

**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 JEAN SUTTON MARTIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
LITIGATION EXPENSES, AND INCENTIVE AWARDS**

I, Jean Sutton Martin, declare as follows:

1. I have personal knowledge of the matters stated herein and if called upon, I could and would competently testify.
2. When my co-counsel and I first filed the matter styled *Lawson v. Chipotle Mexican Grill, Inc.*, Case No. 17-cv-01997-CBS, which was later consolidated in the present matter, I ran the Law Office of Jean Sutton Martin PLLC. Last year I became a partner in the Consumer Class Action section of Morgan & Morgan's Complex Litigation Group, which was co-counsel to me in *Lawson*.
3. I am a lead attorney in the Consumer Class Action section of Morgan & Morgan's Complex Litigation Group and one of the counsel of record for Plaintiffs in this matter. I respectfully submit this declaration in support of Plaintiffs' unopposed motion for preliminary approval and direction of notice.

4. My law firm and I were fully and unequivocally committed to this action and the time-consuming task of prosecuting this litigation to conclusion, and even to trial, as were my co-counsel. The formidable resources of Morgan & Morgan and those of our co-counsel, combined with our substantial privacy and data-breach litigation experience, allowed us to achieve a favorable result for the class of consumers who were affected by the data breach which is the subject of this suit.

5. During the course of this litigation, my firm and my co-Class Counsel have performed numerous tasks for the benefit of Plaintiffs and the class, including but not limited to the following: Investigated the data breach and spoke with affected consumers; drafted and filed an initial complaint and an amended consolidated, complaint; researched and drafted an opposition to Defendant's motion to dismiss; drafted a partial opposition to the Magistrate Judge's Report and Recommendation on the Motion to Dismiss; prepared and served discovery requests; worked with the individual plaintiffs to respond to discovery requests served by Defendant; reviewed and analyzed over 31,000 pages of documents produced by Defendant in discovery; participated in a mediation session with Defendant; attended and participated in conferences with the Court; and upon reaching a settlement, prepared and filed the motion for preliminary approval and all settlement documents, including notice to the settlement class and the claim form.

6. The Settlement in this matter was reached after a full-day mediation session with Mr. Ben Picker, an experienced mediator. 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.

7. All negotiations regarding settlement were conducted at arm's length, in good faith, and free of any collusion.

8. Both sides zealously pressed their positions throughout the litigation process, during the course of the mediation, and continued to do so while negotiating the language for their formal written agreement.

9. 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.

10. It is my opinion that the Settlement in this matter provides significant substantial, ascertainable benefits, for Class Members, particularly in light of a high degree of risk. Although I am confident in the merits of Plaintiffs' claims, the risks involved in prosecuting a class action through trial cannot be disregarded. I have practiced in this

area far too long to disregard the high level of risk, expense, and complexity of class litigation, which is one reason that judicial policy so strongly favors resolving class actions through settlement. This is not only a complex case, but it is in an especially risky field of litigation. Data breach cases continue to be among the most risky and uncertain of all class action litigation. Plaintiffs' success in this matter was not guaranteed, particularly as other courts have addressed the novel legal questions presented in data security cases and have issued mixed bag of decisions, keeping the law still unsettled. Both sides faced the uncertainties, risks, expense and significant delays associated with appeals that would inevitably be pursued following trial.

11. From the inception of this case through September 30, 2018, the Law Office of Jean Sutton Martin, PLLC devoted a total of 191.80 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 in class action matters, the total lodestar value of this billable time is \$122,180.00. From the inception of this case through October 31, 2019, Morgan and Morgan devoted a total of 77.50 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 in class action matters, the total lodestar value of this billable time is \$64,572.40.

12. With the filing of the initial complaint in Lawson, I had other co-counsel who also incurred time on behalf of the Class.

13. My co-counsel Kevin Hannon of The Hannon Law Firm LLC was subsequently appointed as Liaison Counsel by the Court. Mr. Hannon actively participated in the activities outlined in Paragraph 5 above.

14. From the inception of this case through October 31, 2019, Hannon Law Firm PC devoted a total of 135.9 billable hours of work on this case. Based upon hourly rates currently charged in class action matters, the total lodestar value of this billable time is \$76,625.

15. Ben Barnow & Associates devoted a total of 70.80 billable hours of work on this case. Based upon hourly rates currently charged, the total lodestar value of this billable time is \$36,406.

16. Glancy, Prongay & Murray LLP devoted a total of 1.5 billable hours of work on this case. Based upon hourly rates currently charged, the total lodestar value of this billable time is \$1,387.50.

17. The Johnson Firm devoted 30.4 total of billable hours of work on this case. Based upon hourly rates currently charged, the total lodestar value of this billable time is \$21,280.

18. In total, my co-counsel and I devoted 507.90 total of billable hours of work on this case with a total lodestar value of \$322,450.90.

19. Attached as part of the cumulative Exhibit A to this Declaration are charts for each firm 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 each firm. Each firm's detailed time records are available to the Court for inspection upon request.

20. All of the time billed to this case by my firm any my co-counsel was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis; none of these firms have not been compensated for any of its work on this matter to date.

21. As detailed in **Exhibit B** attached to this Declaration, my firm has incurred a total of \$6,694.33 in unreimbursed expenses in connection with the prosecution of this litigation through October 31, 2019. Additionally, the Law Office Of Jean Sutton Martin PLLC incurred \$1,913.07, The Hannon Law Firm LLC incurred a total of \$2,077.87, Ben Barnow & Associates incurred \$826.96, Glancy, Prongay & Murray LLP incurred \$228, and the Johnson Firm incurred \$216 in unreimbursed expenses in connection with the prosecution of this litigation through October 31, 2019.

22. In total, my co-counsel and I incurred \$11,956.23 in unreimbursed expenses in connection with the prosecution of this litigation through October 31, 2019.

23. These expenses were reasonable and necessary in the prosecution of this case. The expenses incurred in this action are reflected on each 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. As with our billable time, none of these firms have been reimbursed for these expenses. 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/ Jean Sutton Martin
Jean Sutton Martin