

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MADELEINE YATES, on behalf of herself)
and other persons similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 CHECKERS DRIVE-IN RESTAURANTS,)
 INC. and VIBES MEDIA, LLC,)
)
 Defendants.)
)

Civil Action No. 17-cv-09219
Magistrate Judge Sunil R. Harjani

ORDER APPROVING SUPPLEMENTAL TEXT MESSAGE NOTICE

WHEREAS, the Court previously entered a Preliminary Approval Order [DE-129], granting preliminary approval of the parties’ Settlement, the terms and conditions of which are set forth in the settlement agreement [DE-125-7]; and

WHEREAS, pursuant to the Court’s November 3, 2020 Memorandum Opinion and Order and Notification of Docket Entry [DE-156 and DE-155, collectively referred to as the “Order”], the Court denied without prejudice Plaintiff’s Unopposed Motion for Final Approval of Class Settlement, Response to Class Objector, Application for Service Award, and Application for Attorney’s Fees and Costs and further ordered an additional text message notice of the proposed Settlement to those telephone numbers of the Settlement Class who did not submit a Valid Claim Form; and

WHEREAS, pursuant to the Order, Plaintiff Madeleine Yates (“Plaintiff”) and Defendants Checkers Drive-In Restaurants, Inc. and Vibes Media, LLC (“Defendants”) met and conferred and

reached a proposed text message notice plan (“Text Message Notice Plan”) to provide supplemental text message notice to the Settlement Class members who did not submit a Valid Claim Form; and

WHEREAS, Plaintiff and Defendants have agreed to an addendum to the settlement agreement (the “Addendum,” and collectively with the settlement agreement, the “Settlement Agreement”) to encompass the Text Message Notice Plan; and

WHEREAS, the Court has fully considered the record of these proceedings, the proposed Text Message Notice Plan, the Addendum, the representations, arguments, and recommendation of counsel for the Parties, and the requirements of law; and

WHEREAS, it appears to the Court upon preliminary examination that the proposed Settlement Agreement, as amended by the Addendum, and the Text Message Notice Plan are fair, reasonable, and adequate, and that a hearing should be held after notice to the Settlement Class of the proposed Settlement to finally determine whether the proposed Settlement is fair, reasonable, and adequate and whether a Final Approval Order and Judgment should be entered in this Action.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered. Except as set forth herein, all terms of the Preliminary Approval Order remain in full force and effect.

2. The Court preliminarily approves the Settlement Agreement, as amended through the Addendum, as fair, reasonable, and adequate to the Settlement Class, as falling within the range of possible final approval, and as meriting notice of the Settlement to persons in the Settlement Class for their consideration and a hearing on the approval of the Settlement.

3. A Final Approval Hearing shall be held before this Court on April 14, 2021 to address: (a) whether the Court should finally certify the Settlement Class and whether the Settlement Class Representative and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed Settlement should be finally approved as fair, reasonable, and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class in this Action should be dismissed on the merits and with prejudice; (d) whether Class Counsel's Attorney's Fees and Costs application and the Incentive Award for Named Plaintiff should be approved; and (e) such other matters as the Court may deem necessary or appropriate. Papers in support of final approval of the Settlement, the Incentive Award to Named Plaintiff, and Class Counsel's Attorney's Fees and Costs application shall be filed with the Court according to the schedule set forth in Paragraph 14 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the Settlement at or after the Fairness Hearing with any modifications agreed to by Defendants and the Class Representative and without further notice to the Settlement Class.

4. The Court approves, as to form and content, the use of the following text message notice (the "Text Message Notice"):

NOTICE OF CLASS ACTION SETTLEMENT: You may be entitled to benefits under a class action settlement in Yates v. Checkers Drive-In, 17 CV 9219 (N.D. Illinois). Submit a claim at www.burgertcpasettlement.com/claim or call 844-908-0531.

Both the Settlement Website and the phone number provided will provide detailed information

concerning the Settlement, the Claim Form, and the various deadlines.

5. A single text message with the Text Message Notice will be provided to members of the Settlement Class by using the Class Member List that was prepared from the database of phone numbers previously utilized by Defendants to send text messages to the Settlement Class, after removing the phone numbers for the 7,017 members of the Settlement Class who previously submitted a Valid Claim Form. The Text Message Notice shall be sent within 40 days of the date of entry of this Order. Prior to the Final Approval Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice provisions.

6. The cost of the Text Message Notice and settlement administration shall be paid by Defendants, as provided for in the Settlement Agreement and the Preliminary Approval Order.

7. The Text Message Notice, as directed in this Order, in conjunction with the Notice previously approved and provided to 75% of the Settlement Class [DE-129 and DE-156], constitutes the best notice practicable under the unique circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Action, their right to object to the Settlement or exclude themselves from the Settlement Class, the request for Class Counsel's Attorney's Fees and Costs, and the request for an Incentive Award for Named Plaintiff. The Court further finds that the Text Message Notice Plan is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive such notice, and that it meets the requirements of due process and of Federal Rule of Civil Procedure 23.

8. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions and requirements set forth at

the Settlement Website a timely and valid written request for exclusion postmarked no later than 30 days before the Final Approval Hearing.

9. Each request for exclusion, or “Opt-Out”, must be personally signed by the individual Class Member; any so-called “mass” or “class” opt-outs shall not be allowed. Further, to be valid and treated as a successful exclusion or “Opt-Out” the request must (a) state the Class Member’ full name, address, and telephone number; (b) contain the cellular telephone number at which texts from Defendants were received; (c) contain the Class Member’s personal and original signature or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member with respect to a claim or right such as those in the Action; and (d) state unequivocally the Class Member’s intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement.

10. No person shall purport to exercise any exclusion rights for any other Person, or purport to exclude any other Class Member as a group, aggregate, or class involving more than one Class Member, or as an agent or representative. Any such purported exclusion shall be void and the Person that is the subject of the purported opt-out shall be treated as a member of the Settlement Class and be bound by the Settlement.

11. Any member of the Settlement Class who elects to be excluded shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement or appear at the Final Approval Hearing.

12. Any Class Member who does not submit a valid and timely request for exclusion

may object to the proposed Settlement. Any such Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such Class Member must file with the Court a written notice of intention to appear together with supporting papers, including a detailed statement of the specific objections made, no later than 30 days before the Final Approval Hearing. Each Objection must (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) identify the cellular telephone number of the Settlement Class Member that brings him or her within the scope of the Settlement Class; (iii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member; (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; and (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position. Any Class Member that fails to object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this Settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Action.

13. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any Released Claim against any of the Released Parties in any action, arbitration or proceeding in any court, arbitration forum or tribunal.

14. Further settlement proceedings in this matter shall proceed according to the following schedule:

<u>EVENT</u>	<u>SCHEDULED DATE</u>
Text Message Notice deadline	January 4, 2021
Last day for Class Members to opt-out of Settlement	March 15, 2021
Last day for objections to the Settlement to be filed with the Court	March 15, 2021
Last day to submit a Valid Claim Form	March 15, 2021
Briefs in support of Final Approval due by	March 31, 2021
Attorney's Fees and Costs application due by	March 1, 2021
Incentive Award application due by	March 1, 2021
Final Approval Hearing	April 14, 2021 at 10:00 a.m.

15. Service of all papers on counsel for the parties shall be made as follows: for settlement Class Counsel: to Roberto Costales, Beaumont Costales LLC, 3801 Canal Street #207, New Orleans, Louisiana 70119; for Defendant Checkers: Abigail Lyle, Hunton Andrews Kurth LLP, 1445 Ross Avenue, Suite 3700, Dallas, TX 75202; for Defendant Vibes: Amy Richardson, Harris, Wiltshire & Grannis LLP, 1919 M Street, N.W., Eighth Floor, Washington, D.C. 20036.

16. In the event that a Final Approval Order and Judgment is not entered by the Court, or the Effective Date of the Settlement does not occur, or the Settlement Agreement otherwise terminates according to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever, including without limitation for any evidentiary purpose (including

but not limited to class certification), in this Action or any other action. In such event the Settlement Agreement, exhibits, attachments and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all of the parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

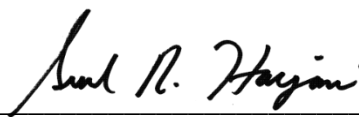
17. The Court may, for good cause, extend all of the deadlines set forth in this Order without further notice to the Settlement Class.

18. Except for such proceedings as are necessary to implement, effectuate and grant Final Approval to the terms of the Settlement Agreement, all discovery and other litigation activity in this Action shall remain stayed pending final approval of the Settlement.

19. The Settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Action, or of any wrongdoing, liability, or violation by Defendants, which vigorously deny all of the claims and allegations raised in the Action.

IT IS SO ORDERED.

DATED this 25th day of November 2020.

By 

Sunil R. Harjani
United States Magistrate Judge