


**FILED**  
San Francisco County Superior Court

FEB 24 2020

CLERK OF THE COURT  
BY:   
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 304

TANIKA TURLEY, ET AL.,

Plaintiffs,

v.

CHIPOTLE SERVICES, LLC, ET AL.,

Defendants.

Case No. CGC-15-544936

ORDER RE PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT

The Court held a hearing on the above-captioned matter on February 24, 2020. As discussed at the hearing, the motion is continued for a supplemental filing. The supplemental filing is due on or before March 6, 2020. The supplemental filing should address the issues raised in the tentative ruling. The substance of the tentative ruling is reproduced below.<sup>1</sup> A further hearing is set for March 16, 2020 at 9:15 a.m. Moreover, as discussed at the hearing, the trial date is continued to August 31, 2020. The trial, if necessary, is expected to go out of Department 206.

**I. Class Certification**

The settlement, in effect, contains two distinct classes. There is the Wage Statement Class and

<sup>1</sup> The header and the following two sentences, including one footnote, have been removed. The supplemental declaration submitted on the Sunday immediately preceding the Monday morning hearing will be considered as part of the supplemental filing. That declaration was submitted in response to the tentative ruling.

1 everyone else – the Omnibus Class. “Wage Statement Class” is a misnomer. It derives from the fact that  
2 the only claim on which the original plaintiff, Tanika Turley, obtained class certification was a wage  
3 statement claim. But the claims that the Wage Statement Class will be releasing include the usual  
4 panoply of wage and hour claims, just the same as the Omnibus Class. The only difference between the  
5 two seems to be whether the parties think it is likely that the respective class members signed an  
6 arbitration agreement. The parties apparently have a much dimmer view of the value of the claims if the  
7 arbitration agreement is enforceable, as the 70,000 people in that group are essentially given nominal  
8 consideration and the 7,000 people in the other group are given ten times more, on average. The class  
9 certification inquiry is different in the settlement context than it is in the ordinary context, the question is  
10 not so much whether there can be a one-size-fits-all trial but as it is whether there can be a fair one-size-  
11 fits-all settlement. Even in the settlement context, the Court is not persuaded that the violation rates for  
12 the alleged offenses were so common, or the defenses to the alleged claims are so common, that the  
13 settlement can be evaluated on a one-size-fits-all basis. (Compare Nov. 2, 2018 Order, 8-16.) Notably,  
14 both of the proposed class representatives are non-managerial employees who worked exclusively in San  
15 Francisco locations, one of whom apparently was employed for less than a month. Moreover, including  
16 two distinct classes, who receive starkly different consideration, inevitably raises questions as to whether  
17 one group’s claims were sacrificed for the benefit of the other group.<sup>2</sup> A declaration(s) setting out in  
18 detail what factors went into the determination to treat the two classes differently and what, if any  
19 measures could be taken to treat groups more equitably needs to be filed to address this significant issue  
20 in the preliminary approval process.

## 21 **II. Fairness**

22 At a minimum, the Court needs to be able to compare the maximum potential verdict value of the  
23 claims the class is releasing to the value obtained through settlement, guided by Plaintiffs’ explanation of  
24 the reasons that the settlement was reasonable. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2018) 168

25 \_\_\_\_\_  
26 <sup>2</sup> One means of blunting these arguments is to appoint a class representative for each class. The parties  
27 have done so here. However, the class receiving lesser relief is headed by a plaintiff who apparently  
28 worked at Chipotle for less than a month and who intends to request a \$10,000 enhancement award that  
substantially outstrips any individual claim she could hope to recover and is about 1,000 times more than  
the \$12 food vouchers or \$6 cash payments available to class members. (See Harris Decl., 12-22;  
Carrithers Decl. ¶ 3.)

1 Cal.App.4th 116, 120 [trial court must independently satisfy itself that the consideration received for the  
2 release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims  
3 and the risks of the particular litigation].) The Court cannot do that when Plaintiffs fail to disclose the  
4 verdict value of the class claims. (See Harris Decl., 12-22.) Accordingly, the Court cannot begin the  
5 fairness analysis.

6 In addition, the Court needs to understand the verdict value of all of the PAGA claims that are  
7 being resolved through this settlement. Violations related to meal periods, rest periods, overtime, and  
8 minimum wages are, at least arguably, separate PAGA claims.<sup>3</sup> The per-pay-period violation rates may  
9 differ. It does not appear that Plaintiffs undertook this sort of analysis in valuing the PAGA claims.

### 10 **III. Notice**

#### 11 **A. LWDA**

12 If the parties elect to amend their settlement, the amended settlement should be filed with the  
13 LWDA on the same day it is filed with the Court.

#### 14 **B. Class**

##### 15 **1. Process**

16 The Court raises the following issues and questions:

- 17 • Will mailed or emailed notice be given primacy? Why not send both – what is the relevant cost-  
18 benefit analysis?
- 19 • When will the National Change of Address database check and skip-tracing be done in relation to  
20 the mailing and remailing of notices?
- 21 • The Proposed Settlement appears, although there is some ambiguity, to contemplate an extension  
22 of the time to respond by objecting or opting where notice is remailed but does not extend the  
23 deadline for electing a cash payment. Why? Any ambiguities on this point should also be  
24 resolved. (See Proposed Settlement § VII ¶¶ 38, 43, 47.)

25  
26  
27  
28 <sup>3</sup> The parties may express their views on “stacking” in any further motion.

- 1 • The response deadlines should uniformly be described as postmark deadlines without using words  
2 like “file” or “serve.” (See Proposed Settlement § VII ¶¶ 41 [appropriate language], 43  
3 [“serving”], 47 [“postmarked for delivery”].)
- 4 • The Proposed Settlement does not contain a deadline to dispute workweek information. Should it?  
5 If a class member challenges a workweek determination, is the presumption that Chipotle’s  
6 records are correct rebuttable?
- 7 • When will the settlement website go live?

## 8                   2.       **Substance**

9       The Court raises the following issues and questions:

- 10 • Should the notice documents be translated into any languages other than English?
- 11 • Notice, Generally: Use plain English. For example, the substance of the notice should not begin:  
12 “YOU ARE HEREBY NOTIFIED that a proposed settlement of the above-captioned class  
13 action...”
- 14 • Notice, Page 1: Replace “THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT  
15 CAREFULLY.” with “A PROPOSED SETTLEMENT AFFECTS YOUR RIGHTS. PLEASE  
16 READ THIS NOTICE CAREFULLY.”
- 17 • Notice ¶ 1: The introductory section of the notice should clearly summarize the proposed  
18 settlement amounts and the proposed disposition of the settlement funds. For example: “The  
19 Maximum Gross Settlement Amount is \$3,050,000, including a cash payment of \$2,250,000 and  
20 up to \$800,000 in food vouchers or cash. Plaintiffs will ask that the \$2,250,000 cash payment be  
21 used to cover up to \$1,067,500 in attorney’s fees, up to \$25,000 in litigation costs, an estimated  
22 \$231,129 in settlement administration costs, up to \$20,000 in enhancement payments to the class  
23 representatives, and \$10,000 to the Labor and Workforce Development Agency as penalties under  
24 the Labor Code. The remainder of the cash payment, estimated to be \$896,371, would then be  
25 distributed to the Wage Statement Class, estimated to include [insert number] members, based on  
26 the number of workweeks worked in the Class Period. The payment of up to \$800,000 in food  
27 vouchers or cash would be distributed to Omnibus Class Members, estimated to include [insert  
28

1 number] members, with each Omnibus Class Member entitled to either a \$12 food voucher or a \$6  
2 cash payment.”<sup>4</sup>

- 3 • Notice ¶¶ 3, 21, 26: The parties promise too much when they say: “If you do nothing, you *will*  
4 receive a payment from the settlement.” It may be true that some form of payment, be it a voucher  
5 or a check, will be mailed to each Class Member at their mailing address of record if the  
6 settlement is finally approved. But this means that a Class Member must keep his or her address  
7 up to date to receive payment, if one is ever issued.
- 8 • Notice ¶ 4: “similar legal claims” is too ambiguous. For example, claims outside of the class  
9 period are similar to claims in the class period, but only one of them is released.
- 10 • Notice ¶ 6: This paragraph should be preceded by a header. The first clause of the first sentence,  
11 from “The” through “but” should be removed and the balance of the sentence should be rewritten  
12 to be intelligible without that clause.
- 13 • Notice ¶ 7: A summary of the litigation should include, at minimum, the class certification ruling.  
14 It may also be necessary to explain other litigation against Chipotle. Indeed, the origin of the  
15 terms Wage Statement Class and Omnibus Class does not make any sense without understanding  
16 that backstory. A neutral reader may incorrectly infer that the Wage Statement claims are limited  
17 to wage statement theories.
- 18 • Notice ¶ 8: The reference to the word “parties” in the first sentence is awkward because Susan  
19 Carrithers was not a party to this case until after the mediation, but could be read to be included in  
20 the reference.
- 21 • Notice ¶ 14: The representation about the Court’s certification determination may be misleading  
22 to class members who are not familiar with the ruling on the contested class certification motion.
- 23 • Notice ¶ 18: Describing the set aside for the Wage Statement Settlement as \$1,750,000 is  
24 misleading where the parties acknowledge that the amount payable to the Wage Statement Class  
25 Members will be only \$896,471 if the requested disbursements from the \$2,250,000 fund are  
26 approved.

27  
28 <sup>4</sup> \$800,000 is only enough to fully fund 66,666 food vouchers. This may not be sufficient to cover the full  
Omnibus Class.

- 1 • Notice ¶ 18: The notice should apprise Wage Statement Class Members of their anticipated  
2 settlement share assuming a 100% claims rate and all disbursements are approved, with language  
3 explaining the assumptions that were made in the estimate and the reasons those assumptions may  
4 be incorrect. To the extent this information is left to the Workweek Correction Form, the form  
5 should specify the assumptions that went into the estimate.
- 6 • Notice ¶ 28: The word “file” should not be used.
- 7 • Notice ¶ 31: “McAllister Streets” should be “McAllister Street”.
- 8 • Notice, Generally: The notice should provide basic information about all aspects of the settlement  
9 relevant to putative class members. This includes the distribution plan – i.e., the time when  
10 payments will be mailed, the duration of time for which checks will be negotiable, and the  
11 anticipated disbursement of unclaimed funds.
- 12 • Workweek Correction Form: The parties should consider renaming this the Correction Form  
13 because it is not just for correcting workweek information. The form should be revised consistent  
14 with the suggestions above regarding the notice. In addition, Class Members should be told to  
15 send copies of relevant documentation and to keep the original versions for their records. Finally,  
16 there should be separate signature blocks for the address correction and workweek correction  
17 sections.
- 18 • Cash Option Form: The form should be revised consistent with the suggestions above regarding  
19 the notice. There should be separate signature blocks for the address correction and cash option  
20 sections. The signature block for the case option section should simply contain language  
21 confirming that the person, by signing, is saying they want to receive \$6 cash instead of a \$12  
22 voucher.

#### 23 **IV. Distribution**

24 The Court raises the following questions and issues:

- 25 • Did the parties consider a second round of checks if there are a large amount of unclaimed funds?  
26 At some point, the costs of administering a second round of checks will outweigh the benefit of  
27 sending a second round of checks, do the parties know what that point is here?

- 1 • The Court will consider whether the proposed cy pres recipient is appropriate at final approval.  
2 • This settlement effectively settles the claims of two separate classes for discrete consideration.  
3 This may raise issues as to the fairness of the allocation between the two classes. However, those  
4 cannot be assessed without an understanding of the value of the claims in this case.

5 **V. Release**

6 The release refers to a Third Amended Complaint. The Court is not aware of a Third Amended  
7 Complaint in this action.

8 **VI. Miscellaneous Issues**

9 How did the parties determine to classify the monetary payments as 25% wages, 25% interest, and  
10 50% penalties? Who will send Class Members W-2s or other tax documents?

11 According to the Proposed Settlement, “All disputes relating to the Claims Administrator’s  
12 performance of its duties will be referred to the Court, if necessary, which will have continuing  
13 jurisdiction over this settlement...[.]” Is this necessary and appropriate? If the Claims Administrator  
14 experiences a data breach, causing the Social Security numbers it receives to process the settlement to be  
15 shared with unidentified recipients, would the resulting claim be filed in this Court?

16 IT IS SO ORDERED.

17  
18 Dated: February 24, 2020



19 Anne-Christine Massullo  
20 Judge of the Superior Court

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

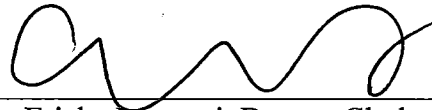
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 24, 2020, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 24, 2020

T. Michael Yuen, Clerk

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Ericka Larnauti', written over a horizontal line.

Ericka Larnauti, Deputy Clerk