

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

TODD GORDON, MARC and KRISTEN
MERCER, h/w, MICHELLE FOWLER,
GREG LAWSON, and JUDY CONARD,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CHIPOTLE MEXICAN GRILL, INC.,

Civil Action No. 1:17-cv-01415-CMA-SKC

Defendant.

**DECLARATION OF BENJAMIN F. JOHNS IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
LITIGATION EXPENSES, AND INCENTIVE AWARDS**

I, Benjamin F. Johns, declare as follows:

1. I am a partner at the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSK&D"). I am admitted to practice before the Supreme Courts of Pennsylvania and New Jersey and in various federal courts in the United States. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Incentive Awards. I have personal knowledge of the matters discussed herein, and if called as a witness could testify competently thereto.

2. My firm represents Plaintiffs Todd Gordon, Marc Mercer, Kristen Mercer, and Michelle Fowler in this action. CSK&D filed the *Gordon* action in this Court on June 7, 2017.

3. During the course of this litigation, my firm and my co-Class Counsel have performed the following tasks for the benefit of Plaintiffs and the class:

- Investigated the data breach, spoke with affected consumers, drafted and then filed the initial complaint (ECF No. 1);
- Consulted with an expert regarding damages and dark web activities relating to theft of personally identifying information through data breaches;
- After agreeing to work cooperatively with counsel in the *Lawson* action, drafted and then filed the Consolidated Amended Class Action Complaint on December 8, 2017 (ECF No. 36);
- Researched, wrote, and filed an opposition to Chipotle's motion to dismiss on February 21, 2018 (ECF No. 57);
- Submitted multiple notices of supplemental authorities in further opposition to Chipotle's motion to dismiss (ECF Nos. 62, 63, 68);
- Drafted partial objections (ECF No. 76) to Magistrate Judge Mark L. Carman's Recommendation on Motion to Dismiss (ECF No. 73);
- Responded to Chipotle's objections (ECF No. 77) to Magistrate Judge Mark L. Carman's Recommendation on Motion to Dismiss (ECF No. 73);
- Prepared and served Plaintiffs' Initial Disclosures and discovery requests;
- Worked with Plaintiffs to respond to discovery requests served by Chipotle;
- Communicated regularly with Plaintiffs to keep them apprised of developments in this litigation and to seek their input on and approval of the settlement;
- Assisted in reviewing and analyzing over 31,000 pages of documents produced by Chipotle in discovery, including the post-breach internal PFI Report;
- Participated in a FED. R. CIV. P. 30(b)(6) deposition of Chipotle's representative taken on August 2, 2018;
- Analyzed the Answer (ECF No. 83) filed by Chipotle after the issuance of the order affirming in part and rejecting in part Magistrate Judge Carman's Recommendation (ECF No. 82);
- Prepared and sent a written settlement demand to Chipotle;

- Prepared for the mediation session with Chipotle. This included selecting a mediator, speaking with him several times over the telephone, researching relevant data breach settlements, speaking with our clients and various intakes to gather facts, and submitting a an *ex parte* mediation statement;
- Participated in an all-day mediation session with Bennett G. Picker of the Stradley Ronon law firm in Florida on February 12, 2019;
- Subsequent to the settlement, preparing the settlement agreement and preliminary approval brief, drafted the claim form and class notice, worked with the claims/notice administrator, and fielded questions from class members, among other tasks;
- Engaged in confirmatory discovery to verify that the terms of the settlement were fair, reasonable and adequate to Plaintiffs and class members; and
- Worked with the claims administrator and a notice expert to prepare a classwide notice plan.

4. As noted above, on February 12, 2019 the parties engaged in a full-day mediation session with Mr. Picker. With the assistance of Mr. Picker, the parties reached agreement on the material terms of the settlement. Thereafter, the parties were unable to reach agreement as to the amount of Plaintiffs' attorneys' fees and expenses that would be sought. Mr. Picker then submitted a mediator's proposal for this term, which was ultimately accepted by both sides a few days later. The parties did not discuss or negotiate the requested attorneys' fees and expenses until after all of the substantive terms of the settlement had been agreed upon. All negotiations regarding settlement were conducted at arm's length, in good faith, and free of any collusion.

5. After agreeing on the terms of the Settlement, Class Counsel drafted and negotiated the details of the written Settlement Agreement, and all related exhibits. Class Counsel thoroughly vetted blind, competing settlement notice and administration bids from three vendors, met and conferred, and agreed upon the appropriate vendor

for this settlement. Class Counsel also reviewed, negotiated, and made sure that all administrative aspects of the Settlement, including the notice plan, the form of the claim form, the settlement schedule, were in the best interest of the class, all the while conferring with defense counsel and the administrator.

6. Class Counsel, including my firm, worked diligently and vigorously to secure the best outcome and relief—both prospective and retrospective—for victims of the Security Incident. This work has allowed Settlement Class members to take advantage of reimbursements for fraud resulting from the Security Incident of up to \$250, including, *inter alia*, an automatic payment for each impacted card, payment for time spent dealing with fraud, and reimbursement for credit monitoring and identity theft insurance. Class Members who experienced extraordinary expenses will be eligible for reimbursement in the amount up to \$10,000 per claim. The Settlement also provides monetary relief to class members who enrolled or seek to enroll in credit monitoring and other similar services, which will help mitigate future harms.

7. From the inception of this case through October 31, 2019, my firm devoted a total of 1,081.50 billable hours of work on this case. This total excludes certain time that I have reduced or eliminated, based on the exercise of my billing judgment. Based upon hourly rates currently charged to my firm's clients, the total lodestar value of this billable time is \$509,309.50. Attached as **Exhibit A** to this Declaration is a chart that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each by years of professional experience, their respective positions, and their respective billable rates. Current personnel are billed at their current standard rates, while former personnel are billed at their most recent billable rate before they

departed from the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. My firm's detailed time records are available to the Court for inspection upon request.

8. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis; my firm has not been compensated for any of its work on this matter to date.

9. As detailed in **Exhibit B** attached to this Declaration, my firm has incurred a total of \$11,859.97 in unreimbursed expenses in connection with the prosecution of this litigation through October 31, 2019. These expenses were also reasonable and necessary in the prosecution of this case. As with our billable time, my firm has not been reimbursed for these expenses.

10. The expenses incurred in this action are reflected on my firm's the books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. Underlying receipts are available for inspection upon request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 1, 2019

/s/ Benjamin F. Johns
Benjamin F. Johns

EXHIBIT A

CHIPOTLE LITIGATION					
FIRM NAME: Chimicles Schwartz Kriner & Donaldson-Smith LLP					
LODESTAR REPORT					
INCEPTION - OCTOBER 31, 2019					
NAME	STATUS*	YEARS OF PRACTIC	HOURLY RATE	TOTAL HOURS	CUMULATIVE LODESTAR
Benjamin F. Johns	P	14	675.00	328.40	\$221,670.00
Beena M. McDonald	A	21	500.00	26.80	\$13,400.00
Andrew W. Ferich	A	7	475.00	338.60	\$160,835.00
Alex M. Kashurba	A	5	425.00	29.20	\$12,410.00
Jessica Titler-Lingle	FA		400.00	106.40	\$42,560.00
Zachary P. Beatty	A	2	350.00	49.90	\$17,465.00
David W. Birch	IT		250.00	19.80	\$4,950.00
Corneliu P. Mastraghin	PL		250.00	59.20	\$14,800.00
Ryan I. Kelly	FPL		190.00	14.90	\$2,831.00
Justin P. Boyer	PL		175.00	51.90	\$9,082.50
Madeline C. Landry	PL		165.00	56.40	\$9,306.00
TOTALS				1,081.50	\$509,309.50

P = Partner

A = Associate

FA = Former Associate

PL = Paralegal

FPL = Former Paralegal

IT = Information Tech

EXHIBIT B

CHIPOTLE LITIGATION EXPENSE CHART	
FIRM NAME: Chimicles Schwartz Kriner & Donaldson-Smith LLP	
REPORTING PERIOD: INCEPTION TO OCTOBER 31, 2019	
DESCRIPTION	TOTAL EXPENSES
Travel/Food/Lodging	\$4,156.63
Mediation	\$2,800.00
Computer Research	\$1,873.85
Photocopies/Internal	\$1,502.25
Filing Fees	\$1,089.51
Adwords	\$268.00
Subpoena Service	\$89.80
Photocopies/Outside	\$69.51
Postage	\$6.56
Telephone/Facsimile	\$3.86
TOTAL	\$11,859.97