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8 IN THE UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MAURIZIO ANTONINETTI  
11 Plaintiff,

12 vs.

13 CHIPOTLE MEXICAN GRILL, INC. and DOES  
14 1 THROUGH 10, Inclusive,  
15 Defendants.

Case No.: 05 CV 1660 J  
(WMC)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, TO  
CONSOLIDATE WITH PENDING  
CASE**

Date: February 12, 2007  
Time: 10:30 a.m.  
Judge: Napoleon A. Jones,  
Jr.

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20 Plaintiff, MAURIZIO ANTONINETTI, (hereinafter "Plaintiff"),  
21 hereby submits the following Memorandum of Points and Authorities  
22 in Support of his Opposition to the Motion to Dismiss or, in the  
23 alternative, to consolidate Case No. 05 CV 1660 J (WMC) with Case  
24 No. 06 CV 2671 LAB (POR).

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I.

**PLAINTIFF DOES NOT OPPOSE CONSOLIDATION OF  
CASE NO. 06 CV 2671 WITH THE INSTANT CASE**

Plaintiff has no objection to the consolidation of Case No. 06 CV 2671 with the instant case. In fact, in his Notices of Related Cases filed in the two actions on January 11, 2007, Plaintiff specifically requested that the later-filed case be assigned to Judge Jones, who had been assigned the instant case.

Of note, the Plaintiff recommended that the cases be assigned to the same Judge the day before Defendant filed it's Motion to Dismiss.

II.

**DEFENDANT'S MOTION WAS FILED WITHOUT  
ANY REASONABLE BASIS AND WAS DONE  
FOR IMPROPER PURPOSES**

**A. This Motion was Completely Unnecessary.**

Defendant contended, and continues to contend, that Plaintiff engaged in "judge-shopping" when he filed, along with four other plaintiffs, a subsequent class action lawsuit that involved all of Chipotle's restaurants in California. Defendant also contended, and continues to contend, that Plaintiff tried to "do an end run" around the Court's Scheduling Order in the instant action by filing the subsequent class action.

When Defendant first leveled these charges, Plaintiff's counsel took immediate action to disabuse Defendant and it's attorneys of those notions. (Please see Exhibits "C" and "E" to Defendant's Motion and Plaintiff's Notice of Related Cases filed in the instant matter.)

In addition to Plaintiff's counsel's letters to defense

1 counsel, Plaintiff's Notice of Related Cases, filed and served  
2 the day **before** Defendant filed the instant Motion, clearly stated  
3 that Plaintiff's claims in the instant case were separate and  
4 distinct from those asserted in the Class Action. The Notice  
5 also specifically and emphatically stated that Plaintiff had no  
6 desire to modify the Court's Scheduling Order in the instant  
7 case.

8 In fact, Plaintiff offered to file an Amended Complaint in  
9 the later-filed action to address Defendant's concerns about  
10 "duplicative claims". (Please see Exhibit "E" to Defendant's  
11 Motion.) Plaintiff even provided Stacey Herter, at a deposition  
12 on January 22, 2007, with a Stipulation to allow Plaintiffs to  
13 amend the Complaint in Case No. 06 CV 2671 LAB (POR). Ms. Herter  
14 stated that she needed to "check with Greg" to see if the  
15 Stipulation would be signed by defense counsel. To date, the  
16 Stipulation has not been executed by defense counsel. (See ABV  
17 Dec., par. 5.)

18 Rather than act responsibly, with professionalism and in  
19 good faith, Defendant and/or it's attorneys, including Gregory F.  
20 Hurley, decided to simply ignore the Plaintiff's representations  
21 and his offer to stipulate to amend the Complaint and, instead,  
22 filed the instant motion. There is absolutely no reason for this  
23 motion to take up this Court's time and resources, or for the  
24 Plaintiff to expend attorney's fees reviewing and responding to  
25 the motion.

26 Had Defendant simply agreed to the Stipulation to Amend the  
27 Complaint, the issues of duplication would be moot. Further,  
28 Defendant's allegations regarding the Scheduling Order are belied

1 by the fact that at no time has Plaintiff ever indicated, by  
2 implication or otherwise, that he wished to modify the Court  
3 dates in the instant action. Moreover, the Notice of Related  
4 Cases specifically refutes Defendant's position.

5 Defendant's motion should be denied and Defendant and/or his  
6 attorneys should be sanctioned for filing a frivolous motion.  
7 The Court should also take note that, while the Motion is signed  
8 by Ms. Herter, her supervising attorney, and the person in charge  
9 of this litigation, is Mr. Hurley.

10 **B. Defense Counsel, Greg Hurley, Has Been**  
11 **Sanctioned by Other Courts for Improper Conduct.**

12 In *Lonberg v. Home Depot Store 610* U.S. District Court,  
13 Central District case number SACV-00-221DOC, the Court personally  
14 sanctioned Mr. Hurley for presenting information to the Court  
15 that he knew or should have known was false. (Please See Exhibit  
16 "A" to the Declaration of Amy B. Vandeveld, par. 5.)

17 Not only did the Court find that Mr. Hurley and his client  
18 had misrepresented facts to the Court, it also found that Mr.  
19 Hurley and his client filed a removal action for an "improper  
20 purpose". (Ex. "A" to Vandeveld Dec., par. 8.) The Court also  
21 stated:

22 "Defendant has made it as difficult as possible for  
23 Plaintiff to vindicate his rights, forcing him to  
24 retain an attorney instead of proceeding in small  
25 claims court. Actions like this may make disabled  
individuals reluctant to try and enforce their civil  
rights for fear that they can do so only with the help  
of an attorney at significant cost."

26 Ex. "A" to Vandeveld Dec., par. 7.

27 In a published opinion, another Court found Mr. Hurley's  
28 mischaracterization of a decision of another case "intellectually

1 dishonest and insulting to this Court." *United States v. AMC*  
2 *Entertainment, Inc.* (C.D. Cal. 2002) 232 F.Supp.2d 1092, at n.  
3 14. In fact, the Court found that Mr. Hurley's sworn  
4 declarations were not credible because, among other reasons, they  
5 contradicted statements of his own witnesses and clients.

6 In another published decision, the Court criticized Mr.  
7 Hurley for attempting to rely on his own declaration as evidence.  
8 *United States v. AMC Entertainment, Inc.* (C.D. Cal. 2003) 245  
9 F.Supp.2d 1094, at n. 9)

10 The California Court of Appeal even criticized Mr. Hurley.  
11 In *Hankins v. El Torito* (1998) 63 Cal.App.4th 510, the Court  
12 chastised Mr. Hurley for his improper attempts to cite  
13 unpublished case law: "we also note, with considerable distress,  
14 that El Torito's counsel has improperly cited *two other*  
15 *depublished cases...* It is difficult to excuse these errors  
16 especially in light of El Torito's numerous other violations of  
17 rule 15(a) of the California Rules of Court by, e.g., its failure  
18 to provide record citations for a veritable host of its factual  
19 assertions."

20 Mr. Hurley was personally sanctioned in *United States v. AMC*  
21 *Entertainment*, U.S. District Court, Central District case number  
22 CV-99-1034 FMC for (a) failing to produce records, (b)  
23 intentionally deleting responsive e-mail documents, (c) failing  
24 to act reasonably to recover documents and (d) opposing a  
25 discovery motion without substantial justification. (Ex. "B" to  
26 Vandeveld Dec.)

27 While the instant motion is signed by Ms. Herter, it is  
28 clear that Mr. Hurley is simply hiding behind his associate to

1 avoid further sanctions. He is the supervising attorney on this  
2 case. It is unlikely that the motion would have been filed  
3 without Mr. Hurley's direction and approval. Unless Mr. Hurley  
4 is sanctioned for his improper conduct in filing the instant  
5 motion, he will not be deterred from filing other frivolous  
6 motions, all to the detriment of the Court and to the Plaintiff  
7 and class plaintiffs.

8 **C. Mr. Hurley Has Engaged in other Harassing and Annoying**  
9 **Conduct Against People with Disabilities.**

10 In 2005, a disabled advocate, Ruthee Goldkorn, sought a  
11 quick and economical resolution, in small claims court, of her  
12 claims relating to access violations at a Claire's Boutique store  
13 in Moreno Valley, CA. She won her case. Claire's threatened to  
14 appeal the judgment unless Ms. Goldkorn agreed to provide notice  
15 of other access barriers at Claire's stores before filing a  
16 lawsuit.

17 Ms. Goldkorn agreed to the requested notice provision, even  
18 though she was not legally obligated to give notice prior to  
19 filing a lawsuit. In fact, when Ms. Goldkorn did confront other  
20 barriers at a different Claire's store, she attempted an even  
21 more informal and cost-effective resolution. Rather than give  
22 notice as prescribed by the Settlement Agreement, Ms. Goldkorn  
23 sent an informal email to Claire's counsel, Stacy Herter,  
24 regarding problems she had encountered at the Ontario store. As  
25 noted above, Stacy Herter is Mr. Hurley's associate and is  
26 involved in both of the *Antoninetti v. Chipotle* cases filed with  
27 this Court.

28 Unfortunately, Ms. Goldkorn agreed to the notice provision

1 to her extreme detriment. After receiving notice of the other  
2 violations, Claire's Boutique, represented by Mr. Hurley and  
3 Stacey Herter, actually *sued* Ms. Goldkorn for declaratory relief,  
4 alleging that the notice given by Ms. Goldkorn gave rise to a  
5 justiciable case or controversy. (See Case No.: RCV 085784,  
6 filed in the County of San Bernardino.)

7 In that case, Ms. Goldkorn was forced to locate an attorney  
8 who would defend her, *pro bono*, in a lawsuit that would never  
9 have been filed but for the fact that Ms. Goldkorn agreed to  
10 notify Claire's of access problems at other stores. She was  
11 tricked into this vulnerable position by Claire's or Claire's  
12 attorney, Gregory Hurley, who was the lead attorney in the  
13 declaratory relief lawsuit against Ms. Goldkorn.

14 Upon Ms. Goldkorn's request, and after a hearing on her  
15 motion, the Court dismissed Claire's lawsuit against Ms.  
16 Goldkorn, without leave to amend. (Please see Exhibit "C" to  
17 Vandeveld Dec.) If Ms. Goldkorn had not been able to find an  
18 attorney to defend her *pro bono*, she would have been unable to  
19 defend the case against her.

20 **III.**

21 **CONCLUSION**

22 Based upon the foregoing, Plaintiff respectfully requests  
23 that the Court deny Defendant's Motion to Dismiss. Plaintiff  
24 further requests that the Court consolidate USDC Case No. 06 CV  
25 2671 LAB (POR) with USDC Case No. 05 CV 1660 J (WMC). Finally,  
26 Plaintiff requests that the Court sanction Defense counsel for

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1 filing a frivolous motion.

2 DATED: January 24, 2007

LAW OFFICES OF AMY B. VANDEVELD

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/S/ Amy B. Vandeveld  
AMY B. VANDEVELD, Attorney for  
Plaintiff

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