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10 Attorneys for Defendant
11 CHIPOTLE MEXICAN GRILL, INC.

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 MAURIZIO ANTONINETTI, JEAN
15 RIKER, JAMES PERKINS, KAREN
16 FRIEDMAN and MICHAEL
17 RIFKIN, on behalf of themselves and
18 all other similarly situated,

19 Plaintiffs,

20 vs.

21 CHIPOTLE MEXICAN GRILL,
22 INC., a Colorado Corporation and
23 DOES 1-10, Inclusive,

24 Defendants.

CASE NO.: 06CV-2671-LAB (POR)

CLASS ACTION - Related to
USDC No. 05 CV1660 J (WMC)

**CHIPOTLE MEXICAN GRILL
INC.'S ANSWER AND
AFFIRMATIVE DEFENSES**

[DEMAND FOR JURY TRIAL]

1 Defendant Chipotle Mexican Grill, Inc. answers the Complaint (“Complaint”) in
2 this action and admits, denies and alleges as follows:

3 1. Responding to Paragraph 1 of the Complaint, Chipotle asserts that the
4 allegations in this paragraph constitute argument and legal conclusions to which no
5 response is necessary, and on that basis Chipotle denies each and every allegation in this
6 paragraph.

7 2. Responding to Paragraph 2 of the Complaint, Chipotle lacks the information
8 and knowledge necessary to form a belief as to Plaintiffs’ allegations, and on that basis
9 denies the allegations.

10 3. Responding to Paragraph 3 of the Complaint, Chipotle denies all allegations
11 therein.

12 4. Responding to Paragraph 4 of the Complaint, the Complaint speaks for
13 itself. To the extent Plaintiffs’ characterization of the Complaint is inconsistent with the
14 Complaint, Chipotle denies the characterization.

15 5. Responding to Paragraph 5 of the Complaint, Chipotle denies all allegations
16 therein.

17 6. Responding to Paragraph 6 of the Complaint, Chipotle denies all allegations
18 therein.

19 7. Responding to Paragraph 7 of the Complaint, Chipotle denies all allegations
20 therein.

21 8. Responding to Paragraph 8 of the Complaint, Chipotle denies all allegations
22 therein.

23 9. Responding to Paragraph 9 of the Complaint, Chipotle admits that original
24 jurisdiction in this Court appears to be appropriate pursuant to 28 U.S.C. §§ 1331 and
25 1334.

26 10. Responding to Paragraph 10 of the Complaint, Chipotle admits only that
27 venue appears to be appropriate in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c).
28

1 11. Responding to Paragraph 11 of the Complaint, Chipotle lacks the
2 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
3 that basis denies the allegations.

4 12. Responding to Paragraph 12 of the Complaint, Chipotle lacks the
5 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
6 that basis denies the allegations.

7 13. Responding to Paragraph 13 of the Complaint, Chipotle admits only that it is
8 a Colorado corporation authorized to do business in California, but denies all remaining
9 allegations.

10 14. Responding to Paragraph 14 of the Complaint, Chipotle lacks the
11 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
12 that basis denies the allegations.

13 15. Chipotle incorporates its responses to Paragraphs 1 through 14 of the
14 Complaint by reference as though fully set forth herein.

15 16. Responding to Paragraph 16 of the Complaint, Chipotle lacks the
16 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
17 that basis denies the allegations.

18 17. Responding to Paragraph 17 of the Complaint, Chipotle lacks the
19 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
20 that basis denies the allegations.

21 18. Responding to Paragraph 18 of the Complaint, Chipotle lacks the
22 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
23 that basis denies the allegations.

24 19. Responding to Paragraph 19 of the Complaint, Chipotle lacks the
25 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
26 that basis denies the allegations.

1 20. Responding to Paragraph 20 of the Complaint, Chipotle lacks the
2 information and knowledge necessary to form a belief as to Plaintiffs’ allegations, and on
3 that basis denies the allegations.

4 21. Responding to Paragraph 21 of the Complaint, Chipotle denies all
5 allegations therein.

6 22. Responding to Paragraph 22 of the Complaint, Chipotle denies all
7 allegations therein.

8 23. Responding to Paragraph 23 of the Complaint, Chipotle admits that
9 Plaintiffs “seek” certain relief, but denies that they are entitled to any such relief and
10 denies the remaining allegations in this paragraph.

11 24. Responding to Paragraph 24 of the Complaint, Chipotle lacks the
12 information and knowledge necessary to form a belief as to Plaintiffs’ allegations, and on
13 that basis denies the allegations.

14 25. Responding to Paragraph 25 of the Complaint, Chipotle denies all
15 allegations therein.

16 26. Responding to Paragraph 26 of the Complaint, Chipotle denies all
17 allegations therein.

18 27. Responding to Paragraph 27 of the Complaint, Chipotle denies all
19 allegations therein.

20 28. Responding to Paragraph 28 of the Complaint, Chipotle denies all
21 allegations therein.

22 29. Responding to Paragraph 29 of the Complaint, Chipotle denies all
23 allegations therein.

24 30. Responding to Paragraph 30 of the Complaint, Chipotle denies all
25 allegations therein.

26 31. Responding to Paragraph 31 of the Complaint, Chipotle lacks the
27 information and knowledge necessary to form a belief as to Plaintiffs’ allegations, and on
28 that basis denies the allegations.

1 32. Chipotle incorporates its responses to Paragraphs 1 through 31 of the
2 Complaint by reference as though fully set forth herein.

3 33. Responding to Paragraph 33 of the Complaint, the Americans With
4 Disabilities Act speaks for itself. Chipotle denies Plaintiffs' characterization of the Act
5 to the extent such characterization is inconsistent with the provisions of the Act.

6 34. Responding to Paragraph 34 of the Complaint, the Americans With
7 Disabilities Act speaks for itself. Chipotle denies Plaintiffs' characterization of the Act
8 to the extent such characterization is inconsistent with the provisions of the Act.

9 35. Responding to Paragraph 35 of the Complaint, the Americans With
10 Disabilities Act speaks for itself. Chipotle denies Plaintiffs' characterization of the Act
11 to the extent such characterization is inconsistent with the provisions of the Act.

12 36. Responding to Paragraph 36 of the Complaint, the Americans With
13 Disabilities Act speaks for itself. Chipotle denies Plaintiffs' characterization of the Act
14 to the extent such characterization is inconsistent with the provisions of the Act.

15 37. Responding to Paragraph 37 of the Complaint, Chipotle denies all
16 allegations therein.

17 38. Responding to Paragraph 38 of the Complaint, Chipotle admits only that it is
18 a public accommodation.

19 39. Responding to Paragraph 39 of the Complaint, Chipotle lacks the
20 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
21 that basis denies the allegations.

22 40. Responding to Paragraph 40 of the Complaint, Chipotle denies all
23 allegations therein.

24 41. Responding to Paragraph 41 of the Complaint, Chipotle denies all
25 allegations therein.

26 42. Chipotle incorporates its responses to Paragraphs 1 through 41 of the
27 Complaint by reference as though fully set forth herein.
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1 43. Responding to Paragraph 43 of the Complaint, the Unruh Civil Rights Act
2 speaks for itself. Chipotle denies Plaintiffs' characterization of the Act to the extent such
3 characterization is inconsistent with the provisions of the Act.

4 44. Responding to Paragraph 44 of the Complaint, the Unruh Civil Rights Act
5 speaks for itself. Chipotle denies Plaintiffs' characterization of the Act to the extent such
6 characterization is inconsistent with the provisions of the Act.

7 45. Responding to Paragraph 45 of the Complaint, Chipotle denies all
8 allegations therein.

9 46. Responding to Paragraph 46 of the Complaint, Chipotle denies all
10 allegations therein.

11 47. Responding to Paragraph 47 of the Complaint, Chipotle lacks the
12 information and knowledge necessary to form a belief as to Plaintiffs' allegations, and on
13 that basis denies the allegations.

14 48. Responding to Paragraph 48 of the Complaint, Chipotle admits only that it is
15 a business establishment.

16 49. Responding to Paragraph 49 of the Complaint, Chipotle denies all
17 allegations therein.

18 50. Responding to Paragraph 50 of the Complaint, Chipotle denies all
19 allegations therein.

20 51. Responding to Paragraph 51 of the Complaint, Chipotle denies all
21 allegations therein.

22 52. Chipotle incorporates its responses to Paragraphs 1 through 51 of the
23 Complaint by reference as though fully set forth herein.

24 53. Responding to Paragraph 53 of the Complaint, Chipotle denies all
25 allegations therein.

26 54. Responding to Paragraph 54 of the Complaint, Chipotle denies all
27 allegations therein.

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1 55. Responding to Paragraph 55 of the Complaint, Chipotle denies all
2 allegations therein.

3 56. Responding to Paragraph 56 of the Complaint, Chipotle denies all
4 allegations therein.

5 57. Chipotle incorporates its responses to Paragraphs 1 through 56 of the
6 Complaint by reference as though fully set forth herein.

7 58. Responding to Paragraph 58 of the Complaint, Chipotle denies all
8 allegations therein.

9 59. Responding to Paragraph 59 of the Complaint, Chipotle denies all
10 allegations therein.

11 60. Responding to Paragraph 60 of the Complaint, Chipotle denies all
12 allegations therein.

13 61. Responding to Paragraph 61 of the Complaint, Chipotle denies all
14 allegations therein.

15 62. Responding to Paragraph 62 of the Complaint, Chipotle denies all
16 allegations therein.

17 63. Chipotle incorporates its responses to Paragraphs 1 through 62 of the
18 Complaint by reference as though fully set forth herein.

19 64. Responding to Paragraph 64 of the Complaint, Chipotle denies all
20 allegations therein.

21 65. Responding to Paragraph 65 of the Complaint, Chipotle denies all
22 allegations therein.

23 66. Responding to Paragraph 66 of the Complaint, Chipotle denies all
24 allegations therein.

25 67. Chipotle incorporates its responses to Paragraphs 1 through 66 of the
26 Complaint by reference as though fully set forth herein.

27 68. Responding to Paragraph 68 of the Complaint, Chipotle denies all
28 allegations therein.

1 69. Responding to Paragraph 69 of the Complaint, Chipotle denies all
2 allegations therein.

3 70. Responding to Paragraph 70 of the Complaint, Chipotle denies all
4 allegations therein.

5 **AFFIRMATIVE DEFENSES**

6 For a further answer to Plaintiffs' Complaint and by way of affirmative defenses,
7 Chipotle alleges as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 As a First Affirmative Defense to the Complaint and each cause of action alleged
10 therein, it is alleged that the Complaint and said causes of action fail to state a claim upon
11 which relief may be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 As a Second Affirmative Defense to the Complaint and each cause of action
14 alleged therein, it is alleged that Plaintiffs failed subsequent to the occurrence described
15 in the Complaint to properly mitigate their damages, if any, and thereby are precluded
16 from recovering those damages which could have reasonably been avoided by the
17 exercise of due care on their part.

18 **THIRD AFFIRMATIVE DEFENSE**

19 As a Third Affirmative Defense to the Complaint and each cause of action alleged
20 therein, it is alleged that Plaintiffs voluntarily and with full knowledge of the matters
21 referred to in the Complaint assumed any and all of the risk, hazards, and perils of the
22 circumstances referred to in the Complaint and, therefore, assumed the risk of any
23 injuries or damages sustained by said Plaintiffs, if any at all.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 As a Fourth Affirmative Defense to the Complaint and each cause of action alleged
26 therein, it is alleged that this incident was caused by the negligence and/or fault of other
27 persons, corporations, and entities, whether named or not named in the Complaint, and
28 that Chipotle's liability, if any, should be reduced accordingly.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 As a Fifth Affirmative Defense to the Complaint and each cause of action alleged
3 therein, it is alleged that said Complaint is barred by the Statute of Limitations; including
4 but not limited to, §§ 335.1, 337.1, 338, 339, 340, and 343 of the California Code of Civil
5 Procedure.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 As a Sixth Affirmative Defense to the Complaint and each cause of action alleged
8 therein, it is alleged that if any injuries or damages were sustained by Plaintiffs, those
9 injuries and damages were proximately caused and contributed to by Plaintiffs
10 themselves. Any recovery to which Plaintiffs are entitled, if any, should be reduced by
11 the amount proportionate to the amount by which Plaintiffs' fault contributed to the
12 damages Plaintiffs allege they sustained.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 As a Seventh Affirmative Defense to the Complaint and each cause of action
15 alleged therein, it is alleged that in the event Chipotle prevails in this action, Chipotle
16 shall be entitled to recover reasonable attorneys' fees for the defense of this matter under
17 the provisions of the ADA and California Civil Code Sections 51, 52 and 54.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 As an Eighth Affirmative Defense to the Complaint and each cause of action
20 alleged therein, it is alleged that Chipotle's conduct was privileged because it was
21 undertaken pursuant to the terms of the applicable laws, regulations, orders, and
22 approvals relating to building construction and/or fire safety and public safety.

23 **NINTH AFFIRMATIVE DEFENSE**

24 As a Ninth Affirmative Defense, it is alleged that Plaintiff's Complaint and each
25 cause of action alleged therein, is barred by reason of the issuance by local building
26 authorities of appropriate building permits and Certificates of Occupancy for said
27 facilities.

1 **TENTH AFFIRMATIVE DEFENSE**

2 As a Tenth Affirmative Defense, it is alleged that any and all injuries or damages,
3 if any, suffered by Plaintiffs were caused, in whole or in part, by other persons or entities
4 for whose acts or omissions Chipotle has no responsibility.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 As an Eleventh Affirmative Defense, it is alleged that the Complaint and each
7 cause of action alleged therein, is barred by reason of Chipotle's good faith reliance upon
8 the advice of governmental agencies with respect to said facilities.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 As a Twelfth Affirmative Defense, it is alleged that the Complaint and each cause
11 of action alleged therein is barred because the relief demanded in Plaintiffs' Complaint
12 would, if granted result in a fundamental alteration of Chipotle's services.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 As a Thirteenth Affirmative Defense to the Complaint and each cause of action
15 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, because
16 of their failure to name indispensable parties pursuant to Federal Rules of Civil
17 Procedure 19.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 As a Fourteenth Affirmative Defense to the Complaint and each cause of action
20 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, by the
21 equitable doctrine of waiver.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 As a Fifteenth Affirmative Defense to the Complaint and each cause of action
24 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, by the
25 doctrine of equitable estoppel.
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1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 As a Sixteenth Affirmative Defense to the Complaint and each cause of action
3 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, by the
4 doctrine of judicial estoppel.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 As a Seventeenth Affirmative Defense to the Complaint and each cause of action
7 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, by the
8 doctrine of laches.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 As an Eighteenth Affirmative Defense to the Complaint and each cause of action
11 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, because
12 Chipotle was justified in acting as it did, in that Chipotle acted in good faith and in the
13 lawful exercise of its legitimate rights in connection with all matters alleged in the
14 Complaint.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 As a Nineteenth Affirmative Defense to the Complaint and each cause of action
17 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, because
18 the laws and regulations that Plaintiffs seek to enforce are unconstitutionally vague
19 and/or unconstitutionally overbroad.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 As a Twentieth Affirmative Defense to the Complaint and each cause of action
22 alleged therein, it is alleged that Plaintiffs' claims are barred, in whole or in part, because
23 Chipotle relied in good faith on the law as it existed at the time of the construction of the
24 facilities at issue.

25 **TWENTY FIRST AFFIRMATIVE DEFENSE**

26 As a Twenty First Affirmative Defense to the Complaint and each cause of action
27 alleged therein, it is alleged that Plaintiffs' claims are barred in whole or in part by the
28 doctrine of unclean hands.

1 **TWENTY SECOND AFFIRMATIVE DEFENSE**

2 As a Twenty Second Affirmative Defense to the Complaint and each cause of
3 action, it is alleged that Plaintiffs' claims are barred as a matter of law because Plaintiffs
4 lack standing to seek the relief they request.

5 **TWENTY THIRD AFFIRMATIVE DEFENSE**

6 As a Twenty Third Affirmative Defense to the Complaint and each cause of action
7 alleged therein, it is alleged that Plaintiffs' claims are barred as a matter of law because
8 Plaintiffs failed to provide any notice to Chipotle regarding the relief demanded prior to
9 filing this lawsuit.

10 **TWENTY FOURTH AFFIRMATIVE DEFENSE**

11 As a Twenty Fourth Affirmative Defense to the Complaint and each cause of
12 action alleged therein, Chipotle reserves the right to amend this Answer to assert
13 additional affirmative defenses as such additional defenses are discovered during the
14 course of this case.

15
16 WHEREFORE, Chipotle prays:

- 17 1. That the Complaint be dismissed with prejudice;
18 2. That Plaintiffs take nothing by way of their Complaint;
19 3. That Chipotle recovers its costs of suit, including attorneys' fees; and,
20 4. For such other and further relief as the Court deems just and equitable.

21
22 DATED: December 28, 2006

GREENBERG TRAURIG, LLP

23
24 By s/Gregory F. Hurley
25 Gregory F. Hurley, Esq.
26 Stacey L. Herter, Esq.
27 Attorneys for Defendant, CHIPOTLE MEXICAN
28 GRILL, INC.
E-Mail: hurleyg@gtlaw.com

DEMAND FOR JURY TRIAL

Chipotle hereby demands a trial by jury.

DATED: December 28, 2006

GREENBERG TRAURIG, LLP

By: _____
s/Gregory F. Hurley
Gregory F. Hurley
Stacey L. Herter
Attorneys for CHIPOTLE MEXICAN GRILL,
INC.
E-Mail: hurleyg@gtlaw.com

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE COUNTY

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 650 Town Center Drive, Suite 650, Costa Mesa, CA 92626.

On the below date, I electronically filed the **CHIPOTLE MEXICAN GRILL INC.'S ANSWER AND AFFIRMATIVE DEFENSES** with the Clerk of the United States District Court for the Southern District of California, using the CM/ECF System. The Court's CM/ECF System will send an email notification of the foregoing filing to the following parties and counsel of record who are registered with the Court's CM/ECF System:

Amy B. Vandeveld
Law Offices of Amy B. Vandeveld
1850 Fifth Avenue, Suite 22
San Diego, CA 92101
T: (619) 231-8883
F: (619) 231-8329

Attorneys for Plaintiffs

(BY ELECTRONIC SERVICE VIA CM/ECF SYSTEM)

In accordance with the electronic filing procedures of this Court, service has been effected on the aforesaid party(s) above, whose counsel of record is a registered participant of CM/ECF, via electronic service through the CM/ECF system.

(FEDERAL)

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court and at whose direction the service was made.

Executed on December 28, 2006, at Costa Mesa, California.

/s/

Susan L. Connor