

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

BREANDAN COTTER and JACK DINH,  
individually and on behalf of others similarly  
situated,

Plaintiff,

v.

CHECKERS DRIVE-IN RESTAURANTS, INC.,  
a Delaware corporation,

Defendant.

Case No. 8:19-cv-01386-VMC-CPT  
Class Action

Hon. Virginia M. Hernandez Covington,  
presiding

**DECLARATION OF BRADLEY K. KING IN SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Bradley K. King, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney duly admitted to practice law in California, New York, New Jersey, and the District of Columbia, and I have been admitted *pro hac vice* in the above-captioned action on behalf of Plaintiff Brendan Cotter. I am a partner at Ahdoot & Wolfson, PC (“AW”) and Settlement Class Counsel appointed by the Court in the above-captioned case. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Award (the “Fee Motion”), filed concurrently herewith. The facts herein stated are true of my own personal knowledge, or I am informed and believe them to be true, and if called to testify to such facts, I could and would do so competently.

2. Our firm, Ahdoot & Wolfson, PC, has served as class counsel in class action cases throughout the county, including numerous multidistrict litigations, and has recovered hundreds of millions of dollars on behalf of consumers and aggrieved parties. *See* Dkt. 43-2 at 21-27 (Ahdoot & Wolfson *curriculum vitae* submitted in support of Plaintiffs’ motion for preliminary approval of class settlement).

3. I, along with the other Settlement Class Counsel, have been closely involved in the prosecution of this litigation.

4. Prior to the filings of the Complaints in this matter, all Plaintiffs' firms conducted substantial pre-filing investigation into the alleged wrongful conduct of Defendant, which included interviews with affected data breach victims, consultation with experts, and factual online and technological investigation. Further, counsel for Plaintiff Cotter and Plaintiff Dinh opted to work collaboratively and to further the claims of the plaintiff class affected by Defendant's data breach.

5. From the onset of this litigation, Settlement Class Counsel engaged proactively and efficiently with Defense Counsel, swiftly commencing resolution discussions in the interests of providing relief to the class as expeditiously as possible.

6. Through months of discussions and negotiations, bolstered by their fervent and thorough investigations of the Data Breach, Settlement Class Counsel reached an agreement with Defense Counsel to engage in mediation. As part of this agreement, Settlement Class Counsel negotiated a stipulated protective order and a joint motion to stay the litigation pending the parties' mediation, conserving judicial resources and minimizing expenditures for any future resolution.

7. Settlement Class Counsel's drive towards early resolution, as revealed through the parties' initial discussions and informal exchange of information, was the reality that Defendant's financial situation was unstable. This served as an impetus for early resolution, as Settlement Class Counsel recognized that protracted litigation against Defendant had the potential to significantly reduce or even eliminate any chance of recovery for the putative class of Data Breach victims.

8. Ultimately, on November 21, 2019, the parties participated in a mediation with the assistance of the distinguished certified mediator, Steven R. Jaffe. After a full-day session of hard fought, arm's-length negotiations, the parties reached a settlement in principle.

9. After reaching a settlement in principle, the parties then began memorializing the full Settlement, which generated numerous additional rounds of comprehensive, arm's-length negotiations. The parties extensively negotiated each aspect of the Settlement Agreement itself, as well as the specific language of the various forms of Settlement Notice. With regard to the Notice Program, the parties had significant, substantive discussions that expanded on their initial mediation agreement in principle and employed creative, efficient methods to maximize notice to the Settlement Class.

10. Settlement Class Counsel, upon agreement with Defense Counsel, also engaged Angeion Group, LLC to further refine the Notice Program and each document comprising the Settlement Notice (the Long Form Notice, the Summary Notice, the internet banner ads, the print publication, and the Email Notice to Defendant's loyalty program members) and ensure the information disseminated to Settlement Class Members was clear and concise.

11. In connection with the submission of our Fee Motion, I compiled and reviewed the billing records for work performed by AW. In total, and as set forth in more detail in the table below, my firm has expended 194.2 hours prosecuting this matter for a total lodestar of \$127,520. The fees expended were performed by the following AW professionals:

Professional	Title	Billing Rate	Time (0.1 hour)	Lodestar
Tina Wolfson	Senior Partner	\$900/hour	43.6	\$39,240.00
Bradley King	Partner	\$600/hour	145.4	\$87,240.00
Jessielle Fabian	Paralegal	\$200/hour	5.2	\$1,040.00
		<b>TOTALS:</b>	<b>194.2</b>	<b>\$127,520.00</b>

12. In addition, AW expended \$3,124.11 in expenses associated with court filing fees, postage, mediation fees, and related travel.

13. Throughout this litigation and Settlement negotiations, AW maintained contemporaneous time records that reflect the time spent working on the instant action. I believe that my firm's rates are fully commensurate with the hourly rates of other nationally prominent firms performing similar work for both plaintiffs and defendants. After considering all of these data points, I have determined that the rates are reasonable for each of the AW professionals who worked on this matter.

14. Because of the importance of recovery of attorney fee awards in contingency cases to a plaintiffs' class action practice firm such as AW, we keep current on federal and state law developments on the subject of attorneys' fees. Accordingly, AW is familiar with the prevailing market rates for leading attorneys in trial court, complex, and class action litigation of important issues. AW periodically establishes hourly rates for the firm's billing personnel. AW establishes the rates based on prevailing market rates for attorneys and law firms in the Los Angeles area that have attorneys and staff of comparable skill, experience, and qualifications. AW obtains information concerning market rates from other attorneys in the area that have similar experience doing similar work, from information that occasionally appears in the local press and national bar publications, and in orders awarding attorneys' fees in similar cases.

15. The bulk of AW's practice is contingent, and many of my firm's cases have been large and substantial in settlements or verdicts. In contingent risk cases, my firm and other firms doing this type of work frequently advance tens or hundreds of thousands of dollars in expenses and costs and defer all payment of our fees for several years, with no guarantee that any of the fees we incurred or costs we advanced would ever be recovered.

16. Courts have awarded AW attorneys' fees at rates that are comparable to the rates applicable to this matter. *See, e.g., Eck, et al. v. City of Los Angeles*, No. BC577028 (Los Angeles

Superior Court (“LASC”) (February 2018) (\$295 million finally approved settlement where the Court awarded Class Counsel’s full request of approximately \$15 million based on percentage of the fund method and commensurate hourly rates); *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (October 2019) (\$51 million minimum value finally approved settlement where the Court awarded Class Counsel’s full request of approximately \$8 million based on percentage of the fund method and commensurate hourly rates); *Pantelyat v. Bank of America*, No. 1:16-cv-08964 (S.D.N.Y. Jan. 31, 2019) (Dkt. 116; \$22 million finally approved settlement where the Court awarded Class Counsel’s full request of \$5.5 million based on percentage of the fund method and commensurate hourly rates); *Williamson, et al. vs. McAfee, Inc.*, Case No. 5:14-cv-00158-EJD (N.D. Cal. Feb. 15, 2017) (Dkt. 118; \$85 Million settlement in deceptive auto renewal case); *Smith v. Floor & Decor Outlets of Am., Inc.*, Case No. 1:15-cv-04316-ELR, (N.D. Ga. Jan. 10, 2017) (Dkt. No. 69; \$14.5 Million product liability settlement re: laminate flooring); *Chimeno-Buzzi v. Hollister Co.*, Case No. 1:14-cv-23120-MGC (S.D. Fla. April 11, 2016) (Dkt. No. 155; \$10 Million TCPA Settlement).

17. The rates charged by AW are reasonable and well within the range of rates charged by comparably qualifying attorneys for comparably complex work. Comparable hourly rates have been found reasonable in numerous cases. Moreover, the rates requested by AW are in line with the non-contingent market rates charged by attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable services and supported by surveys of legal rates.

18. Settlement Class Counsel have represented Plaintiffs and the Class on a purely contingent basis, assuming the significant risk that they would not be compensated for time and out of pocket expenses put into this litigation. This risk of nonpayment incentivized all Settlement Class Counsel to work efficiently, to prevent duplication of effort, and to advance expenses

responsibly. AW had to forego the representation of other clients and pursuit of other cases to prosecute this litigation. I believe that AW and the other Settlement Class Counsel assumed significant risk of nonpayment in initiating and dedicating over hundreds of attorney hours in this case given the legal issues involved and uncertain outcome, especially considering the revelation of Defendant's financial status. Despite these risks, AW, along with the other Settlement Class Counsel, was able to successfully resolve this case through a Settlement that confers substantial monetary and injunctive relief to Settlement Class Members despite litigating against a corporate Defendant employing top-tier counsel from a national law firm.

19. Based on my experience, I anticipate that AW will expend approximately 20 to 30 hours of additional attorney time required through final approval and administration of the Settlement, should it be approved by the Court. Settlement Class Counsel must prepare for and attend the final fairness hearing, continue to communicate with Plaintiffs and Settlement Class Members, and otherwise supervise the administration of the Settlement.

20. Representative Plaintiff Breandon Cotter demonstrated a willingness to participate and undertake responsibilities and risks attendant with bringing a representative action. He aided in the investigation of the claims, consulted with counsel, reviewed draft pleadings, participated in informal discovery, and contributed to settlement efforts. In addition to lending his name to this class action, and thus subjecting himself to significant public attention, Mr. Cotter was actively engaged throughout this litigation and settlement negotiations. Among other things, he (1) provided information, including the applicable information related to how the Data Breach affected him, to AW for preparing the complaints and other filings; (2) reviewed pleadings and filings; (3) communicated on a regular basis with AW to stay apprised of the progress of the litigation and settlement negotiations; and (4) reviewed and approved the Settlement Agreement.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of October, 2020.



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Bradley K. King