

*Checkers Drive-In Restaurants, Inc.*

*PLAINTIFF'S APPLICATION FOR SERVICE AWARD,  
ATTORNEYS' FEES, AND COSTS*

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:19-cv-80090-BLOOM/Reinhart

JOEL MEDGEBOW, individually  
and on behalf of all others  
similarly situated

Plaintiff,

vs.

CHECKERS DRIVE-IN RESTAURANTS  
INC.,

Defendant.

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**DECLARATION OF JOSHUA H. EGGNATZ IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES**

I, Joshua H. Egnatz, pursuant to 28 U.S.C. Sec. 1746, declare under perjury that the following is true and correct:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement entered into with Defendant. I submit this declaration in support of Plaintiff's 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.

2. The Notice Program 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

3. The Parties negotiated and reached agreement regarding fees and costs only after agreeing on all other material terms of the Settlement.

4. Plaintiff and the Settlement Class were represented by experienced counsel throughout the negotiations. Class Counsel and Defendant engaged in formal mediation, as well as informal settlement discussions. All negotiations were arm's-length and extensive.

5. Class Counsel negotiated the Settlement with the benefit of informal party and non-party discovery and document production.

6. As such, Class Counsel's analysis and understanding of the legal obstacles positioned them to evaluate with the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, as well as the range and amount of damages that were potentially recoverable if the Action proceeded to judgment on a class-wide basis.

7. Class Counsel believes that Plaintiff had a strong case against Defendant. However, Class Counsel is also mindful of the continued litigation risks given the uncertain legal landscape.

8. Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. The uncertainties and delays from this process would have been significant.

9. Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them.

10. 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.

11. Class Counsel strongly endorse the Settlement.

12. To date, there has been no opposition to the Settlement.

13. Plaintiff provided assistance that enabled Class Counsel to successfully prosecute the Action including submitting to interviews with Class Counsel, reviewing all material filings, including approving the Agreement, and maintaining regular contact with Class Counsel throughout the litigation, mediation, and post-mediation negotiation process. Plaintiff was also prepared to devote additional time to deposition and to be available for trial, if necessary. The end result of his efforts, coupled with those of Class Counsel, provided a substantial benefit to the Settlement Class. In so doing, Plaintiff was integral to forming the theory of the case and litigating it through settlement.

14. Pursuant to the Agreement and the Notices, and consistent with recognized class action practice and procedure, Class Counsel respectfully request an award of attorneys' fees equal to 30% of the Settlement Fund.

15. Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable.

16. Class Counsel devoted substantial time to investigating the claims against Defendant.

17. Class Counsel also expended resources researching and developing the legal claims at issue.

18. Time and resources were also dedicated to conducting formal discovery, motion practice, depositions, and trial preparation.

19. Settlement negotiations consumed further time and resources. The mediation and post-mediation sessions required substantial preparation and time commitment. Finally, significant time was devoted to negotiating and drafting of the Agreement and the preliminary approval process, and to all actions required thereafter pursuant to the preliminary approval order, including oversight of the notice plan to ensure proper implementation. All of this work consumed a substantial amount of time.

20. Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement before the Court.

21. The time and resources devoted to this Action readily justify the requested fee. Moreover, Class Counsel's work is not yet done. Class Counsel is prepared to devote all the necessary time and resources to ensure final approval of settlement, including handling any objections and appeals, to ensure that the Settlement Class obtains the benefits of the settlement.

22. Litigation of this Action required counsel trained in class action law and procedure as well as the specialized issues presented here, such as analyzing class certification issues and litigating the novel issue of whether the software used to make the calls was an ATDS, as defined by the TCPA. Class Counsel possess these attributes, and their participation added value to the representation of this Settlement Class. The Action involved complex and novel challenges, which Class Counsel met at every juncture.

23. Throughout the litigation, Defendant was represented by extremely capable counsel. They were worthy, highly competent adversaries.

24. Rather than facing the uncertainty of trial, each Settlement Class Member is entitled to claim a cash benefit of \$450.00.

25. The Settlement is particularly noteworthy given the combined litigation risks.

26. Prosecuting the Action was risky from the outset.

27. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of Defendant’s defenses, and the challenging and unpredictable path of litigation Plaintiff and the certified class would have faced absent the Settlement.

28. In undertaking to prosecute this case on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment.

29. Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee.

30. The progress of the Action to date shows the inherent risk faced by Class Counsel in accepting and prosecuting the Action on a contingency fee basis. Despite Class Counsel’s effort in litigating this Action, Class Counsel remain completely uncompensated for the time invested in the Action, in addition to the expenses we advanced.

31. Counsel’s requested fee of 30% of the Settlement Fund is well within the range of fees typically awarded in similar cases.

32. Class Counsel also request reimbursement for a total of \$3,708.97 in litigation costs. This sum corresponds to certain actual out-of-pocket costs that Class Counsel necessarily incurred and paid in connection with the prosecution of the Action and the Settlement Class Counsel’s out-of-pocket litigation expenses include:

<b>Expense:</b>	<b>Amount:</b>
Filing Fee	\$400.00
Research/PACER fees:	\$119.47
Mediation Costs/Travel:	\$122.50
Mediator Fee:	\$3,067.00
<b>TOTAL</b>	<b>\$3,708.97</b>

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I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Davie, Florida, on July 29, 2019.

/s/ Joshua H. Eggnatz  
Joshua H. Eggnatz