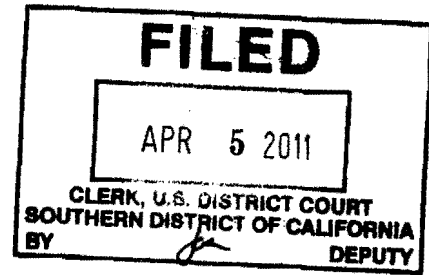


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9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11
12 MAURIZIO ANTONINETTI, JEAN RIKER,
13 JAMES PERKINS, KAREN FRIEDMAN and
14 MICHAEL RIFKIN, on behalf of themselves and
all others similarly situated,

15 Plaintiffs,

16 v.

17 CHIPOTLE MEXICAN GRILL, INC., a Colorado
18 Corporation and DOES 1-10,

19 Defendants.

CASE NO. 06 CV 2671 BTM
(WMe)

~~PROPOSED~~ ^{WMe} PROTECTIVE
ORDER RE: EVIDENCE OF
TRANSACTIONS

21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action may potentially involve production
23 of confidential, proprietary, or private information for which special protection from
24 public disclosure and from use for any purpose other than prosecuting this litigation would
25 be warranted. This Order, and the protection that it affords, extends only to the limited
26 information or items that are specifically defined herein as Transaction Disclosures or

1 Transaction Discovery Material. This Protective Order, as set forth in Section 10, below,
2 creates no entitlement to file confidential information under seal. The procedures outlined
3 in the Local Rules of the Southern District of California must be followed and reflects the
4 standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 2. DEFINITIONS

7 2.1 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and outside counsel (and their support staff).

9 2.2 Transaction Disclosures or Transaction Discovery Material: all items
10 or information, regardless of the medium or manner generated, stored, or maintained
11 (including, among other things, testimony, transcripts, or tangible things) that are produced
12 or generated in disclosures or responses to discovery in this matter, after the entry of this
13 Protective Order, which relate to per-store transactions at Chipotle's restaurants in
14 California. When Defendant produces transaction information pursuant to this Order,
15 Plaintiffs shall randomly provide a number for each store and shall not disclose the name
16 or address or general location of any of the stores identified in the information provided by
17 Defendant. Alternatively, Defendant may provide the "per-store" information in the
18 aggregate. For example, "Chipotle had 1000 transactions at its modified stores in 2005,
19 etc."

20 2.3 "Confidential" Transaction Information or Items: information
21 (regardless of how generated, stored or maintained) or tangible things that relate to per-
22 store transactions at Chipotle's restaurants in California, which information or things are
23 produced or disclosed by Chipotle after the date of this Protective Order, and which
24 qualify for protection under standards developed under Federal Rule of Civil Procedure
25 26(c). Disclosures of transaction data prior to the entry of this Protective are not protected
26 by this Protective Order. Counsel shall not designate discovery materials as

1 “Confidential” without first making a good faith determination that protection is
2 warranted.

3 2.4 Receiving Party: a Party that receives Transaction Disclosure or
4 Transaction Discovery Material from a Producing Party.

5 2.5 Producing Party: a Party or non-party that produces Transaction
6 Disclosure or Transaction Discovery Material in this action.

7 2.6 Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as “Confidential.”

9 2.7 Protected Material: any Transaction Disclosure or Transaction
10 Discovery Material that is designated as “Confidential.”

11 2.8 Outside Counsel: attorneys who are not employees of a Party but who
12 are retained to represent or advise a Party in this action.

13 2.9 In-House Counsel: attorneys who are employees of a Party.

14 2.10 Counsel (without qualifier): Outside Counsel and In-House Counsel
15 (as well as their support staffs).

16 2.11 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
18 expert witness or as a consultant in this action. This definition includes a professional jury
19 or trial consultant retained in connection with this litigation.

20 **3. SCOPE**

21 The protections conferred by this Order cover not only Protected Material (as
22 defined above), but also any information copied or extracted therefrom, as well as all
23 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
24 presentations by parties or counsel to or in court or in other settings that might reveal
25 Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing,
4 or until the expiration of the time granted by this order for a Designating Party to move for
5 a protective order, or a court order otherwise directs. This Court shall have jurisdiction to
6 enforce the terms of this Order for a period of six months after final termination of the
7 action.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection:

10 Each Party or non-party that designates information or items for protection under this
11 Order must take care to limit any such designation to specific material that qualifies under
12 the appropriate standards. A Designating Party must take care to designate for protection
13 only those parts of material, documents, items, or oral or written communications that
14 qualify - so that other portions of the material documents, items or communications for
15 which protection is not warranted are not swept unjustifiably within the ambit of this
16 Order.

17 Mass, indiscriminate, or routinized designations are prohibited.

18 Designations that are shown to be clearly unjustified, or that have been made for an
19 improper purpose (e.g., to unnecessarily encumber or retard the case development process,
20 or to impose unnecessary expenses and burdens on other parties), expose the Designating
21 Party to sanctions.

22 If it comes to a Party's or a non-party's attention that information or items
23 that it designated for protection do not qualify for protection at all, or do not qualify for the
24 level of protection initially asserted, that Party or non-party must promptly notify all other
25 parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations: Except as otherwise provided in
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1 this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated
2 or ordered, material that qualifies for protection under this Order must be clearly so
3 designated before the material is disclosed or produced.

4 (a) for information in documentary form (apart from transcripts of depositions or
5 other pretrial or trial proceedings), that the Producing Party affix the legend
6 “CONFIDENTIAL” at the bottom of each page that contains protected material. If only a
7 portion or portions of the material on a page qualifies for protection, the Producing Party
8 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
9 the margins).

10 A Party or non-party that makes original documents or materials available for
11 inspection need not designate them for protection until after the inspecting Party has
12 indicated which material it would like copied and produced. After the inspecting Party has
13 identified the document it wants copied and produced, the Producing Party must determine
14 which documents, or portions thereof, qualify for protection under this Order, then, before
15 producing the specified documents, the Producing Party must affix the legend
16 “CONFIDENTIAL” at the bottom of each page that contains Protected Material. If only a
17 portion of the material on a page qualifies for protection, the Producing Party must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
20 the Party or non-party offering or sponsoring the testimony identify on the record, before
21 the close of the deposition, hearing, or other proceeding, all protected testimony.” When it
22 is impractical to identify separately each portion of testimony that is entitled to protection,
23 and when it appears that substantial portions of the testimony may qualify for protection,
24 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
25 record (before the deposition or proceeding is concluded) a right to have up to 20 days
26 from the date of receipt of the transcript to identify the specific portions of the testimony

1 as to which protection is sought. Only those portions of the testimony that are
2 appropriately designated for protection within the 20 days shall be covered by the
3 provisions of this Protective Order.

4 (c) for information produced in some form other than documentary, and for any
5 other tangible items, that the Producing Party affix in a prominent place on the exterior of
6 the container or containers in which the information or item is stored the legend
7 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
8 Producing Party, to the extent practicable, shall identify the protected portions.

9 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent
10 failure to designate qualified information or items as “Confidential” does not, standing
11 alone, waive the Designating Party’s right to secure protection under this Order for such
12 material. If material is appropriately designated as “Confidential” after the material was
13 initially produced, the Receiving Party, on timely notification of the designation, must
14 make reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges: Unless a prompt challenge to a Designating
18 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,
19 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
20 Party does not waive its right to challenge a confidentiality designation by electing not to
21 mount a challenge promptly after the original designation is disclosed. The Designating
22 Party shall have the burden of proving that a prompt challenge to a Designating Party’s
23 confidentiality designation is or was necessary to avoid foreseeable substantial unfairness,
24 unnecessary economic burdens, or a later significant disruption or delay of the litigation.

25 6.2 Meet and Confer: A Party that elects to initiate a challenge to a
26 Designating Party’s confidentiality designation must do so in good faith and must begin
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1 the process by conferring directly or in writing with counsel for the Designating Party. In
2 conferring, the challenging Party must explain the basis for its belief that the
3 confidentiality designation was not proper and must give the Designating Party an
4 opportunity to review the designated material, to reconsider the circumstances, and, if no
5 change in designation is offered, to explain the basis for the chosen designation. A
6 Designating Party may proceed to the next stage of the challenge process only if it has
7 engaged in this meet and confer process first. The parties shall meet and confer until the
8 challenge is resolved or an impasse is reached, but in no event shall the time required to
9 meet and confer exceed 20 days from the date of the initial challenge.

10 6.3 Judicial Intervention: A Receiving Party, after meeting and
11 conferring, may pursue a motion for de-designation of material which was designated by
12 the Designating Party as "CONFIDENTIAL." The motion must be brought within 30 days
13 of an impasse or the expiration of the 20-day meet and confer period set forth above in
14 section 6.2. During this 30-day period the Designating Party must comply with the Court's
15 rules for discovery motions, including pre-motion telephonic conference with the Court as
16 set by the Local Rules and Magistrate Judge McCurine's procedures for discovery
17 motions. The burden of persuasion in any such proceeding shall be on the Designating
18 Party. Until the Court rules on the challenge, all parties shall continue to afford the
19 material in question the level of protection to which it is entitled under the Designating
20 Party's designation.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles: A Receiving Party may use Protected Material that
23 is disclosed or produced by another Party or by a non-party in connection with this case
24 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the litigation has been terminated, a Receiving Party must

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1 comply with the provisions of section 11, below (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a
3 location and in a secure manner that ensures that access is limited to the persons
4 authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise
6 ordered by the Court or permitted in writing by the Designating Party, no information or
7 documents designated as "CONFIDENTIAL" pursuant to the terms of this Order shall be
8 disclosed to any person other than:

9 (a) Attorneys for parties to this action, including in-house attorneys, and
10 support personnel (including paralegals and clerical support staff) who are actively
11 engaged in the conduct of this litigation;

12 (b) The parties and those officers, directors, partners, employees, and
13 managing agents of a party who are charged with managing and directing the
14 conduct of this action on behalf of that party;

15 (c) Persons noticed for depositions or specifically designated and
16 identified as trial witnesses to the extent reasonably necessary in preparing them to
17 testify;

18 (d) Qualified persons taking testimony involving such information or
19 documents and necessary stenographic and clerical personnel thereof;

20 (e) Independent experts, including litigation support personnel, retained
21 by the parties for preparation of this litigation;

22 (f) The Court, the officers of the Court and such other personnel as may
23 be authorized by the Court; and

24 (g) Any other individual or entity as to whom the counsel for the parties
25 agree in writing.
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1 appeal in this action or the expiration of the time in which a notice of appeal, or petition
2 for writ of certiorari must be filed, each Receiving Party must return all Protected material
3 to the Producing Party or shall destroy said Protected material. As used in this
4 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
5 summaries or any other form of reproducing or capturing any of the Protected Material.
6 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
7 a written certification to the Producing Party (and, if not the same person or entity, to the
8 Designating Party) by the sixty day deadline that identifies (by category, where
9 appropriate) all the Protected material that was returned or destroyed and that affirms that
10 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
11 other forms of reproducing or capturing any of the Protected Material. Notwithstanding
12 this provision, Counsel are entitled to retain any archival copy of all pleadings, motion
13 papers, transcripts, legal memoranda, correspondence or attorney work product, even if
14 such materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in Section
16 4 (DURATION), above.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief: Nothing in this Order abridges the right of
19 any person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections: The entry of this Order does not
21 affect any Party's right to object to disclosing or producing any information or item on any
22 ground not addressed in this Protective Order. Similarly, no Party waives any right to
23 object on any ground to use in evidence of any of the material covered by this Protective
24 Order.

25 **IT IS SO ORDERED.**

26 **IT IS SO ORDERED**

27 **Dated:** 4/5/11

28 William McCasino, Jr.
William McCasino, Jr.
U.S. Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name),
of _____ (print or type full address), declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was issued
by the United States District Court for the Southern District of California on
_____ (date) in the case of *Maurizio Antoninetti, Jean Riker,*
James Perkins, Karen Friedman and Michael Rifkin v. Chipotle Mexican Grill, Inc., Case
No. 06-CV-2671 J (WMc). I agree to comply with and to be bound by all the terms of this
Protective Order and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Protective Order
to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Southern District of California for the purpose of enforcing the terms of this Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ (print or type full name)
of _____ (print or type full address and tel. number) as
my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____