, 2015, a Minnesota resident filed a lawsuit against Chipotle for “damages related to *Salmonella* poisoning after consuming food sold and prepared by a Chipotle restaurant in St. Louis Park, Minnesota.”

170. The 9/24/15 FPJ Report explained the plaintiff’s story, which began on August 19, 2015 when she ate at a Chipotle restaurant in Minnesota, which led to her experiencing “diarrhea, stomach pains, nausea, vomiting, and a headache.” After a hospital visit, the plaintiff in the case continued to “experience stomach pain, diarrhea, and cramping.” The plaintiff’s “stool sample ultimately tested positive for *Salmonella* Newport, the same strain found in tomatoes that [we]re linked to the [ongoing] outbreak stemming from local Chipotle restaurants.”

171. The 9/24/15 FPJ Report also discussed Chipotle’s record with food safety, stating as follows:

Unfortunately, this is not the first foodborne illness outbreak Chipotle has seen in the past few years. Aside from the current *Salmonella* outbreak, various Chipotle restaurants across the nation have been tied to several serious outbreaks of *E.coli*, hepatitis A, *Campylobacter*, and Norovirus. This is the second lawsuit that food safety attorney, Bill Marler, has filed against Chipotle in regard to the *Salmonella*-tainted tomatoes.

172. The attorney for the plaintiff, who was well experienced in food safety litigation, advised “restaurants to strictly adhere to food safety protocols in an effort to avoid cross-contamination of bacteria and other pathogens.”

173. On this news, the price of Chipotle common stock plummeted \$25.80 or 3.5% over the next two trading days, opening at \$733.83 on September 25, 2015 and closing the next trading day (September 28, 2015) at \$708.03.

October 20, 2015 – Third Quarter 2015 Results

174. On October 20, 2015, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung and attaching a press release published by the Company the same day (“10/20/15 Press Release”).

175. The 10/20/15 Press Release summarized the financial results for the third quarter of 2015, the three month period ended September 30, 2015. The 10/20/15 Press Release contained the following highlights:

Highlights for the third quarter of 2015 as compared to the third quarter of 2014

lawsuit-filed-against-chipotle-for-salmonella-tainted-tomatoes/#.VvqyRnA-KJ8 (last accessed March 30, 2016).

include:

- Revenue increased 12.2% to \$1.2 billion
- Comparable restaurant sales increased 2.6%
- Restaurant level operating margin was 28.3%, an decrease of 50 basis points
- Net income was \$144.9 million, an increase of 10.8%
- Diluted earnings per share was \$4.59, an increase of 10.6%
- Opened 53 new restaurants

176. The 10/20/15 Press Release contained the same “About Chipotle” representations as the previous press releases, which provided:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food. In order to achieve this vision, we focus on building a special people culture that is centered on creating teams of top performers empowered to achieve high standards.

177. After the market closed on October 20, 2015, at approximately 6:53 PM, the Company filed a quarterly report for the three-month period ended September 30, 2015 on a Form 10-Q with the SEC (“3Q 2015 10-Q”), which was signed by Defendant Hartung.

178. Attached to the 3Q 2015 10-Q were SOX certifications, signed by Defendants Ells, Moran, and Hartung attesting to the accuracy of the 3Q 2015 10-Q.

179. To the public’s dismay, the Company did not address, in the 10/20/15 Press Release nor the 3Q 2015 10-Q, the episodes of food contamination at Chipotle restaurants in California and Minnesota.

180. Instead, the Company continued to make its usual misrepresentations regarding the Company’s commitment to high-quality and fresh ingredients and safe preparation methods. The 3Q 2015 10-Q represented as follows:

We use high-quality raw ingredients, classic cooking methods and distinctive interior design, and have friendly people to take care of each customer—features that are more frequently found in the world of fine dining. Our approach is also

guided by our belief in an idea we call “Food With Integrity.” Our objective is to find the highest quality ingredients we can—ingredients that are grown or raised with respect for the environment, animals and people who grow or raise the food.

Food With Integrity. In all of our restaurants, we endeavor to serve only meats that were raised without the use of non-therapeutic antibiotics or added hormones, and in accordance with criteria we’ve established in an effort to improve sustainability and promote animal welfare.

We haven’t required significant working capital because customers pay using cash or credit cards and because our operations do not require significant receivables, nor do they require significant inventories due, in part, to our use of various fresh ingredients.

181. Given the Company’s self-propelled reliance on its food’s freshness, quality, and safety, the food contamination issue generated substantial negative press. As a result, the Company’s sales growth for the third quarter 2015 fell below 3% and earnings per share for the quarter were under expected values by \$0.04.¹⁴

182. Despite the horrendous financials, the 3Q 2015 10-Q disclosed that, in accordance with the share repurchase program instituted by the Company with Board approval, 45,998 shares of Company common stock were repurchased during the third quarter 2015 for an average price per share of \$669.58. Thus, the Company repurchased about \$30.8 million of Company stock during the quarter.

183. On the release of the 10/20/15 Press Release, the price of the Company’s common stock dropped over \$13 or 1.8%, going from a close of \$718.64 on October 19, 2015 to a close of \$705.63 on October 20, 2015.

184. On the filing of the 3Q 2015 10-Q, the price of the Company’s common stock dropped more than \$55 or 7.8% in after hours trading, going from a close of \$705.63 on October 20, 2015 to an open of \$650.61 on October 21, 2015.

November 2015 – More Contaminations at Chipotles Across the Country

¹⁴ See <http://seekingalpha.com/news/2841306-comp-sales-growth-falls-3-percent-chipotle> (last accessed March 30, 2016); http://seekingalpha.com/news/2841346-chipotle-mexican-grill-misses-0_04-revenue-line (last accessed March 30, 2016).

185. On November 1, 2015, the major national news network *CNN* published an article titled, “Chipotle shuts dozens of locations as more confirmed *E. coli* cases emerge” (“*CNN Report*”).¹⁵

186. The *CNN Report* mentioned that “[a]t least 35 *E. coli* cases in Washington and Oregon have been linked to the Mexican-themed restaurant chain Chipotle, health officials said, prompting the company to temporarily close dozens of restaurants” and that the “restaurant chain has responded by temporarily closing 43 restaurants in the two states affected.”

187. On November 3, 2015, the Company finally spoke up, issuing a press release on the matter (“11/3/15 Press Release”). The 11/3/15 Press Release was not filed with the SEC but was made publicly available, and quoted in the *CNN Report*.

188. The 11/3/15 Press Release published comments from Defendant Ells as follows:

The safety of our customers and integrity of our food supply has always been our highest priority. We work with a number of very fresh ingredients in order to serve our customers the highest-quality, best-tasting food we can. If there are opportunities to do better, we will push ourselves to find them and enhance our already high standards for food safety. Our deepest sympathies go out to those who have been affected by this situation and it is our greatest priority to ensure the safety of all of the food we serve and maintain our customers’ confidence in eating at Chipotle.

189. Moreover, the 11/3/15 Press Release explained that because of the “*E. coli* incident” at several Chipotle locations, the Company, *inter alia*, “[i]mmediately clos[ed] 43 restaurants in Oregon and Washington,” conducted “environmental testing in its restaurants, and food testing in its restaurants and distribution centers,” replaced all food items in the closed restaurants, and retained “two preeminent food safety consulting firms . . . to help the company assess and improve upon *its already high standards for food safety*.”

190. The 11/3/15 Press Release represented the following about the Company:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food.

¹⁵ Brumfield et al., *Chipotle shuts dozens of locations as more confirmed E. coli cases emerge* (November 1, 2015), <http://edition.cnn.com/2015/11/01/health/chipotle-closings-e-coli-scare/> (as amended on November 4, 2015) (last accessed March 30, 2016).

191. As local and national reports of Chipotle location shutdowns over the food-safety issues became public, Chipotle stock continued its downward spiral. Between October 29, 2015 and November 9, 2015, the price of Chipotle stock dropped \$38.91 or 6% on above average trading volume.

192. On November 10, 2015, Chipotle issued a press release addressing the restaurant closures in Portland and Seattle (the “11/10/15 Press Release”). The 11/10/15 Press Release made several notable and surprising claims, such as the headline “All test results negative for E. Coli; no ongoing threat.”

193. The Company announced, in the 11/10/15 Press Release, that “Chipotle has taken important steps *to make certain that their food is as safe as it can be.*” The Company then published a laundry list of measures it claimed would prevent another food-safety issue.

194. While initially reporting that eight locations were associated with the E. coli issue, the Company now reported, in the 11/10/15 Press Release, that eleven Chipotle restaurants were linked to the incident.

195. The 11/10/15 Press Release recounted statements from Defendant Ells as follows:

The safety of our customers and integrity of our food supply has always been our highest priority. If there are any opportunities for us to do better in any facet of our sourcing or food handling – from the farms to our restaurants – we will find them. We are sorry to those affected by this situation, and *it is our greatest priority to ensure that we go above and beyond to make certain that we find any opportunity to do better in any area of food safety.*

196. The 11/10/15 Press Release also represented the following about the Company:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food.

197. Investors relied on the Company’s representations in the 11/10/15 Press Release. Immediately following the Company’s comments, the price of the Company’s common stock increased \$19.59 or 3.2%, going from a close of \$609.29 on November 9, 2015 to a close of \$628.88 on November 10, 2015.

198. On November 20, 2015 the U.S. Centers for Disease Control and Prevention (“CDC”) announced four additional cases linked to the aforementioned E. coli incident; following this announcement and related negative publicity, daily comparable

restaurant sales trended down to approximately -22%. Moreover, on this news, Chipotle stock plummeted \$75.32 or 12.3% from its previous close on November 20, 2015; going from a close of \$611.51 on November 19, 2015 to a close of \$536.19 on November 20, 2015.

December 2015 – Contaminations Continue, Despite Representations of Containment

199. On December 4, 2015, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung (the “12/4/15 8-K”). Among other things, the 12/4/15 8-K restated the Company’s financial outlook for the fourth quarter 2015 and the 2016 fiscal year in light of recent episodes of food contamination at Chipotle restaurants across the country.

200. The E. coli contamination had a huge impact on Chipotle’s sales. The 12/4/15 8-K disclosed the following:

E. coli Incident Impact

If recent sales trends continue (as discussed below), we anticipate for the fourth quarter 2015:

- Comparable restaurant sales to be in a range of -8% to -11% (negative)
- Non-recurring expenses during the fourth quarter of 2015 in the range of \$6.0 to \$8.0 million
 - o The estimate of non-recurring expenses includes costs to replace food in select restaurants, lab analysis of food samples and environmental swabs, and retaining expert advisory services related to epidemiology and food safety; it does not include any estimate for legal claims and related expenses.
- Restaurant level operating margins of 22% to 24%
- Diluted earnings per share in the range of \$2.45 to \$2.85
- No impact to anticipated new restaurant openings during the fourth quarter of 2015

We are also rescinding our previously-announced 2016 outlook for comparable restaurant sales increases. In light of recent sales trends and additional uncertainty related to the E. coli incident, we cannot reasonably estimate 2016 comparable restaurant sales at this time.

201. The effect of the Company’s representations on the public were made clear by the 12/4/15 8-K, which explained that “[w]hen [the Company] announced the closure of 43 restaurants on November 3, company-wide comparable restaurant sales dropped for the ensuing few days to approximately -20%” and “when [the Company] announced the re-opening of

restaurants in Oregon and Washington on November 10, 2015, comparable restaurant sales over the next several days quickly improved to approximately -9%.” The effect on investors was consistent with that on the general public, as can be seen by the Company’s stock price following each of the Company’s announcements.

202. In a stunning display of intentional or reckless mismanagement, the 12/4/15 8-K announced that the Company’s “Board of Directors has authorized additional repurchases of Chipotle common stock, with a total aggregate purchase price of \$300 million, exclusive of commissions.” The Company mentioned that “[t]his repurchase is in addition to previously announced repurchase authorizations totaling \$1.0 billion.”

203. Thus, despite the announcement of diminishing sales and revenue figures, and that Chipotle would be faced with less cash-on-hand than expected, the Individual Defendants authorized and made the Company initiate a new share repurchase program.

204. Business got worse for Chipotle. Beginning on or around December 2, 2015, more than 140 Boston College students fell ill after dining at a Chipotle restaurant in Brighton, Massachusetts. On December 9, 2015, the Boston Public Health Commission confirmed that the students had contracted norovirus.¹⁶

205. The next day, December 10, 2015, Defendant Ells participated in an interview with a reporter from the major national news network NBC and stated, “This was a very unfortunate incident and I’m deeply sorry that this happened, but *the procedures we’re putting in place today are so above industry norms that we are going to be the safest place to eat.*” Moreover, according to a report published by *Reuters*, Ells stated that “the U.S. Food and Drug Administration has still not found an exact source for the bacteria, which can cause severe diarrhea and vomiting” and that “*Chipotle’s new food safety procedures will put it 10 to 15 years ahead of industry standards.*”¹⁷

206. Earlier in the week, Defendant Moran, in a conference call with investors, blamed the media for over-reporting the illnesses.

207. Relying on the Company’s representations, investors regained confidence in Chipotle. The price of Chipotle common stock increased \$27.42 or 5% on December 10, 2015;

¹⁶ See *Norovirus confirmed in Boston Students who ate at Chipotle* (December 9, 2015), <http://www.reuters.com/article/us-chipotle-mexican-ecoli-idUSKBN0TS2EZ20151209> (last accessed March 30, 2016); *120 Boston students sickened by Chipotle norovirus outbreak, school says* (December 9, 2015), <http://www.wmur.com/health/120-boston-students-sickened-by-chipotle-norovirus-outbreak-school-says/36879210> (last accessed March 30, 2016).

¹⁷ Susan Heavey & Surbat Patnaik, *Chipotle Shares jump as CEO apologizes over illnesses, vows change* (December 10, 2015), <http://www.reuters.com/article/us-chipotle-mexican-ecoli-idUSKBN0TT1L120151210> (last accessed March 30, 2016).

going from a close of \$548.01 on December 9, 2015 to a close of \$575.43 on December 10, 2015.

January 2016 – From Bad to Worse for Chipotle

208. On January 6, 2015, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung (the “1/6/16 8-K”). Among other things, the 1/6/16 8-K again restated the Company’s financial outlook for the fourth quarter 2015 in light of recent episodes of food contamination at Chipotle restaurants.

209. The 1/6/16 8-K set the stage for the Company’s reassessment by explaining, “During the week of December 7, 2015, we experienced an incident involving norovirus at a Chipotle restaurant in Brighton, Massachusetts, which worsened the adverse financial and operating impacts we experienced from an E. coli incident associated with a number of Chipotle restaurants in October and November.”

210. Thus, the Company now anticipated the following:

Fourth Quarter 2015 Impact

For the Fourth Quarter, we anticipate for the fourth quarter 2015:

- Comparable restaurant sales were -14.6% (negative)
- Non-recurring expenses during the fourth quarter of 2015 in the range of \$14.0 to \$16.0 million
 - o The estimate of non-recurring expenses includes costs to replace food in select restaurants, lab analysis of food samples and environmental swabs, increased marketing expenses, retaining expert advisory services related to epidemiology and food safety, and preliminary estimates for legal claims and related expenses.
- Restaurant level operating margins of 20% to 21%
- Diluted earnings per share in the range of \$1.70 to \$1.90; final year-end accounting adjustments and related tax expenses may further impact these estimates

211. For December 2015, the Company explained that its previous estimate of comparable restaurant sales of -16% was decreased to -31%. Ultimately, “[f]or the full month of December, comparable restaurant sales were -30%.”

212. Importantly, the Company announced that it received a Federal Grand Jury Subpoena in connection with an investigation related to the norovirus outbreak at a Chipotle restaurant in Simi Valley, California. Specifically, the 1/6/16 8-K explained:

Receipt of Grand Jury Subpoena

In December 2015, Chipotle was served with a Federal Grand Jury Subpoena from the U.S. District Court for the Central District of California in connection with an official criminal investigation being conducted by the U.S. Attorney's Office for the Central District of California, in conjunction with the U.S. Food and Drug Administration's Office of Criminal Investigations. The subpoena requires us to produce a broad range of documents related to a Chipotle restaurant in Simi Valley, California, that experienced an isolated norovirus incident during August 2015. We intend to fully cooperate in the investigation. It is not possible at this time to determine whether we will incur, or to reasonably estimate the amount of, any fines, penalties or further liabilities in connection with the investigation pursuant to which the subpoena was issued.

213. As was almost becoming standard practice for the Company, it announced the initiation of another share repurchase program in the face of horrific news for the Company and its prospects. The 1/6/16 8-K announced that the Company's Board "authorized repurchases of Chipotle common stock with a total aggregate purchase price of \$300 million, exclusive of commissions. *These authorized repurchases are in addition to \$300 million in repurchase authorizations announced on December 4, 2015*, of which \$116 million remained available as of December 31, 2015."

214. On this news, the price of Chipotle stock tumbled \$44.77 or 10% over the next five days on above average trading volume; going from a close of \$449.03 on January 5, 2016 to a close of \$404.26 on January 12, 2016.

February 2, 2016 – 2015 Annual Report

215. On February 2, 2016, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung ("2/2/16 8-K") and attaching a press release issued by the Company the same day ("2/2/16 Press Release").

216. The 2/2/16 8-K announced the time and date for a conference call regarding the Company's fourth quarter and year-end financial results. More importantly, however, the 2/2/16 8-K announced the initiation of yet another share repurchase program. Unabashed, the Company announced that the Board "authorized repurchases of Chipotle common stock with a total aggregate purchase price of \$300 million, exclusive of commissions. This repurchase is in addition to previously announced repurchase authorizations totaling \$1.6 billion."

217. The 2/2/16 Press Release summarized the financial results for the fourth quarter and year end of 2015, the three month and one year periods, respectively, ended December 31, 2015. In that regard, the 2/2/16 Press Release contained the following highlights:

Highlights for the fourth quarter of 2015 as compared to the fourth quarter of 2014 include:

- Revenue decreased 6.8% to \$997.5 million
- Comparable restaurant sales decreased 14.6%
- Restaurant level operating margin was 19.6%, a decrease of 700 basis points
- Net income was \$67.9 million, a decrease of 44.0%
- Diluted earnings per share was \$2.17, an decrease of 43.5%
- Opened 79 new restaurants

Highlights for the twelve months ended December 31, 2015 as compared to the prior year include:

- Revenue increased 9.6% to \$4.5 billion
- Comparable restaurant sales increased 0.2%
- Restaurant level operating margin was 26.1%, a decrease of 110 basis points
- Net income was \$475.6 million, an increase of 6.8%
- Diluted earnings per share was \$15.10, an increase of 6.9%
- Opened 229 new restaurants

(Emphasis in original).

218. The 2/2/16 Press Release quoted Defendant Ells' statements as follows:

The fourth quarter of 2015 was the most challenging period in Chipotle's history, but the Centers for Disease Control and Prevention has now concluded its investigation into the recent E. coli incidents associated with Chipotle. ***We are pleased to have this behind us and can place our full energies to implementing our enhanced food safety plan that will establish Chipotle as an industry leader in food safety.*** We are extremely focused on executing this program, which designs layers of redundancy and enhanced safety measures to reduce the food safety risk to a level as near to zero as is possible. By adding these programs to an already strong and proven food culture, ***we strongly believe that we can establish Chipotle as a leader in food safety*** just as we have become a leader in our quest for the very best ingredients we can find,

219. The 2/2/16 Press Release quoted Defendant Moran's statements as follows:

2016 will be a very difficult year relative to our past performance. But, by staying true to our food culture and unique people culture, and *layering on our rigorous food safety program*, we are confident that we are now in a position to aggressively welcome customers into our restaurants and restore customer confidence in the things that make Chipotle great. *With our full commitment to becoming an industry leader in food safety*, and our continued focus on delivering an exceptional customer experience, we are confident that Chipotle will emerge as an even stronger company.

220. The 2/2/16 Press Release also explained that Chipotle's role was growing in the criminal investigation that it received a subpoena for. Specifically, the Company explained:

On January 28, 2016, Chipotle was served with a subpoena broadening the scope of the previously-announced criminal investigation by the U.S. Attorney's office for the Central District of California. The new subpoena requires us to produce documents and information related to company-wide food safety matters dating back to January 1, 2013, and supersedes the subpoena served in December 2015 that was limited to a single Chipotle restaurant in Simi Valley, California. We intend to fully cooperate in the investigation.

221. The 2/2/16 Press Release contained the same "About Chipotle" representations as its previous press releases, which provided:

Today, Chipotle continues to offer a focused menu of burritos, tacos, burrito bowls (a burrito without the tortilla) and salads made from fresh, high-quality raw ingredients, prepared using classic cooking methods and served in a distinctive atmosphere. Through our vision of Food With Integrity, Chipotle is seeking better food from using ingredients that are not only fresh, but that—where possible—are sustainably grown and raised responsibly with respect for the animals, the land, and the farmers who produce the food. In order to achieve this vision, we focus on building a special people culture that is centered on creating teams of top performers empowered to achieve high standards.

222. The 2/2/16 Press Release also announced the new share repurchase program, stating that the Board "approved the investment of up to an additional \$300 million, exclusive of commissions, to repurchase shares of our common stock."

223. After the market closed on February 4, 2016, the Company filed an annual report for the fiscal year ended December 31, 2015 on Form 10-K with the SEC (the "2015 10-K"), which was signed by the Board and Defendant Hartung.

224. Attached to the 2015 10-K were SOX certifications, signed by Defendants Ells, Moran, and Hartung attesting to the accuracy of the 2015 10-K.

225. Despite the recurring episodes of contaminated food and lack of safety controls, the Company still represented that it used fresh, high quality ingredients and was focused on food-safety. The 2015 10-K represented the following:

We focus on finding the highest quality ingredients we can to make great tasting food; on building a special people culture that is centered on creating a team of top performers empowered to achieve high standards; on building restaurants that are operationally efficient and aesthetically pleasing; and on *doing all of this with the highest regard for the safety of our customers* and increasing awareness and respect for the environment.

Our objective is to find the *highest quality ingredients* we can—ingredients that are grown or raised with respect for the environment, animals and people who grow or raise the food.

Quality Assurance and Food Safety. We are committed to serving safe, high quality food to our customers. Quality and food safety measures are found throughout our supply chain, from the farms that supply our food all the way through to our front line. We have established close relationships with some of the top suppliers in the industry, and we actively maintain a limited list of approved suppliers from whom our distributors must purchase. *Our quality assurance department establishes and monitors our quality and food safety programs for our supply chain.* Our training, operations, and risk management departments develop and implement operating standards for food quality, preparation, cleanliness and safety in the restaurants. *Our food safety programs are also designed to ensure that we comply with applicable federal, state and local food safety regulations.*

Food With Integrity. Serving high quality food while still charging reasonable prices is critical to our vision to change the way people think about and eat fast food. As part of our Food With Integrity philosophy, we believe that purchasing fresh ingredients is not enough, so we spend time on farms and in the field to understand where our food comes from and how it is raised. Because our menu is so focused, we can concentrate on the sources of each ingredient, and this has become a cornerstone of our continuous effort to improve our food. . . .

One of our primary goals is for all of our restaurants to serve meats raised to meet our standards

Close Relationships with Suppliers. Maintaining the high levels of quality and safety we expect in our restaurants depends in part on our ability to acquire high-quality, fresh ingredients and other necessary supplies that meet our specifications from reliable suppliers. Our 24 independently owned and operated regional distribution centers purchase from various suppliers ***we carefully select based on quality*** and their understanding of our mission, and we seek to develop mutually beneficial long-term relationships with suppliers.

226. The Company, in its 2015 10-K, also represented that its food safety controls “have always been carefully designed and have been in conformance with applicable industry standards.” But the Company outlined its changes in response to the “hundreds of customers” who became ill after eating contaminated food from Chipotle restaurants. The Company stated as follows:

Using the assistance of highly respected experts we performed a review of the ingredients we use, with a goal of designing an industry-leading food safety program. Components of the new program include DNA-based testing of many ingredients designed to ensure the quality and safety of ingredients before they are shipped to our restaurants, changes to food preparation and food handling practices, including washing and cutting some produce items (such as tomatoes and romaine lettuce) in central kitchens, blanching of some produce items (including avocados, onions, jalapenos and citrus) in our restaurants before cutting them, and new protocols for marinating meats. We are also working to enhance our internal controls surrounding food safety by utilizing the Food and Drug Administration’s Hazard Analysis Critical Control Point (HACCP) management system. Additionally, we are focused on internal training programs to ensure that all employees thoroughly understand our high standards for food safety and food handling, and we offer paid sick leave to employees to reduce incentives for employees to work while sick.

227. The Company explained that its new procedures “go beyond the industry-standard food safety practices that we were previously following.” And even described them as “enhanced food safety procedures.”

228. Regarding the Federal Grand Jury Subpoena, the Company stated that it received an “additional subpoena broadening the investigation and requiring the production of documents and information related to company-wide food safety matters dating back to January 1, 2013.” The Company represented that it intends to fully cooperate with the investigation, which is still ongoing as of the date of the filing of this Complaint.

229. The 2015 10-K outlined ongoing litigation against the Company, including the Securities Fraud Class Actions.

230. Regarding internal controls, the 2015 10-K stated:

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2015, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework (the “2013 framework”). Based on that assessment, management concluded that, as of December 31, 2015, our internal control over financial reporting was effective based on the criteria established in the 2013 framework.

231. Importantly, the 2015 10-K provided information regarding the share repurchase program. In just the last three months of 2015, the Company purchased 609,245 shares of Company common stock at an average price per share of \$555.95, spending a total of \$338.7 million.

232. Moreover, the 2015 10-K provided:

Stock Repurchases. In accordance with stock repurchases authorized by our Board of Directors, we purchased shares of our common stock during 2015 with an aggregate total repurchase price of \$485.8 million. As of December 31, 2015, \$116.4 million was available for stock repurchases under the authorization announced on December 4, 2015. We also announced authorizations by our Board of Directors of up to an additional \$300 million in common stock repurchases on January 6, 2016 and up to another additional \$300 million on February 2, 2016. We have purchased \$270.0 million of our common stock under these authorizations from January 1, 2016 through February 3, 2016.

233. Thus, according to 2015 10-K, the Company expended \$485.8 million on repurchased stock in 2015 and expended \$270 million on repurchased stock in 2016 as of the filing of the 2015 10-K.

234. In sum, the Company disclosed the following Company stock repurchases by year:

Year	# of Shares	Expenditure by Company (approx.)
2016	609,000	\$270 million
2015	839,000	\$486 million
2014	154,000	\$88 million
2013	336,000	\$110 million
Total	1,938,000	\$954 million

235. Given that during the period when the Company misstated and omitted material facts, and before the scheme to defraud the public was exposed, it purchased 1,448,000 shares of Company common stock and expended approximately \$756 million on such purchases (leading to an average purchase price of \$522), and given that the price of the Company’s common stock

as of the close of trading on April 4, 2016 was \$465.00, the Individual Defendants caused the Company to purchase its own stock from undisclosed sellers for over \$84 million more than the stock was actually worth ((522-465) x 1,488,000 shares).

March 2016 – Another Contamination

236. In the face of all of the Company's aforementioned representations, the public learned of a new pathogenic contamination of food at a Chipotle restaurant. On March 9, 2016, the Food Poisoning Bulletin published a story titled "Chipotle in MA Closes Because of Norovirus" that reported on sick employees at a Chipotle restaurant in Billerica, Massachusetts, one of whom tested positive for norovirus.¹⁸ The report also described Chipotle's checkered history with food safety and the ensuing litigations.

237. On this news, the price of Chipotle common stock dropped \$18.06 or 3.44%; going from a close of \$524.69 on March 8, 2015 to a close of \$506.63 on March 9, 2015.

238. On March 15, 2016, the Company filed a Form 8-K with the SEC, signed by Defendant Hartung ("3/15/16 8-K"), that announced positive financial developments and the hiring of an Executive Director of Food Safety at Chipotle.

239. Notably, the 3/15/16 8-K, unlike previous filings from the Company, did not have any language regarding the freshness, quality, or food-safety of Chipotle's food and restaurants. Most importantly, the Company did not even address the norovirus outbreak in Billerica, Massachusetts, which forced the closure of a Chipotle restaurant less than one week before the filing of the 3/15/16 8-K.

Defendants' Wrongful Conduct

240. In breach of their fiduciary duties owed to Chipotle, the Individual Defendants willfully or recklessly caused the Company to pay grossly excessive compensation to them under the guise of the 2011 SIP.

241. In breach of their fiduciary duties owed to Chipotle, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and/or misleading statements and/or omissions of material fact referenced herein. These facts pertained to the Company's business, operations, and prospects and were known to the Individual Defendants or recklessly disregarded by them.

242. The Company's statements and representations, referenced above were materially false and misleading at all relevant times because they misrepresented and failed to disclose material facts regarding, at least, (1) the Company's commitment to and control of food safety at

¹⁸ Linda Larsen, "Chipotle in MA Closes Because of Norovirus" (March 9, 2016), <https://foodpoisoningbulletin.com/2016/chipotle-in-ma-closes-because-of-norovirus/> (last accessed March 30, 2016).

Chipotle restaurants; (2) Chipotle's quality controls being in compliance with consumer and workplace safety regulations, (3) Chipotle's quality controls being inadequate to safeguard consumer and employee health, (4) Chipotle's adherence to "industry-standard food safety practices," (5) Chipotle's adoption of procedures that went "beyond the industry-standard food safety practices," (6) the purpose and effect of the Individual Defendants' grossly excessive compensation, and (7) the purpose and effect of the Company's many repurchase programs.

243. In breach of their fiduciary duties owed to Chipotle, the Individual Defendants willfully or recklessly made and/or caused the Company to initiate harmful repurchase programs to the detriment of the Company and its shareholders while the price of the Company's stock was artificially inflated and resulted in the payment of approximately \$756 million for the Company's own stock that was actually worth less than \$672 million -- while a supermajority of the Individual Defendants engaged in lucrative insiders sales, receiving in excess of \$224.6 million.

DAMAGES TO CHIPOTLE

244. As a direct and proximate result of the Individual Defendants' conduct, Chipotle has expended and will continue to lose and expend tens, if not hundreds, of millions of dollars.

245. Such losses include over \$84 million that the Company overpaid for its own stock in several repurchase programs in 2015 and 2016 while a supermajority of the Individual Defendants engaged in lucrative insiders sales, receiving in excess of \$224.6 million.

246. Such expenditures include, but are not limited to, legal fees associated with the Securities Fraud Class Actions filed against the Company and certain Individual Defendants for violations of the federal securities laws, with the Federal Grand Jury Subpoena from the U.S. District Court for the Central District of California in connection with an official criminal investigation being conducted by the U.S. Attorney's Office for the Central District of California, in conjunction with the U.S. Food and Drug Administration's Office of Criminal Investigations, with the investigation conducted by the Ventura County Environmental Health Division, and with other related investigations and complaints -- and amounts paid to outside lawyers, accountants, and investigators in connection with each of the foregoing.

247. Such costs include, but are not limited to, compensation, bonuses tied to the Company's attainment of certain goals and benefits paid to the Individual Defendants who breached their fiduciary duties to the Company.

248. As a direct and proximate result of the Individual Defendants' conduct, Chipotle has suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will plague the Company's stock in the future due to the misrepresentations made by the Individual Defendants and caused to be made by the Company by the Individual Defendants.

249. Indeed, the Company has and will continue to lose revenues and profit caused by customers' loss of trust in the Company's business.

DERIVATIVE ALLEGATIONS

250. Plaintiff brings this action derivatively and for the benefit of Chipotle to redress injuries suffered, and to be suffered, as a result of the Individual Defendants' breaches of their fiduciary duties as directors and/or officers of Chipotle, gross mismanagement, abuse of control, unjust enrichment, and waste of corporate assets as well as the aiding and abetting thereof.

251. Chipotle is named solely as a nominal party in this action. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

252. Plaintiff is, and at all relevant times has been, a Chipotle shareholder. Plaintiff will adequately and fairly represent the interests of Chipotle in enforcing and prosecuting its rights, and, to that end, has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

DEMAND FUTILITY ALLEGATIONS

253. Plaintiff incorporates by reference and re-alleges each and every allegation stated above as if fully set forth herein.

254. A pre-suit demand on the Board of Directors of Chipotle is futile and, therefore, excused. At the time of filing of this action, the Board consisted of the following nine Individual Defendants: Ells, Moran, Flynn, Charlesworth, Friedman, Baldocchi, Flanzraich, Gillett, and Musk (collectively, the "Directors"). Plaintiff needs only to allege demand futility as to five of the nine directors that were on the Board at the time this action was commenced.

255. In complete abdication of their fiduciary duties, the Directors either intentionally participated in causing the Company to issue the materially false and misleading statements contained in the Company's public filings, press releases, and interviews, or did so recklessly. The fraudulent scheme was intended to make the Company appear more profitable and attractive to investors. While investors were duped into believing the fraud perpetrated by the Individual Defendants, a supermajority of the Individual Defendants sold millions of dollars' worth of Company stock at artificially inflated prices based on inside material information.

256. At the same time, the Directors intentionally authorized the Company's many repurchase programs, causing the Company to be liable for the repurchase of up to almost \$2 billion, and the actual purchase of \$756 million, of Chipotle common stock while the stock price was inflated due to the schemes described herein.

257. As a result of the foregoing, the Directors breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

258. In complete abdication of their fiduciary duties, the Directors either intentionally participated in causing the Company to issue grossly excessive compensation to Defendants Ells

and Moran as well as the non-employee members of the Board pursuant to the 2011 SIP, or did so recklessly. As a result of the foregoing, too, the Directors breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

259. The Company admittedly based part of its executive compensation on the attainment of company goals. Indeed, as stated in the 2016 Proxy Statement, the Company decreased its compensation packages due to the decreased sales and prospects of the Company. The Company falsely reported, *inter alia*, that its restaurants served fresh, high quality food that complied with health safety regulations. Moreover, the Company concealed, *inter alia*, the truth behind the shutdown of the Simi Valley Chipotle location. Thus, Defendants Eells and Moran had an incentive to participate in the scheme to disseminate false and misleading statements, because it illegally increased their compensation. Thus, Defendants Eells and Moran breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested or independent, and demand upon them is futile and, therefore, excused.

260. The Directors, except for Defendants Eells, Moran, and Musk hold at least one position on a specific board committee. As stated in the 2016 Proxy Statement, the board committees have the following responsibilities:

Compensation Committee

The Compensation Committee oversees our executive compensation policies and programs. In accordance with its charter, the committee determines the compensation of our Co-Chief Executive Officers based on an evaluation of their performance, and approves the compensation level of our other executive officers following an evaluation of their performance and recommendation by the Co-Chief Executive Officers. The manner in which the committee makes determinations as to the compensation of our executive officers is described in more detail below under “Executive Officers and Compensation – Compensation Discussion and Analysis – Overview of Executive Compensation Determinations.”

The Compensation Committee charter also grants the committee the authority to: review and make recommendations to the Board with respect to the establishment of any new incentive compensation and equity-based plans; review and approve the terms of written employment agreements and post-service arrangements for executive officers; review our compensation programs generally to confirm that those plans provide reasonable benefits to us; recommend compensation to be paid to our outside directors; review disclosures to be filed with the SEC and distributed to our shareholders regarding executive compensation and recommend to the Board the filing of such disclosures; assist the Board with its functions relating to our compensation and benefits programs generally; and other administrative matters with regard to our compensation programs and policies. The committee may delegate any of its responsibilities to a subcommittee

comprised of one or more members of the committee, except where such delegation is not allowed by legal or regulatory requirements.

The Compensation Committee has also been appointed by the Board to administer our Amended and Restated 2011 Stock Incentive Plan and to make awards under the plan, including as described below under “Executive Officers and Compensation – Compensation Discussion and Analysis – Components of Compensation – Long-Term Incentives.” The committee has in some years, including 2015, delegated its authority under the plan to our executive officers to make grants to non-executive officer level employees, within limitations specified by the committee in its delegation of authority.

Audit Committee

In accordance with its charter, the Audit Committee acts to oversee the integrity of our financial statements and system of internal controls, the annual independent audit of our financial statements, the performance of our internal audit services function, our compliance with legal and regulatory requirements, the implementation and effectiveness of our disclosure controls and procedures, and the evaluation and oversight of risk issues, and also acts to ensure open lines of communication among our independent auditors, accountants, internal audit and financial management. The committee’s responsibilities also include review of the qualifications, independence and performance of the independent auditors, who report directly to the Audit Committee. The committee retains, determines the compensation of, evaluates, and when appropriate replaces our independent auditors and pre-approves audit and permitted non-audit services provided by our independent auditors. The Audit Committee has adopted the “Policy Relating to Pre-Approval of Audit and Permitted Non-Audit Services” under which audit and non-audit services to be provided to us by our independent auditors are pre-approved. This policy is summarized on page 21 of this proxy statement. The committee determined that the fees paid to the independent auditor in 2015, including in connection with non-audit services, were appropriate, necessary and cost-efficient in the management of our business, and did not present a risk of compromising the auditor’s independence.

As required by law, the Audit Committee has established procedures to handle complaints received regarding our accounting, internal controls or auditing matters. It is also required to ensure the confidentiality of employees who have provided information or expressed concern regarding questionable accounting or auditing practices. The committee also fulfills the oversight function of the Board with respect to risk management, as described under “Corporate Governance – Role of the Board of Directors in Risk Oversight.” The committee may retain independent advisors at our expense that it considers necessary for the completion of its duties.

Nominating and Corporate Governance Committee

The responsibilities of the Nominating and Corporate Governance Committee include reviewing, at least annually, the adequacy of our corporate governance principles and recommending to the Board any changes to such principles as deemed appropriate, and recommending to the Board appropriate guidelines and criteria to determine the qualifications to serve and continue to serve as a director. The Nominating and Corporate Governance Committee identifies and reviews the qualifications of, and recommends to the Board, (i) individuals to be nominated by the Board for election to the Board at each annual meeting, (ii) individuals to be nominated and elected to fill any vacancy on the Board which occurs for any reason (including increasing the size of the Board) and (iii) appointments to committees of the Board.

The committee, at least annually, reviews the size, composition and organization of the Board and its committees and recommends any policies, changes or other action it deems necessary or appropriate, including recommendations to the Board regarding retirement age, resignation or removal of a director, independence requirements, frequency of Board meetings and terms of directors. A number of these matters are covered in our Corporate Governance Guidelines, which the committee also reviews at least annually. The committee also reviews the nomination by our shareholders of candidates for election to the Board if such nominations are within the time limits and meet other requirements established by our bylaws. The committee oversees the annual evaluation of the performance of the Board and its committees and reviews and makes recommendations regarding succession plans for positions held by executive officers.

261. Demand is excused as to Defendants Flanzraich, Flynn, and Friedman (the “Compensation Committee Defendants”), who awarded excessive compensation in the form of, *inter alia*, SOSARs and RSUs to Defendants Ells and Moran as well as the non-employee members of the Board pursuant to the 2011 SIP. The Compensation Committee Defendants are the primary wrongdoers responsible for awarding Defendants Ells and Moran over \$300 million in SOSARs between 2011 and 2015 and the RSUs granted to the non-employee Board members. The Compensation Committee Defendants were responsible for evaluating the compensation program, including the 2011 SIP, and took no action to reform the 2011 SIP until overwhelming shareholder opposition at the 2014 Annual Meeting of Shareholders. The Compensation Committee Defendants failed and continue to fail to take adequate action to recoup excessive payments in the form of SOSARs and RSUs, which will vest in 2015 and 2016. Accordingly, the Compensation Committee Defendants are interested and non-independent and any demand upon them to institute legal action on behalf of the Company to recoup the excessive payments to the Company’s officers and directors under the 2011 SIP is therefore futile.

262. Moreover, the Compensation Committee approved the compensation of the Company’s executives that is tied to the success of the Company, which the Company falsely

claimed to the public as set forth herein, and which was the illegal basis for Defendant Ells to receive over tens of millions in annual compensation. Thus, Defendants Flynn, Friedman, and Flanzraich, as members of the Compensation Committee, are especially culpable in the misconduct alleged herein and each of them breached his/her fiduciary duty, faces a substantial likelihood of liability, is not disinterested or independent, and demand upon each of them is futile and, therefore, excused.

263. Moreover, demand on the Board is futile because a majority of the Board approved the 2011 SIP that provides a blank check to award compensation for the Board. Defendants Ells, Moran, Baldocchi, Charlesworth, Flanzraich, Flynn, and Friedman approved the 2011 SIP and received or awarded compensation in the form of stock options challenged in this action pursuant to an incentive plan that contains no limits on their compensation, let alone meaningful ones, and thus, those Individual Defendants stand on both sides of the compensation awards. Additionally, Defendants Ells and Moran received hundreds of millions of dollars in SOSARs and thus derived a personal financial benefit from and had a direct interest in the transactions at issue in this case. Because they stand on both sides of the challenged compensation awards and received personal financial benefits from those awards, those Individual Defendants lack disinterest, they will have the burden of proving the entire fairness of their compensation, and there is more than a reasonable doubt that the directors could impartially consider a demand. Accordingly, demand is excused.

264. The Directors, except for Defendant Gillett, have received compensation pursuant to the 2011 SIP in the form of RSUs and have a strong financial incentive to maintain the *status quo* by not authorizing any corrective action that would devalue their current holdings or cause them to disgorge improperly obtained profits. During 2014, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, Friedman, and Musk each received \$120,013 in RSUs. During 2013, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn and Friedman each received \$85,161 in RSUs and Defendant Musk received \$28,572 in RSUs. During 2012, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn and Friedman each received \$85,092 in RSUs. During 2011, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn and Friedman each received \$85,233 in RSUs. The RSUs vest on the third anniversary of the grant date of such shares, similar to the SOSARs. Thus, for these additional reasons, at least, Defendants Baldocchi, Charlesworth, Flanzraich, Flynn, Friedman, and Musk are interested and unable to impartially consider demand as each received challenged compensation in the form of RSUs pursuant to the 2011 SIP and, thus, demand is futile as to those Defendants.

265. Additional reasons that demand on Defendant Ells is futile follow. Defendant Ells is the Company's co-Chief Executive Officer and Chairman of the Board, and is thus, as the Company admits, a non-independent director. Defendant Ells was ultimately responsible for all of the false and misleading statements and omissions that were made, including those contained in the SEC filings, many of which he signed, and including many of which he personally made. His insider sales before the fraud was exposed, which yielded \$78.3 million in proceeds, demonstrate his motive in facilitating and participating in the fraud. Suspiciously, Defendant Ells sold Company common stock on material non-public information only days after

(sometimes the day after) the Company initiated new repurchase programs. Moreover, his dispositions of common stock for tax or other benefits, through which he benefitted from \$42.4 million in proceeds, before the fraud was exposed, demonstrate his motive in facilitating and participating in the fraud. As he received over \$13.8 million in 2015 and just under \$29 million in 2014 in annual compensation, which is greater compensation than that received by most CEOs and CFOs of publicly-traded companies, he depends, and has depended, on the other members of the Board, especially the directors on the Compensation Committee, and is, and was, beholden to them. His large Company stock holding, worth \$280.4 million the day before the first contamination issue was made public, which represented 1.2% of the Company's issued and outstanding common stock, reveals his interest in keeping the Company's stock price as high as possible. Moreover, Defendant Ells is a defendant in the Securities Fraud Class Actions. Finally, as an officer and director of the Company, Defendant Ells conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Ells breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

266. Additional reasons that demand on Defendant Moran is futile follow. Defendant Moran is the Company's co-Chief Executive Officer and is thus, as the Company admits, a non-independent director. Defendant Moran was ultimately responsible for all of the false and misleading statements and omissions that were made, including those contained in the SEC filings, many of which he signed, and including many of which he personally made. His insider sales before the fraud was exposed, which yielded almost \$108 million in proceeds, demonstrate his motive in facilitating and participating in the fraud. Suspiciously, Defendant Moran sold Company common stock on material non-public information the day after the Company initiated the July 21, 2015 repurchase program. Moreover, his dispositions of common stock for tax or other benefits, through which he benefitted from \$66.2 million in proceeds, before the fraud was exposed, demonstrate his motive in facilitating and participating in the fraud. As he received almost \$13.6 million in 2015 and over \$28 million in 2014 in annual compensation, which is greater compensation than that received by most CEOs and CFOs of publicly-traded companies, he depends, and has depended, on the other members of the Board, especially the directors on the Compensation Committee, and is, and was, beholden to them. His large Company stock holding, worth \$452.2 million the day before the first contamination issue was made public, which represented 1.9% of the Company's issued and outstanding common stock, reveals his interest in keeping the Company's stock price as high as possible. Moreover, Defendant Moran is a defendant in the Securities Fraud Class Actions. Finally, as an officer and director of the Company, Defendant Moran conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs,

consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Moran breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

267. Additional reasons that demand on Defendant Flynn is futile follow. Defendant Flynn's insider sales before the fraud was exposed, which yielded over \$1.7 million in proceeds, demonstrate his motive in facilitating and participating in the fraud. Suspiciously, Defendant Flynn sold Company common stock on material non-public information only days after the Company initiated the February 3, 2015 and July 21, 2015 repurchase programs. His large Company stock holding, worth \$5.8 million the day before the first contamination issue was made public, reveals his interest in keeping the Company's stock price as high as possible. Finally, as Chairman of the Nominating and Corporate Governance Committee, a member of the Compensation Committee, and a director, Defendant Flynn conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Flynn breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

268. Additional reasons that demand on Defendant Charlesworth is futile follow. Defendant Charlesworth's insider sales before the fraud was exposed, which yielded over \$1.5 million in proceeds, demonstrate his motive in facilitating and participating in the fraud. Suspiciously, Defendant Charlesworth sold Company common stock on material non-public information only two weeks after the Company initiated the July 21, 2015 repurchase program. His large Company stock holding, worth \$4 million the day before the first contamination issue was made public, reveals his interest in keeping the Company's stock price as high as possible. Finally, as a member of the Audit Committee, and a director, Defendant Charlesworth conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Charlesworth breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

269. Additional reasons that demand on Defendant Friedman is futile follow. Defendant Friedman's insider sales before the fraud was exposed, which yielded over \$1 million in proceeds, demonstrate her motive in facilitating and participating in the fraud. Suspiciously,

Defendant Friedman sold Company common stock on material non-public information only days after the Company initiated the July 21, 2015 repurchase program. Her large Company stock holding, worth \$4.6 million the day before the first contamination issue was made public, reveals her interest in keeping the Company's stock price as high as possible. Finally, as a member of the Compensation Committee and the Nominating and Corporate Governance Committee, and a director, Defendant Friedman conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded her duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded her duties to protect corporate assets. Thus, for these reasons, too, Defendant Friedman breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile and, therefore, excused.

270. Additional reasons that demand on Defendant Baldocchi is futile follow. Defendant Baldocchi has served as a compensated Company director at all relevant times. His large Company stock holding, worth \$54.8 million the day before the first contamination issue was made public, reveals his interest in keeping the Company's stock price as high as possible. As Chairman of the Audit Committee, and a director, Defendant Baldocchi conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Baldocchi breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

271. Additional reasons that demand on Defendant Flanzraich is futile follow. Defendant Flanzraich has served as a compensated Company director at all relevant times. His large Company stock holding, worth \$2.6 million the day before the first contamination issue was made public, reveals his interest in keeping the Company's stock price as high as possible. As Chairman of the Compensation Committee, a member of the Audit Committee, and a director, Defendant Flanzraich conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Flanzraich breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

272. Additional reasons that demand on Defendant Gillett is futile follow. As a member of the Audit Committee, and a director, Defendant Gillett conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Gillett breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

273. Additional reasons that demand on Defendant Musk is futile follow. As a director, Defendant Musk conducted little, if any, oversight of the Company's internal controls over public reporting of financial statements and of the Company's engagement in the schemes to pay grossly excessive compensation pursuant to the 2011 SIP, make false and misleading statements and omissions, and initiate fraudulent and corrupt repurchase programs, consciously disregarded his duties to monitor such controls over reporting and engagement in the schemes, and consciously disregarded his duties to protect corporate assets. Thus, for these reasons, too, Defendant Musk breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

274. Demand is excused as to all of the Directors because each one of them faces, individually and collectively, a substantial likelihood of liability as a result of their participation in the schemes as described herein, which renders them unable to impartially investigate the charges and decide whether to pursue action against themselves and the other perpetrators of the schemes.

275. As described above, five out of the nine Directors on Chipotle's Board directly engaged in insider trading, in violation of Federal Law and the Company's Ethics Codes. Defendants Eells, Moran, Flynn, Charlesworth, and Friedman received proceeds in excess of \$190.2 million as a result of insider transactions executed at a time when the price of the Company common stock was artificially inflated due to the false and misleading statements of material fact. This alone prevents the existence of a majority of disinterested directors on the Board. Therefore, demand in this case is futile, and excused.

276. Moreover, those members of the Board who did not engage in insider trading while the stock price was artificially inflated due to the misconduct described herein stood idly by while a majority of the Directors and at least four of the Company's top executives engaged in lucrative insider sales. Thus, they face a substantial likelihood of liability for breaching their fiduciary duties and duties of oversight, and therefore demand upon them is futile.

277. The Directors, as members of the Board, were and are subject to the Code of Conduct and Corporate Guidelines. The Code of Conduct is applicable to all employees, including the Company's officers and directors. The Code of Conduct and Corporate Guidelines go well beyond the basic fiduciary duties required by applicable laws, rules, and regulations.

The Directors did not comply with the requirements of the Code of Conduct and Corporate Guidelines. The Directors violated the Code of Conduct by making and/or facilitating the false misrepresentations set forth, by failing to correct those misrepresentations, and by engaging in other misconduct set forth herein. Because the Directors violated the Code of Conduct and Corporate Guidelines, they face a substantial likelihood of liability for breaching their fiduciary duties, and therefore demand upon them is futile.

278. Additionally, Defendants Eells and Moran were subject to the Ethics Pledge. Each of Defendants Eells and Moran individually signed the Ethics Pledge and were, and are, bound by the terms and commitments therein. The Ethics Pledge goes well beyond the basic fiduciary duties required by applicable laws, rules, and regulations. Defendants Eells and Moran did not comply with the Ethics Pledge. Defendants Eells and Moran violated the Ethics Pledge by making and/or facilitating the false misrepresentations set forth, by failing to correct those misrepresentations, and by engaging in other misconduct set forth herein. Because Defendants Eells and Moran violated the Ethics Pledge, they face a substantial likelihood of liability for breaching their fiduciary duties, and therefore demand upon them is futile.

279. Furthermore, demand in this case is excused because the Directors, who are named as defendants in this action, control the Company and are beholden to each other. The Board is especially beholden to Defendants Eells and Moran, who made and were responsible for causing the Company to make the false and misleading statements of material fact alleged herein and for failing to correct those false and misleading statements, and actively exerted control over the Company in facilitating the Individual Defendants' schemes described herein and approving their own excessive and lucrative compensation.

280. Members of the Board have longstanding business and personal relationships with each other and the other Individual Defendants that preclude them from acting independently and in the best interests of the Company and the shareholders. For example, Defendants Eells and Moran have a longstanding personal and business relationship that dates back to before Chipotle was founded, as the two were high school classmates and friends. After Chipotle was founded, Defendant Eells asked his friend, Defendant Moran, who was then working at the law firm of Messner Reeves LLP, to provide legal services for Chipotle beginning in 1997. Subsequently, Defendant Eells brought Defendant Moran into executive management roles at Chipotle, starting as President and COO in March 2005, and, on January 1, 2009, Defendant Eells promoted Defendant Moran to the role of co-CEO. These conflicts of interest precluded the Board from independently considering a demand upon each other, adequately monitoring the Company's operations and calling into question the Individual Defendants' conduct. Thus, any demand on the Directors would be futile.

281. Chipotle has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Directors have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Chipotle any part of the damages Chipotle suffered and will continue to suffer thereby. Thus, any demand on the Directors would be futile.

282. The Individual Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgment as it was based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of the Directors can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Directors face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

283. The acts complained of herein constitute violations of fiduciary duties owed by Chipotle' officers and directors, and these acts are incapable of ratification.

284. The Directors may also be protected against personal liability for their acts of mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability insurance if they caused the Company to purchase it for their protection with corporate funds, i.e., monies belonging to the stockholders of Chipotle. If there is a directors' and officers' liability insurance policy covering the Directors, it may contain provisions that eliminate coverage for any action brought directly by the Company against the Directors, known as, *inter alia*, the "insured-versus-insured exclusion." As a result, if the Directors were to sue themselves or certain of the officers of Chipotle, there would be no directors' and officers' insurance protection. Accordingly, the Directors cannot be expected to bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will provide a basis for the Company to effectuate a recovery. Thus, demand on the Directors is futile and, therefore, excused.

285. If there is no directors' and officers' liability insurance, then the Directors will not cause Chipotle to sue the Individual Defendants named herein, since, if they did, they would face a large uninsured individual liability. Accordingly, demand is futile in that event, as well.

286. Thus, for the reasons set forth above, all of the Directors, and, if not all of them, certainly a majority of the Directors, cannot consider a demand with disinterestedness and independence. Consequently, a demand upon the Board is excused as futile.

287. Overall, the Company will most likely expend millions of dollars in internal investigations and defending the Securities Fraud Class Actions. It will most likely be liable for millions upon millions of dollars in damages if it loses or settles the related Securities Fraud Class Actions. Moreover, the Company's reputation has been severely damaged. The Company has also wasted a substantial amount of money in unjustly compensating the Individual Defendants as directors and officers. Its market capitalization has been severely diminished and its prospect of raising equity in the future is questionable. All of this substantial damage stems proximately from the Individual Defendants' conscious and willful breaches of their fiduciary duties, abuse of control, and other malfeasance.

FIRST CLAIM
Against Individual Defendants for Breach of Fiduciary Duties

288. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

289. Each Individual Defendant owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Chipotle's business and affairs.

290. Each of the Individual Defendants violated and breached his or her fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

291. The Individual Defendants' conduct set forth herein was due to their intentional, reckless, or negligent breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants intentionally, recklessly, or negligently breached or disregarded their fiduciary duties to protect the rights and interests of Chipotle.

292. In breach of their fiduciary duties owed to Chipotle, the Individual Defendants willfully or recklessly engaged in the misconduct described herein, including causing the Company to purchase its own stock from undisclosed sellers for over \$84 million more than the stock was worth and their participation in the scheme to make and/or cause the Company to make false and/or misleading statements and/or omissions of material fact regarding, at least, (1) the Company's commitment to and control of food safety at Chipotle restaurants; (2) Chipotle's quality controls being in compliance with consumer and workplace safety regulations, (3) Chipotle's quality controls being inadequate to safeguard consumer and employee health, (4) Chipotle's adherence to "industry-standard food safety practices," (5) Chipotle's adoption of procedures that went "beyond the industry-standard food safety practices," (6) the purpose and effect of the Individual Defendants' grossly excessive compensation, and (7) the purpose and effect of the Company's many repurchase programs. These facts pertained to the Company's business, operations, and prospects and were known to the Individual Defendants or recklessly disregarded by them. Moreover, a supermajority of the Individual Defendants engaged in lucrative insiders sales, receiving in excess of \$224.6 million, while the price of the Company common stock was artificially inflated due to the false and misleading statements of material fact alleged herein.

293. The Individual Defendants had actual or constructive knowledge that they had engaged in and/or caused the Company to engage in the fraudulent schemes alleged herein, including causing the Company to pay them excessive compensation, engaging in insider sales on material non-public information, failing to maintain adequate internal controls, and causing the Company to improperly misrepresent its business operations and prospects and failing to correct the Company's public statements. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts even though such facts were available to them. Such material misrepresentations and omissions were made, and were subsequently not corrected, knowingly or recklessly and for the purpose and effect of artificially inflating the price of Chipotle's securities.

294. These actions were not a good-faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

295. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Chipotle has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

296. Plaintiff on behalf of Chipotle has no adequate remedy at law.

SECOND CLAIM

Against Individual Defendants for Abuse of Control

297. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

298. The Individual Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Chipotle, for which they are legally responsible.

299. As a direct and proximate result of the Individual Defendants' abuse of control, Chipotle has sustained significant damages. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations of candor, good faith, and loyalty, Chipotle has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

300. Plaintiff on behalf of Chipotle has no adequate remedy at law.

THIRD CLAIM

Against Individual Defendants for Gross Mismanagement

301. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

302. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Chipotle in a manner consistent with the operations of a publicly-held corporation.

303. As a direct and proximate result of the Individual Defendants' gross mismanagement and breaches of duty alleged herein, Chipotle has sustained and will continue to sustain significant damages.

304. As a result of the misconduct and breaches of duty alleged herein, the Individual Defendants are liable to the Company.

305. Plaintiff, on behalf of Chipotle, has no adequate remedy at law.

FOURTH CLAIM
Against Individual Defendants for Unjust Enrichment

306. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

307. By their wrongful acts and false and misleading statements and omissions of material fact that they made and/or caused to be made, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Chipotle.

308. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration the Board received while breaching its fiduciary duties owed to Chipotle and certain of the Company's executive officers were unjustly enriched through the Board's action in granting awards pursuant to the 2011 SIP.

309. The Individual Defendants either benefitted financially from the improper conduct and their making lucrative insider sales and received unjustly lucrative bonuses tied to the false and misleading statements, or received bonuses, stock options, or similar compensation from Chipotle that was tied to the performance or artificially inflated valuation of Chipotle, or received compensation that was unjust in light of the Individual Defendants' bad faith conduct.

310. Plaintiff, as a shareholder and a representative of Chipotle, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all proceeds from insider sales made on non-public information, profits, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by the Individual Defendants due to their wrongful conduct and breach of their fiduciary duties.

311. Plaintiff on behalf of Chipotle has no adequate remedy at law.

FIFTH CLAIM
Against Individual Defendants for Waste of Corporate Assets

312. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

313. As a result of the foregoing, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused Chipotle to waste valuable corporate assets, to incur many tens, if not hundreds, of millions of dollars due to overpayment by \$84 million for Chipotle's own stock, legal liability and/or costs to defend unlawful actions, and to lose business from clients, investors, and financiers who no longer trust the Company and its affiliates.

314. As a result of the waste of Company assets, the Individual Defendants are each liable to the Company.

315. Plaintiff on behalf of Chipotle has no adequate remedy at law.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiff demands judgment in the Company's favor against all Individual Defendants as follows:

(a) Declaring that Plaintiff may maintain this action on behalf of Chipotle, and that Plaintiff is an adequate representative of the Company;

(b) Declaring that the Individual Defendants have breached and/or aided and abetted the breach of their fiduciary duties to Chipotle;

(c) Determining and awarding to Chipotle the damages sustained by it as a result of the violations set forth above from each of the Individual Defendants, jointly and severally, together with pre-judgment and post-judgment interest thereon;

(d) Directing Chipotle and the Individual Defendants to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Chipotle and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote the following resolutions for amendments to the Company's Bylaws or Articles of Incorporation and the following actions as may be necessary to ensure proper corporate governance policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

2. a provision to permit the shareholders of Chipotle to nominate at least five candidates for election to the Board; and

3. a proposal to ensure the establishment of effective oversight of compliance with applicable laws, rules, and regulations.

(e) Awarding Chipotle restitution from Individual Defendants, and each of them;

(f) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs, and expenses; and

(g) Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: April 6, 2016

Respectfully submitted,

Pursuant to Rule 121, Sec. 1-26(7), C.R.P.C., a printed or printable copy of this document, with original, electronic, or scanned signature, will be maintained by the Plaintiff and will be made available for inspection by the other parties upon request.

By: /s Karen Cody-Hopkins

-and-

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