

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

MADELEINE YATES, on behalf of herself )  
and other persons similarly situated, )

*Plaintiff,* )

v. )

Civil Action No. 1:17-cv-09219

CHECKERS DRIVE-IN RESTAURANTS, )  
INC. and VIBES MEDIA, LLC, )

*Defendants.* )

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**DECLARATION OF ROBERTO COSTALES**

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Roberto Costales declares as follows:

1. I am one of the attorneys designated as Class Counsel under the Settlement Agreement and Release (“Settlement” or “Agreement”) entered into Madeleine Yates (“Plaintiff”) and Checkers Drive-In Restaurants, Inc., and Vibes Media, LLC (“Defendants”). I submit this declaration in support of Plaintiff’s Motion for Final Approval of the Class Settlement and Application for Service Award, Attorneys’ Fees and Costs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so. Except where otherwise provided, all capitalized terms used herein have the meanings set forth in the Settlement Agreement filed concurrent with this declaration.

2. Class Counsel negotiated the Settlement of this matter with the benefit of targeted and comprehensive discovery. Class Counsel’s due diligence included the review of thousands of pages of discovery documents, four all-day depositions, intensive legal research on a variety of issues attendant to this dispute, and the consultation of two liability experts.

3. As such, Class Counsel's analysis and understanding of the legal obstacles positioned them to evaluate the strengths and weaknesses of Plaintiff's claims and Defendants' defenses, as well as the range and amount of damages that were potentially recoverable.

4. Plaintiff and the Settlement Class faced numerous obstacles to recovery in this matter, including the very real risk of total loss on one or more liability issues.

5. Apart from the risks, continued litigation of this case would have involved substantial delay and expense, which further counsels in favor of Court approval of the settlement. The uncertainties and delays from this process would have been significant.

6. This Settlement provides an extremely fair and reasonable recovery to Settlement Class Members when considering Defendant's defenses, as well as the challenging, unpredictable path of litigation that Plaintiff would otherwise have continued to face in the trial and appellate courts.

7. Class Counsel strongly endorse the Settlement.

8. The Notice Program in this matter was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's Attorneys' Fee application and request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement.

9. The Settlement in this matter was the result of months of extensive and arms-length negotiations between the parties, culminating with Court-assisted mediation on October 2, 2019.

10. The Parties were represented by experienced counsel throughout the negotiations.

11. At mediation, the Parties discussed their competing views on various issues, including the relief to which the Settlement Class is potentially entitled and the prospects of class certification, and eventually began exchanging counterproposals on key aspects of the settlement.

Under guidance of the Honorable Judge Sunil Harjani, the Parties reached an agreement on the principal terms of the Settlement.

12. Under the terms of the Settlement, Defendants agree to provide two \$5-dollar vouchers to Settlement Class Members. Defendants also agree to that the database used to send text messages to the Settlement Class will not be used for future text messaging programs.

13. This Settlement is particularly noteworthy given the combined litigation risks, including the emergent Seventh Circuit case *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 468 (7th Cir. 2020).

14. Pursuant to the Settlement the Parties agree that Class Counsel is entitled to request attorneys' fees up to \$354,000.00, if so awarded by the Court. This fee amount was only negotiated after agreeing on all other material terms of the Settlement.

15. Myself and the attorneys at my firm have expended a substantial amount of time and effort in prosecuting this action. The attorneys' fee negotiated by the Parties is reasonable in light of the risks posed by this litigation, its complexity, my office's refusal of alternative employment opportunities, and the substantial benefit obtained for the Class. Specifically, my firm took on this representation with no guarantee of success and with no guarantee that we would recover fees. We invested substantial resources (both in terms of attorney time and costs) in the prosecution of this case.

16. My co-Class Counsel William Beaumont and I are the partners of our firm, Beaumont Costales LLC. We have offices in Chicago, Illinois and New Orleans, Louisiana.

17. I have practiced law for nine years and Mr. Beaumont for over ten.

18. Mr. Beaumont and I have been named lead class counsel in more than twenty other collective and class action cases, including but not limited to: *Goldschmidt v. Rack Room Shoes*,

*Inc.*, Case No. 18-CV-21220 (S.D. Fl. Jan. 15, 2020); *De La Rosa v. Collision Damage Experts Group, LLC* Case No. 17-CH-14760 (Cir. Ct. Cook County 2020); *Maldonado v. New Orleans Millworks, LLC*, Case No. 17-CV-1015 (E.D. La. Mar. 14, 2018); *Nieto v. Pizzati Enterprises, Inc.*, Case No. 16-CV-5352, (E.D. La. Mar. 28, 2017); *Murillo v. Coryell Cnty. Tradesmen, LLC*, Case No. 15-CV-3641 (E.D. La. Sept. 21, 2016); *Calix v. Ashton Marine LLC*, Case No. 14-CV-2430 (E.D. La. March 25, 2015); *Esparza v. Kostmayer Construction*, Case No. 15-CV-4644 (E.D. La. July 1, 2016); *Leon v Diversified Concrete*, Case No. 15-CV-6301 (E.D. La. Oct. 26, 2016).

19. I have spent 404.2 hours prosecuting this case to date. This number includes three anticipatory hours. I bill at the rate of \$450 per hour. My rate closely reflects the fair market rate for attorneys of similar experience, skill, and reputation engaged in similar type practice in the Chicago legal market and comparable markets nationwide.

20. For example, the 2015 National Law Journal's survey of billing rates (attached as **Exhibit A**) shows that the median rate for partnered attorneys in Illinois as \$420 dollars an hour. Similarly, rates for attorneys with my level of experience in consumer class action cases are awarded \$450 dollars an hour. *See In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 4765679, at \*17 (N.D. Ill. Sept. 13, 2016) (finding that \$450 dollars per hour reasonable for consumer class action attorney with 9 years' experience and \$460 dollars per hour reasonable for one with 10 years' experience).

21. My co-counsel Mr. Beaumont, has spent 358.2 hours prosecuting this case to date. This number includes two anticipatory hours. Mr. Beaumont bills at the rate of \$450 dollars per hour. This rate closely reflects the fair market rate for attorneys of similar experience, skill, and reputation engaged in similar type practice in the Chicago legal market and comparable markets nationwide. *See* ¶ 13.

22. Our associate Mr. Jon Kirkland has spent 151.4 hours prosecuting this case to date. Mr. Kirkland has been practicing for over 2.5 years and he bills at the rate of \$300 dollars per hour. This rate closely reflects the fair market rate for attorneys of similar experience, skill, and reputation engaged in similar type practice in the Chicago legal market and comparable markets nationwide. See Exhibit A (showing the median billing rate for associates in the state of Illinois as \$300 dollars an hour).

23. Our associate Ms. Emily Westermeier has spent .9 hours prosecuting this case to date. Ms. Westermeier has been practicing for over 5 years and she bills at the rate of \$300 dollars per hour. This rate closely reflects the fair market rate for attorneys of similar experience, skill, and reputation engaged in similar type practice in the Chicago legal market and comparable markets nationwide. See Exhibit A (showing the median billing rate for associates in the state of Illinois as \$300 dollars an hour).

24. A total summary of the hours expended by the attorneys at my firm in this matter is as follows:

ACTION	Hours Spent			
	RLC \$450/hr	WHB \$450/hr	JMK \$300/hr	EAW \$300/hr
Pre-filing research, drafting, filing, coordinating service of process and client meetings:	14.5	18.3	20.8	
Correspondence with counsel of record:	43.6	34.7	5	
Review of Filings, Court Orders, Answer, Discovery Responses, Document Production, and MIDP & 26(a)(1) Disclosures:	69.8	58.7	40.3	
Research and Drafting: Response to Motions, Amended Complaints, Motion to Strike and Compel, Motion for Protective Order, and Discovery Requests and Answers:	123.2	91.4	30.5	0.9

Preparation for and time with consultants and experts, review of material provided:	19.5	13.7	10.2	
Preparation for and Attendance at Hearings:	15	3.2		
Preparation for and Attendance at Depositions:	61.4	53.8	30.6	
Drafting of Pre-Mediation Demand, Attendance at Mediation Sessions:	8.5	2.4	2	
Post-Mediation Research and Drafting:	3	6.7	4	
Post-Mediation Settlement Negotiations, and Drafting/Editing Settlement Agreement:	10.4	32.9	5	
Research, Draft, and Edit Motion for Preliminary Approval:	0.5	12.5		
Research, Draft, and Serve Petition for Attorneys' Fees and final approval:	21.8	14.2	3	
Preparation for and Attendance at Final Hearing (anticipated):	3	2		
Additional work subsequent to Aug. 24, 2020 order: Research, Drafting, Correspondence with counsel of record, Hearing Preparation and Attendance	10	13.7		
<b>Total Lodestar Hours:</b>	404.2	358.2	151.4	0.9
Total Billed:	\$181,890.00	\$161,190.00	\$45,420.00	\$270.00
	<b>Total Lodestar Fee Amount:</b>			<b>\$388,770.00</b>

25. Additionally, my firm has spent \$17,281.02 in un-reimbursed expenses incurred in connection with this case to date.

26. Among these costs were charges incurred for expert consultants. My firm engaged the services of Mr. Randall Snyder for the purposes of expert consultation in the field of automatic telephone dialing systems. Additionally, my firm engaged the services of Server Side Technology Solutions, Inc. for assistance in the processing and analysis of the extensive document productions made by Defendants in this matter.

27. A total summary of the costs my firm has incurred in this matter is as follows:

<b>Description</b>	<b>Cost</b>
Filing Fee	\$400.00
Transcript Costs	\$4,853.66
Postage	\$86.80
Consultant and Expert Witness Fees	\$9,737.50
Travel Costs	\$2,203.06
<b>Total Disbursements</b>	<b>\$17,281.02</b>

\* \* \*

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

Executed on March 1, 2021.

/s/ Roberto Costales

# Exhibit A





## 2015 NLJ Billing Survey

Source: National Law Journal

Category: National Law Journal

ALM Legal Intelligence, in association with The National Law Journal, collected 2015 hourly billing rates for partners, associates, of counsel and paralegals. The data sources include the published rates from the 20 largest federal bankruptcy jurisdictions and a survey of the nation's 350 largest firms conducted during October and November of 2015. Individual firm rates are not identified.

## Hourly Billing Rates for 2015

Overall Hourly Rates	Partner			Associate			Of Counsel			Paralegal		
	High	Low	Median	High	Low	Median	High	Low	Median	High	Low	Median
	\$1,295	\$90	\$395	\$950	\$50	\$350	\$1,120	\$125	\$350	\$325	\$25	\$125

## Rates by Firm Size

1 - 25 lawyers	\$1,080	\$90	\$350	\$950	\$90	\$300	\$645	\$125	\$350	\$325	\$25	\$115
26 - 150 lawyers	\$1,050	\$190	\$460	\$900	\$100	\$300	\$620	\$225	\$393	\$305	\$75	\$173
151 or more lawyers	\$1,295	\$100	\$595	\$975	\$125	\$325	\$1,120	\$270	\$610	\$325	\$35	\$220

## Rates by State

AL	\$725	\$200	\$375	\$375	\$175	\$300	\$495	\$290	\$393	n/a	n/a	n/a
AZ	\$750	\$125	\$375	\$750	\$175	\$250	\$750	\$250	\$300	\$250	\$75	\$125
CA	\$1,080	\$200	\$495	\$950	\$300	\$350	\$595	\$175	\$450	\$325	\$25	\$150
CO	\$893	\$350	\$443	\$642	\$150	\$325	\$400	\$325	\$363	\$285	\$75	\$158
CT	\$1,200	\$295	\$350	\$625	\$175	\$350	\$550	\$325	\$438	\$290	\$75	\$100
DC	\$1,095	\$975	\$1,035	\$655	\$350	\$375	\$775	\$275	\$750	n/a	n/a	n/a
DE	\$1,050	\$295	\$650	\$850	\$260	\$388	\$525	\$260	\$275	\$305	\$125	\$235
FL	\$625	\$175	\$375	\$525	\$100	\$300	n/a	n/a	n/a	\$255	\$65	\$123
GA	\$500	\$250	\$358	\$450	\$110	\$275	\$250	\$240	\$245	\$160	\$50	\$120
IL	\$985	\$200	\$420	\$710	\$150	\$300	\$1,120	\$395	\$430	\$215	\$75	\$120
IN	\$400	\$250	\$305	\$400	\$200	\$275	\$300	\$225	\$295	\$220	\$90	\$100
KY	\$340	\$200	\$290	\$350	\$200	\$275	n/a	n/a	n/a	\$150	\$75	\$105
LA	\$575	\$150	\$333	\$500	\$100	\$250	\$425	\$200	\$350	\$285	\$45	\$83
MA	\$650	\$300	\$475	\$500	\$260	\$350	n/a	n/a	n/a	n/a	n/a	n/a
MD	\$560	\$250	\$363	\$580	\$150	\$325	\$350	\$250	\$275	\$280	\$75	\$125
MI	\$375	\$190	\$265	\$400	\$125	\$275	n/a	n/a	n/a	\$125	\$75	\$103
NC	\$675	\$250	\$425	\$435	\$150	\$275	n/a	n/a	n/a	\$180	\$75	\$110
NJ	\$880	\$250	\$400	\$400	\$150	\$298	\$565	\$225	\$325	\$195	\$65	\$120
NM	n/a	n/a	n/a	\$350	\$175	\$200	n/a	n/a	n/a	n/a	n/a	n/a
NV	\$450	\$295	\$375	\$500	\$200	\$325	n/a	n/a	n/a	\$240	\$75	\$152
NY	\$1,295	\$100	\$420	\$975	\$90	\$350	\$930	\$250	\$573	\$325	\$60	\$130
OH	\$545	\$250	\$313	\$330	\$155	\$250	n/a	n/a	n/a	\$135	\$85	\$100
OR	\$485	\$315	\$370	\$325	\$230	\$300	\$450	\$310	\$380	\$220	\$145	\$185
PA	\$875	\$200	\$350	\$565	\$86	\$257	\$440	\$300	\$325	\$325	\$75	\$105
PR*	\$300	\$100	\$200	\$350	\$100	\$200	\$250	\$125	\$188	\$150	\$45	\$75
TN	\$735	\$225	\$300	\$350	\$150	\$250	\$300	\$270	\$300	\$150	\$50	\$90
TX	\$925	\$90	\$395	\$650	\$150	\$298	\$740	\$225	\$320	\$290	\$35	\$100
VA	\$545	\$220	\$335	\$495	\$175	\$295	\$400	\$300	\$350	\$325	\$75	\$95
WA	\$965	\$275	\$460	\$375	\$150	\$350	n/a	n/a	n/a	\$215	\$125	\$143
WI	\$595	\$560	\$578	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

n/a: data not available

\*Puerto Rico is a U.S. Territory

## Hourly Billing Rates for 2015

Partner				
	High	Low	Median	High
<b>Overall Hourly Rates</b>	\$1,295	\$90	\$395	\$950

### Rates by Firm Size

1 - 25 lawyers	\$1,080	\$90	\$350	\$950
26 - 150 lawyers	\$1,050	\$190	\$460	\$900
151 or more lawyers	\$1,295	\$100	\$595	\$975

### Rates by State

AL	\$725	\$200	\$375	\$375
AZ	\$750	\$125	\$375	\$750
CA	\$1,080	\$200	\$495	\$950
CO	\$893	\$350	\$443	\$642
CT	\$1,200	\$295	\$350	\$625
DC	\$1,095	\$975	\$1,035	\$655
DE	\$1,050	\$295	\$650	\$850
FL	\$625	\$175	\$375	\$525
GA	\$500	\$250	\$358	\$450
IL	\$985	\$200	\$420	\$710
IN	\$400	\$250	\$305	\$400
KY	\$340	\$200	\$290	\$350
LA	\$575	\$150	\$333	\$500
MA	\$650	\$300	\$475	\$500
MD	\$560	\$250	\$363	\$580
MI	\$375	\$190	\$265	\$400
NC	\$675	\$250	\$425	\$435
NJ	\$880	\$250	\$400	\$400
NM	n/a	n/a	n/a	\$350
NV	\$450	\$295	\$375	\$500
NY	\$1,295	\$100	\$420	\$975
OH	\$545	\$250	\$313	\$330
OR	\$485	\$315	\$370	\$325
PA	\$875	\$200	\$350	\$565
PR*	\$300	\$100	\$200	\$350
TN	\$735	\$225	\$300	\$350
TX	\$925	\$90	\$395	\$650
VA	\$545	\$220	\$335	\$495
WA	\$965	\$275	\$460	\$375
WI	\$595	\$560	\$578	n/a

n/a: data not available

\*Puerto Rico is a U.S. Territory

Associate			Of Counsel		
Low	Median	High	Low	Median	High
\$50	\$350	\$1,120	\$125	\$350	\$325

\$90	\$300	\$645	\$125	\$350	\$325
\$100	\$300	\$620	\$225	\$393	\$305
\$125	\$325	\$1,120	\$270	\$610	\$325

\$175	\$300	\$495	\$290	\$393	n/a
\$175	\$250	\$750	\$250	\$300	\$250
\$300	\$350	\$595	\$175	\$450	\$325
\$150	\$325	\$400	\$325	\$363	\$285
\$175	\$350	\$550	\$325	\$438	\$290
\$350	\$375	\$775	\$275	\$750	n/a
\$260	\$388	\$525	\$260	\$275	\$305
\$100	\$300	n/a	n/a	n/a	\$255
\$110	\$275	\$250	\$240	\$245	\$160
\$150	\$300	\$1,120	\$395	\$430	\$215
\$200	\$275	\$300	\$225	\$295	\$220
\$200	\$275	n/a	n/a	n/a	\$150
\$100	\$250	\$425	\$200	\$350	\$285
\$260	\$350	n/a	n/a	n/a	n/a
\$150	\$325	\$350	\$250	\$275	\$280
\$125	\$275	n/a	n/a	n/a	\$125
\$150	\$275	n/a	n/a	n/a	\$180
\$150	\$298	\$565	\$225	\$325	\$195
\$175	\$200	n/a	n/a	n/a	n/a
\$200	\$325	n/a	n/a	n/a	\$240
\$90	\$350	\$930	\$250	\$573	\$325
\$155	\$250	n/a	n/a	n/a	\$135
\$230	\$300	\$450	\$310	\$380	\$220
\$86	\$257	\$440	\$300	\$325	\$325
\$100	\$200	\$250	\$125	\$188	\$150
\$150	\$250	\$300	\$270	\$300	\$150
\$150	\$298	\$740	\$225	\$320	\$290
\$175	\$295	\$400	\$300	\$350	\$325
\$150	\$350	n/a	n/a	n/a	\$215
n/a	n/a	n/a	n/a	n/a	n/a

<b>Paralegal</b>	
<b>Low</b>	<b>Median</b>
\$25	\$125

\$25	\$115
\$75	\$173
\$35	\$220

n/a	n/a
\$75	\$125
\$25	\$150
\$75	\$158
\$75	\$100
n/a	n/a
\$125	\$235
\$65	\$123
\$50	\$120
\$75	\$120
\$90	\$100
\$75	\$105
\$45	\$83
n/a	n/a
\$75	\$125
\$75	\$103
\$75	\$110
\$65	\$120
n/a	n/a
\$75	\$152
\$60	\$130
\$85	\$100
\$145	\$185
\$75	\$105
\$45	\$75
\$50	\$90
\$35	\$100
\$75	\$95
\$125	\$143
n/a	n/a