

CAUSE NO. 91888-CV

MDG, Individually, and as Next Friend of CNDGR, A Minor Child,	§	IN THE DISTRICT COURT OF
	§	
	§	
<i>Plaintiff,</i>	§	
	§	BRAZORIA COUNTY, TEXAS
v.	§	
	§	
CHIPOTLE MEXICAN GRILL, INC.,	§	
CHIPOTLE MEXICAN GRILL OF	§	
COLORADO, L.L.C., JOANNY	§	
CASTILLO AND FRANCO DIAZ	§	
	§	
<i>Defendants</i>	§	____th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

MAY IT PLEASE THE COURT:

COME NOW MDG, Individually, and as Next Friend of CNDGR, a Minor Child (hereinafter referred to as "Minor Plaintiff"), complaining of Defendants Chipotle Mexican Grill, Inc., Chipotle Mexican Grill of Colorado, L.L.C. (hereinafter collectively referred to as "Chipotle"), Joanny Castillo and Franco Diaz, and would respectfully show the Court the following:

**I.
Discovery**

Discovery is intended to be conducted pursuant to Level 3 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
Damages**

Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiffs seek monetary relief in excess of \$1,000,000.00.

POOR ORIGINAL

III. Parties

MDG is an individual who resides in Fort Bend, County, Texas.

CNDGR, Minor Plaintiff, resides in Fort Bend County, Texas.

Chipotle Mexican Grill, Inc. is a Delaware corporation registered to conduct business under the laws of the State of Texas. Chipotle Mexican Grill, Inc. may be served with process by and through its registered agent, National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Chipotle Mexican Grill of Colorado, L.L.C. is a Delaware corporation registered to conduct business under the laws of the State of Texas. Chipotle Mexican Grill of Colorado, L.L.C. may be served with process by and through its registered agent, National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Joanny Castillo is an individual who resides in Brazoria County, Texas. Defendant Castillo may be served with process at his place of employment at 6245 Hwy 6, Missouri City, Texas 77459, or wherever he may be found.

Franco Diaz is an individual who resides in Harris County, Texas. Defendant Diaz may be served with process at his place of employment at 6245 Hwy 6, Missouri City, Texas 77459, or wherever he may be found.

IV. Jurisdiction and Venue

Venue is proper in Brazoria County, Texas, pursuant to Section 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claims occurred in Brazoria

County, Texas. Venue is also proper in Brazoria County, Texas, pursuant to Section 15.002(a)(2), because Defendant Castillo resides in Brazoria County, Texas.

This Court has jurisdiction over the claims at issue in this proceeding as Plaintiff seeks to recover damages within the jurisdictional limits of the Court.

**V.
Motion for Pseudonyms**

Plaintiffs bring this suit under pseudonym in order to protect her privacy and to protect herself from notoriety and embarrassment associated with the predatory videotaping of an underage minor.

Plaintiffs respectfully ask the Court to permit this suit to proceed using pseudonyms and for an order mandating such use in all documents which are publicly filed.

**VI.
Summary of Case**

On the heels of a recent \$7.5 million jury verdict in Harris County for sexual harassment of a minor, Chipotle has again engaged in the improper exploitation of women, including minor children. This time, Management for Chipotle repeatedly installed a video-recording spy-camera in the women's restroom at its 6245 Highway 6, Missouri City, Texas location and recorded Plaintiff and her five (5) year old daughter while they were undressing and using the restroom for the purpose of selling the video recordings.

After Management was caught twice by an employee, who is also a victim, Chipotle engaged in a series of attempts to cover-up the repulsive invasive visual-recording scandal. The cover-up includes, but is not limited to, the following: (1) attempting to blame customers for planting the recording device, (2) destroying SIM cards which contained graphic images of the women and children undressing and using the restroom, (3) mandating that none of the Chipotle

managers and employees with knowledge of the visual recording scandal notify anyone, including law enforcement, (4) the General Manager allowing another member of Management to take the video recorder home in an attempt to destroy evidence and to undoubtedly engage in self-gratification from viewing the videos of the women and children undressing and using the restroom, (5) by continuing to allow the general manager who was involved in the cover-up to continue working in a managerial capacity for over two months after the invasive video recording scandal was uncovered, (6) by removing interoffice emails which advised a Manager, who was a co-conspirator and close friend of one of the sexual predators, of the names of Chipotle employees and former employees complaining of the scandal that were provided to Chipotle by Plaintiffs' counsel in confidence in an attempt to resolve Plaintiffs' claims without resorting to a lawsuit, and (7) by refusing to notify any of its employees and/or customers, including children, who had no knowledge of the invasive video-recording scandal.

It is the cavalier attitude and culture of Chipotle's Management, coupled with its complete disregard for the safety and privacy of its customers and employees, including minor children, that resulted in potentially hundreds of women and children being recorded with their clothes off while using the restroom. Likewise, it is this same indifference and overall wanton disregard of the privacy and safety of its customers and employees that led Chipotle to cover-up this horrific predatory scandal.

VII. Background

Chipotle is an American chain of fast food restaurants in the United States specializing in tacos and burritos. Chipotle has over 2,000 locations with a staff of more than 45,000 employees. All of Chipotle's restaurants are company-owned, rather than franchised. Chipotle serves more than 700,000 people per day. Many of Chipotle's 45,000 employees are female and are minors.

Chipotle's Culture of Exploiting Women and Children

In December 2016, a Harris County jury awarded a minor \$7.5 million who had been repeatedly sexually assaulted by a manager at Chipotle. (Ex. 1). After Chipotle had irrefutable proof of an unlawful sexual relationship between one of its managers, Chipotle received subsequent reports of the same type of sexual abuse in its other stores. As a result, more children were harmed because Chipotle simply does not understand the nature of these wrongs. Chipotle's culture defies the spirit of laws intended to protect children. The reports of sexual abuse that Chipotle received subsequent to being placed on notice of the sexual exploitation of a minor which resulted in the large jury verdict are detailed below:

1. June 16, 2015. "Hello I have been a crew member at the bells fair location in Bellingham Washington. I have been at the location since opening and have had an engaging and regarding time as a crew member, our original apprentice had to leave and was replaced by an apprentice named Alexander Caulins. It has become obvious to many of us that he is in a sexual relationship with one of our underage coworkers. Her schedule is often fixed so that she leaves and he can take her home." (Ex. 2).

2. December 22, 2015. "Lisa called and alleged the manager here (Robert) is sleeping with her 17 year old daughter. Her daughter does not want her name to come into it, but Lisa needs to have this looked into. Lisa said Robert is 24 and her daughter has told her he is also sleeping with another female crew member who has gonorrhea. I assured her that we would get in touch with her, and look into this. . . . Lisa called back. Said there was more to report. She said GM Robert Ramirez Flores . . . hosted a Xmas party on 12/12 and provided alcohol to the team, including minors. Lisa's daughter was passed out at the party and a male employee (unknown name) fondled Lisa's daughter while she was passed out. Lisa said the man had been fired as of

today. She said she was concerned about Roberts behavior and that she made her daughter quit because of this action.” (Ex. 3).

3. May 7, 2015. “Patrick Bonus spoke to Mark Strickland (step father of XXXX) – active employee at store 1041) called to report that his Noemi is engaged in some type of inappropriate relationship with SM Pablito Lo Andura. Ark claims that law enforcement has been called about this situation and that they have confronted Pablito about this allegation. Mark sent me texts that he states are between Pablito’s and Noemi phone. Mark also claims his daughter skipped school to spend time with Pablito and that when Noemi works night she returns home very late – he suspects she is with Pablito. Mark claims that he informed store management of this alleged inappropriate relationship a couple of weeks ago and he feels “nothing was done about it.” Subsequent to this call from Mark Strickland Noemi was taken off the schedule per the families’ request and her own request while a complete and thorough investigation was carried out. Mark and Noemi want to have noemi transfer locations.” (Ex. 4).

4. January 5, 2016. “Melany left a voicemail saying she had a complaint about her manager. When I called her back she described that she had recently been terminated. She said that Freddy said there were a list of people they were terminating and the manager picked who they would be. She also said her main concern is the way Freddy is with the minor female employees. She said Freddy would touch the minors inappropriately. When asked how so. She described an incident where a girl was rubbing her stomach and he started rubbing it too. He also calls the girls babe and offering to pick them up from school to hang out.” (Ex. 5).

These incidents are evidence that the culture at Chipotle allows its managers to sexually assault women, including minors. The sexual exploitation of women and minor children is not unique to Chipotle culture. The culture at Chipotle in this case allowed multiple managers to be

involved in the predatory video-taping scandal of its customers, including minor children, and employees. This same culture by Chipotle management likewise resulted in numerous attempts by multiple members of management to cover-up the scandal.

Management Repeatedly Caught in Predatory Video-Taping Scandal

While the dust is still settling on \$7.5 million sexual harassment jury verdict rendered in Harris County, just miles down the road, another sexual exploitation scandal was brewing. On February 24, 2017, one of Chipotle's employees (hereinafter referred to as F.G.), noticed a partially hidden video 2.0 mega pixel Y2000 Mini HD Video Recorder spy camera ("Spy Camera") on the door closer above the women's restroom door while she was using the restroom. The Spy Camera was aimed directly at F.G. while she was using the restroom. Upon finishing her business, F.G. removed the Spy Camera. Prior to finding the camera, the F.G. had noticed that one of Chipotle's managers, Joanny Castillo, the only Chipotle manager on duty that evening, had been volunteering to clean the women's restroom. It was uncommon for male managers at Chipotle to "service" the women's restroom. Defendant Castillo' behavior raised F.G.'s suspicion that he may have been the individual who was involved in placing the Spy Camera.

After she left the restroom, with the Spy Camera in hand, F.G. noticed Manager Castillo sneaking back into the women's restroom. When he exited, he was frantically running around the Chipotle store advising employees that a customer had called and claimed to have left a small video recording device in the restroom and asked if anyone had seen it. F.G. did not want to turn the Spy Camera over to Manager Castillo due to his erratic and suspicious behavior; however, when Manager Castillo related that the Spy Camera had a Global Positioning System ("GPS") tracker, F.G. reluctantly gave the device to Manager Castillo who immediately ran out the store's

back door to allegedly give the device to the customer. Upon his return to the store, Manager Castillo proclaimed he returned it to the customer.

Three days later, F.G was dismayed when she identified the same Spy Camera while using the restroom. This time the Spy Camera was discreetly placed under the restroom sink in exposed polybutylene piping. (Ex. 6) (Picture of Spy Camera on February 27, 2017). Upon finding the Spy Camera for the second time, F.G. decided to turn it over to the General Manager for that location who was on duty, Franco Diaz. Instead of providing the Spy Camera to the proper authorities, Manager Diaz, in an effort to cover-up the sex predator scandal, took the Spy Camera home with him to presumably engage in self-gratification while watching the video footage of exposed women and children.

The Cover-Up

On or about March 1, 2017, F.G. approached an on-duty “Apprentice” manager, M.G., and asked her in the manager’s office what happened with the Spy Camera. M.G. was completely unaware of the scandal and was appalled by what she heard as she had also used the Chipotle restroom in question on a daily basis. While discussing the Spy Camera with M.G., F.G. was extremely upset and crying. To make matters worse, as F.G. was discussing what she found with M.G., Manager Castillo, continuously kept interrupting the conversation by poking his head in the office and asking if everything was okay. M.G. assured F.G. that as soon as she got her hands on the camera, she was going to call local law enforcement.

After the meeting, M.G. immediately called Manager Diaz and asked him what was going on and inquired as to what happened to the Spy Camera. Manager Diaz reluctantly admitted that he had the Spy Camera. M.G. demanded that he bring it with him to the store the following day.

The accomplice, Manager Diaz, reported to the Chipotle store the following day with the Spy Camera in hand. Team Leader, Juan Hernandez, and Restaurateur, Irma Valenzuela, made an appearance on behalf of Chipotle. With upper-management present, M.G. immediately noticed that the Spy Camera provided by Manager Diaz was missing its SIM card. Manager Diaz explained, "It popped out in my car but I will try to find it."

Next, M.G., began questioning Manager Castillo about the video-recording scandal. Manager Castillo again explained that the Spy Camera belonged to one of Chipotle's customers and that he gave it to the customer. M.G. advised Manager Castillo that if it was truly a customer's Spy Camera, then he should have nothing to worry about.

After meeting with Manager Castillo, M.G. advised Hernandez and Valenzuela that she was going to call local law enforcement. They attempted to persuade her that it would not be prudent to do that. Instead, M.G. should report this incident to Chipotle's internal Safety Security Risk Team ("SSR"). M.G. immediately called 911. While M.G. was on the telephone with dispatch for the Missouri City Police Department, Hernandez approached her and began directing M.G. to stop what she was doing and to stop calling the police. Again, he urged her to call SSR. M.G. refused to get off the telephone with 911.

Shortly after making the call, the police arrived at the location. A female officer began interrogating Manager Diaz and asked him where was the missing SIM card. She gave him until the end of the day to return the SIM card or he would be charged with child pornography. Manager Diaz left the Chipotle location but did not return until later in the evening. When he returned, he was in the vehicle he claimed he was in when the SIM card allegedly "popped out and fell under the seat." His girlfriend was in the vehicle and she was crying hysterically. He advised the officers that he wanted to bring someone in to remove the seats so they could look for the SIM card. They

advised Manager Diaz that was not going to happen. Interestingly, Manager Diaz was able to recover the SIM card out of his car without the use of an outside team to remove the seats. Upon locating the SIM card, he handed it to the police.

After the cops left the Chipotle restaurant, Hernandez approached M.G. and quipped, “Do you feel better about yourself?” Then angrily walked away.

Prior to leaving, Valenzuela instructed M.G. and other Chipotle employees with knowledge of the video-recording scandal that they could not discuss the scandal with anyone, including other Chipotle employees at the location or customers and their children. Valenzuela threatened the employees that if they discussed this scandal with anyone, they would be in violation of Chipotle’s Non-Disclosure Agreement that they executed when they were hired.

Chipotle’s Decides to Retain the Accomplice and Co-Conspirator Managers

While Chipotle had no choice but to terminate the employment of the predator who directly installed the Spy Camera in the women’s restroom, Chipotle made the decision to continue the employment of Manager Diaz even though he was, at a minimum, an accomplice to the predatory video recordings of women and children. Likewise, they continue to employ Manager Diaz’s live-in girlfriend, Caroline Quinteros, who is also a manager at the same Chipotle location AND previously acknowledged that “she knew all along that Manager Castillo was going to get caught.”

On March 4th and 5th, M.G. made numerous telephone calls to Team Leader Hernandez and left messages advising Hernandez that Chipotle needed to terminate the employment of Manager Quinteros. Hernandez refused to return M.G.’s calls. On March 6th, M.G. decided to go above Hernandez and calls Hernandez’s supervisor Lillian. M.G. expressed her concerns about Manager Quinteros to Lillian; however, Lillian played ignorant of the facts and advised that she was busy but would get back to her. Within minutes of hanging up the phone with Hernandez’s

supervisor, M.G. received a telephone call from Hernandez. M.G. explained to Hernandez that Manager Quinteros needed to go because she lives with the predator and most likely has seen the videos of naked women and children including the Chipotle employees who were identified on the camera. M.G. complained that to continue to allow her to stay on as a Chipotle employee was not fair to the Chipotle employees who were on the video recordings not to mention she was management who knew about the scandal and was an accomplice. Hernandez said he would make some calls and get back to her.

After her conversation with Hernandez, Valenzuela instead of Hernandez called M.G. back. Valenzuela explained that they could not terminate Manager Quinteros because “she was not currently under investigation by the police.” Valenzuela further explained that “it would be like someone finding a murder weapon at the scene of a crime then trying to convict them for finding it.” Valenzuela further maintained that Caroline was innocent and that there was no basis to terminate her.

Chipotle’s Insincere Public Statement Mislead the Public

On April 11, 2017, Plaintiffs’ counsel advised Chipotle’s in-house counsel that he represented clients who were victims of the sexual exploitation scandal. In-house counsel and general counsel claimed to have no information concerning the scandal. It was not until Chipotle was tipped off hours before local news channels were going to go public with the scandal on April 28th that Chipotle issued a statement.

The statement was issued by Chipotle’s Executive Director of Security, Tim Spong, on behalf of the company. He proclaimed,

“We were shocked and appalled to learn of these allegations. Nothing is more important than providing a safe environment for our customers and employees, and we have a zero-tolerance

policy for employee actions that compromise the safety or well-being of customers or other employees.”

This corporate statement is insincere yet interesting since Chipotle’s Management has known about the video recording scandal since February 24th yet as of the time the statement was issued, still employed Manager Diaz, an accomplice and individual involved in the cover-up of the visual recording of women and children using Chipotle’s restroom. Equally complexing is the fact that Chipotle continues to employ Manager Castillo’s live-in girlfriend who knew Manager Castillo was recording women and children and was overheard telling her boyfriend that, “I knew you were going to get caught.” If Chipotle truly cared about its employees, customers, and women and children who use their restrooms, it would have terminated the co-conspirator managers who were involved in the cover-up.

Adding Insult to Injury

Executives at Chipotle were not notified about the bathroom scandal by any of its management. Instead, it was Plaintiffs’ counsel who notified Chipotle executives on April 12, 2017 – a month and a half after law enforcement became involved. Plaintiffs’ counsel notified Chipotle of numerous individuals that his firm represented and provided names and acronyms to Chipotle in confidence. Unbelievably, yet consistent with the culture instilled at Chipotle, Chipotle’s executives and/or general counsel turned around and gave the list of individuals who had been video-taped to Chipotle managers, including at least one of the managers involved in the predatory scandal, Defendant Diaz. Furthermore, they advised Defendant Diaz that the individuals had hired an attorney. Of course, Defendant Diaz immediately began contacting the employees and harassing them. It is this culture and lack of accountability that has now further placed these women and children’s lives in danger.

CAUSES OF ACTION

VIII.

Negligent Invasion of Privacy

Plaintiffs re-allege and incorporate by reference the allegations made above.

During February and early March, Defendants owed a duty to Plaintiffs. Defendants breached that duty and Defendants' breach proximately caused Minor Plaintiff injuries.

IX.

Invasion of Privacy by Intrusion upon Seclusion

Plaintiffs re-allege and incorporate by reference the allegations made above.

In February 2017, Defendants made an intentional intrusion upon the Plaintiffs' solitude, seclusion, or private affairs or concerns, in a manner that would be highly offensive to a reasonable person. As a result, the Plaintiffs suffered damages.

X.

Intentional Infliction of Emotional Distress

Plaintiffs re-allege and incorporate by reference the allegations made above.

Defendants acted intentionally and their conduct was extreme and outrageous and proximately caused Plaintiffs emotional distress. The emotional distress suffered by Plaintiffs was severe. Plaintiffs further seeks exemplary damages, prejudgment interest, post-judgment interest, and court costs.

XI.

Negligence

Plaintiffs re-allege and incorporate by reference the allegations made above.

Plaintiffs would show that Defendants had a duty to ensure that their premises was safe for use by its customers, including Plaintiffs. Defendants failed to ensure the safety of Plaintiffs and as a result, Plaintiffs suffered severe emotional and mental anguish.

XII.
Premises Liability

Plaintiffs re-allege and incorporate by reference the allegations made above.

Plaintiffs would show that Chipotle was a possessor of the premises and that a condition on the premises posed an unreasonable risk of harm to its customers, including Plaintiffs. Chipotle knew about the danger and/or reasonably should have known of the danger, Chipotle breached its duty of ordinary care by failing to make the condition reasonably safe. As a result, Chipotle's breach proximately cause Plaintiffs' injuries.

XIII.
Vice Principals

Chipotle is directly responsible for the predatory video-taping scandal which occurred on several occasions over an extended period of time because the individuals responsible were each individually acting as vice principals of Chipotle. Under Texas law, a "vice principal" encompasses "(a) corporate officers; (b) those who have authority to employ, direct, and discharge servants of the master; (c) those engaged in the performance of nondelegable or absolute duties of the master; and (d) those to whom the master has confided the management of the whole or a department or a division of the business." See *Hammerly Oaks, Inc. v. Edwards*, 958 S.W.2d 387, 389 (Tex.1997). Further, a corporation is liable if it commits gross negligence through the actions or inactions of a vice principal. *Id.* Here, the individuals responsible for the camera being placed in the women's restroom held vice-principal positions with Chipotle. In fact, just a few examples of their authority as vice principals includes: (1) managing a crew of workers for the various stations that are organized for food preparation and service, (2) disciplining employees for misconduct, (3) issuing write-ups for employee misconduct, and (4) recommending promotions to fellow management.

Texas courts have consistently held that regardless of whether the individuals who were involved in intentional torts acted within the scope of their employment, their status as a vice-principal of the corporation is sufficient to impute liability to Chipotle for their actions taken in the workplace. *Id.* at 391-92 (corporations may be liable for punitive damages for torts committed by vice-principals). When actions are taken by a vice-principal of a corporation, those acts may be deemed to be the acts of the corporation itself. *Fort Worth Elevators Co. v. Russell*, 123 Tex. 128, 70 S.W.2d 397, 406 (1934). Additionally, whether “the corporation’s acts can be attributed to the corporation itself, and thereby constitute corporate gross negligence, is determined by reasonable inferences the factfinder can draw from what the corporation did or failed to do and the facts existing at relevant times that contributed to a plaintiff’s alleged damages.” *See Bowman v. Puckett*, 144 Tex. 125, 188 S.W.2d 571, 574 (1945).

XIV.
Exemplary Damages

Plaintiffs injuries resulted from Defendants’ malice and gross negligence, which entitles Plaintiffs to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

XV.
Request for Disclosure

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2.

XVI.
Jury Trial

Minor Plaintiff hereby demands a jury trial and tenders the appropriate fee with this petition.

XVII.
Prayer

For these reasons, Minor Plaintiff prays that Defendants be cited to appear and answer, and that Minor Plaintiff be awarded a judgment against Defendants for the following:

- a. Actual damages;
- b. Exemplary damages;
- c. Past and future mental anguish;
- d. Pre-judgment and post-judgment interest;
- e. Court Costs; and
- f. For such further relief, both at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

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