

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

MADELEINE YATES, on behalf of herself)		
and other persons similarly situated,)		
)	
<i>Plaintiff,</i>)		Civil Action No. 1:17-cv-09219
)	
v.)		
)	Honorable Sunil R. Harjani
CHECKERS DRIVE-IN RESTAURANTS,)		
INC. and VIBES MEDIA, LLC,)		
)	
<i>Defendants.</i>)		
)	

**UNOPPOSED APPLICATION FOR SERVICE AWARD AND
ATTORNEYS' FEES AND COSTS**

NOW COMES PLAINTIFF, Madeleine Yates, who hereby makes the following unopposed application for a service award in this matter, and also for her attorneys' fees and costs. As argued below, Plaintiff is entitled to a service award in exchange for her role as the class representative in this matter, including the time, risk, and efforts she expended in her pursuit of relief for the class. Similarly, Plaintiff is entitled to the reasonable attorneys' fees and costs incurred by her attorneys in this matter. Both Plaintiff's service award and her attorneys' fees and costs have been agreed to by the parties as part of the settlement of this class action. As of the date of this filing, Plaintiff's counsel makes a copy of this motion available on the settlement website, www.burgertcpasettlement.com.

1. Plaintiff's Service Award

Pursuant to the Settlement, Class Counsel respectfully request, and Defendant does not oppose, a Service Award for Plaintiff in the amount of \$7,000. Service awards compensating named plaintiffs for work done on behalf of the class are routinely awarded, because such awards encourage individual plaintiffs to undertake the responsibility of representative lawsuits. *See Cook*

v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *Synthroid I*, 264 F.3d at 722 (“Incentive awards are justified when necessary to induce individuals to become named representatives.”).

Plaintiff answered discovery, was deposed, and fully participated in this litigation. Ms. Yates also worked with Class Counsel to investigate the case, stayed abreast of the proceedings through litigation and settlement, and reviewed and approved the proposed settlement. The amount requested is comparable to or less than other awards approved by federal courts in Illinois and elsewhere. *See, e.g., Kolinek* at 503 (approving \$5,000 service award in TCPA class settlement); *Gehrich* at 239 (approving \$1,500 service award in TCPA class settlement); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 205 (N.D. Ill. 2018) (approving \$10,000 service award in TCPA class settlement). Plaintiff’s requested service award of \$7,000 is therefore reasonable and should be approved.

2. **Attorneys’ Fees and Costs**

Class Counsel seeks the Court’s approval of an award of attorneys’ fees and costs in the amount of \$354,000. These fees were negotiated with the assistance and input of Your Honor, a respected Judge in the Northern District of Illinois, and only after first reaching agreement on the terms of the underlying Class relief. The settlement structure requires Defendants to pay the fees directly, without any reduction in benefits that were first established for the Class. Additionally, the requested fees represent an amount actually lower than Class Counsel’s lodestar in this matter. Accordingly, for the reasons outlined below, Class Counsel and Plaintiff request that this Court grant the fee request.

a. **The requested fees reflect less than Class Counsel’s lodestar.**

Because the relief obtained for the class includes vouchers and an injunction, see Dkt. 125-7, p. 10, Class Counsel's fees should be affixed using the lodestar method. *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 710 (7th Cir. 2015) (finding that "a district court [can] use the lodestar method to calculate attorney fees to compensate class counsel for the coupon relief obtained for the class."); *see also Grant v. Capital Mgmt. Servs., L.P.*, 2014 WL 888665, at *7 (S.D. Cal. Mar. 5, 2014) (granting approval of TCPA robocall injunctive-only settlement and awarding attorneys' fees of \$475,000). To determine the reasonableness of attorneys' fees under the lodestar method, a court calculates the base lodestar amount by "multiplying a reasonable hourly rate by the number of hours reasonably expended." *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010).

As detailed in the attached declaration, Class Counsel spent extensive time prosecuting this action, including 914.7 hours from pre-suit investigation through to the drafting and filing of the instant motion. Costales Decl. ¶ 24. Class counsel reviewed thousands of pages of discovery, presided over multiple all-day depositions, engaged and conferred with experts, briefed numerous pleadings and motions, and undertook extensive negotiations with Defendants prior to the intervention of this Court in the settlement talks. The number of hours expended by Class Counsel multiplied by their hourly rate results in a lodestar of \$378,770.00. *Id.* Class Counsel's total costs in this matter are \$17,281.02. Costales Decl. ¶ 27. Thus, the attorneys' fees Class Counsel request as part of the Settlement are actually *less* than their effective lodestar. This counsels in favor of approving the fee award.

b. The fees were negotiated by the Parties and they do not diminish the recovery of Class Members.

Courts strongly encourage negotiated fee awards in class action settlements. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second

major litigation. Ideally, of course, litigants will settle the amount of the fee.”). Courts have also observed that negotiated fee awards should be given particular deference. *Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (noting specifically that the attorneys’ fees were negotiated in coming to the conclusion that the fee request was fair); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 106 F. Supp. 2d 721, n.1 (D.N.J. 2000) (giving deference to the negotiated attorneys’ fees and noting that “if such agreements are likely to be subject to further reduction by the Court notwithstanding the absence of any collusion or opportunity for collusion, and notwithstanding the absence of any impact on the class recovery, then future plaintiffs’ counsel will have little incentive to make such agreements”); *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, *28 (M.D. Tenn 1999) (“the Court gives great weight to the negotiated fee in considering the fee and expense request.”). This holds particularly true when, as is the case here, the Court was involved in the negotiations.

Additionally, the fee award does not in any way diminish the consideration each Class Member receives. In many class settlements the awarded attorney fee is withdrawn from a common fund before claims are paid to class members, thus reducing the amount available to the class. Here, however, the fee requested by Class Counsel will in no way reduce the amount available for payment to the Class. Rather, the fees will be paid separately from the class benefit. This additionally bolsters the request for fees. *See In re Vitamin Antitrust Litig.*, 2004 WL 6080000, *5 (D.D.C. Oct. 22, 2004) (“The fact that “the proposed fee [did] not diminish the Plaintiffs’ recovery was an important factor supporting this Court’s approval of the first fee petition.”) (citations omitted).

3. **Conclusion**

For the foregoing reasons, Plaintiff hereby requests that the Court grant her unopposed motion for a Service Award in the amount of \$7,000 and also for her attorney's fees and costs in the amount of \$354,000.00.

Respectfully submitted,

/s/ Roberto Costales

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