

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FATIMA BUTLER and JULIA SCHOLZ-
PINGER, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WHITEPAGES, INC.,

Defendant.

Case No. 19-cv-04871

Hon. Gary S. Feinerman

**DECLARATION OF ROBERTO LUIS COSTALES IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES, COSTS, AND INCENTIVE AWARD**

I, Roberto Luis Costales, hereby aver, pursuant to 28 U.S.C. § 1746, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am a partner at Beaumont Costales LLC and counsel of record for the Settlement Class in the above-captioned case. I make this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive Award, and further for the purpose of attesting to my firm’s lodestar in this matter.

2. This case was litigated extensively both by myself and my law partner, William Beaumont, over a period beginning in April of 2020 and continuing until roughly July of 2021.¹ During this course of time our firm briefed a multitude of contested motions, in addition to

¹ The Court denied Defendant’s motion to dismiss on April 14, 2020 and all proceedings had been stayed prior to that date. The Court entered the parties’ joint motion to stay for the purposes of settlement on July 19, 2021.

conducting rigorous discovery on the merits, class certification, and the fitness of Plaintiff Lukis as a class representative.

3. Our office did not keep contemporaneous billing records of our time spent litigating this case. Thus, for the purposes of a lodestar cross-check to validate the fees requested by Settlement Class Counsel, we offer the following conservative reconstruction of the hours our firm expended litigating this case.

4. Time spent briefing motions and oppositions, 665 hours. This quantity of hours is based on our firms' drafting of 190 pages of briefing in opposition to 383 pages of defense counsel's briefing over the course of 21 contested motions.² These briefings were not simply rote exercises based on boilerplate templates. *Cf. Douglas v. W. Union Co.*, 328 F.R.D. 204, 223 (N.D. Ill. 2018) (finding reconstructed hours unreasonable where they were based on briefs that were "largely boilerplate...[and] cut-and-paste job[s]" that counsel had filed in other cases). To the contrary, much of undersigned counsel's briefing in this matter touched on comparably novel applications of the IRPA and defenses thereto. The 665 hours expended by undersigned counsel was determined by multiplying 190 pages of briefing by 3.5 hours per briefed page, which is reasonable given the success rate of the briefs and the comparable complexity of the issues. *Cf. Maldonado v. Houstoun*, 256 F.3d 181, 186 (3d Cir. 2001) (finding that 3 hours per briefed page is a reasonable allotment of billable time in a § 1983 action); *Beattie v. Colvin*, 240 F. Supp. 3d 294, 298 (D.N.J. 2017) (finding 3 billable hours per briefed page reasonable in social security disability matters, collecting cases); *In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 466 (C.D. Cal. 2014) (holding that plaintiff's

² While technically not opposed, Plaintiff's page count includes the drafting of three joint status reports due to their contested nature, *see* Dkts. 22, 73, 91, and 154. It also includes the drafting of the original and first amended complaints.

counsel's billing at just over 3 hours per page was reasonable in a "not particularly complex" class action).

5. Time spent conducting written discovery, 150 hours. This quantity of hours is based on our office's answer to 242 admissions propounded by Defendant, as well as 45 interrogatories and 54 requests for production of documents, and it includes the time spent formulating objections, reviewing the legal merits of the requests, reviewing the requests with the Plaintiffs, and drafting the actual responses—including reviewing, redacting, and ultimately providing 2,223 pages of responsive documents.³ Our reconstruction also takes into account our office's drafting of 17 interrogatories and 26 requests for production of documents (none of which was generated from any sort of template) as well as reviewing Defendant's responses to those requests, including 230 pages of document productions. Our reconstruction is also based on our drafting of a corporate deposition notice directed at the Defendant, which included 15 separate topics.⁴

6. Time spent preparing and conducting depositions, 90 hours. These hours are based on roughly 30 hours of deposition testimony, totaling 1,067 pages of transcript. In all there were four depositions taken of Defendant's personnel (totaling 563 pages and 16 hours of testimony) and a deposition of the Plaintiff (totaling 504 pages and 14 hours of testimony).

Factored into our estimated time are the reasonable hours spent (i) preparing for the depositions

³ Undersigned counsel estimates spending 10 minutes to review, object to, and answer each of Defendant's 242 admissions, 45 interrogatories and 54 requests for production of documents; undersigned counsel further estimates spending 1 minute per page to obtain, review, and redact 2,223 documents provided by Plaintiff Lukis.

⁴ Undersigned counsel estimates spending 20 minutes per page to conceive and draft each of Plaintiffs' 58 written discovery request and 30(b)(6) topics, and estimates spending 10 minutes per page reviewing 230 pages of Defendant's document productions.

(estimated at 50 hours), (ii) attending the depositions (estimated at 30 hours), and (iii) reviewing the deposition transcripts (estimated at 10 hours).

7. Time spent communicating with opposing counsel, 35 hours. This quantity of hours is based on the exchange of at least 209 emails with defense counsel between April 14, 2020 and July 19, 2021, many of which of which were detailed emails regarding discovery and the merits of the case. *See e.g.* Dkts. 106-2, 109-16, 127-2, 127-3. It also includes the review of 25 single-spaced pages of written communications from defense counsel via letter, five Rule 37 conferences (one of which was 3 hours, *see* Dkt. 139-1, pg. 14), and multiple phone calls with defense counsel regarding the merits and possible settlement.

8. Time spent communicating with the Court, 50 hours. This quantity of hours is based on reviewing 103 pages of orders authored by the Court (approximately 10 hours); preparing for and attending Court on status and motion hearings 11 times (approximately 16 hours); reviewing 76 minute entries (approximately 7 hours); preparing for and attending court-ordered mediation before the 7th Circuit (approximately 3 hours); and preparing for and attending mediation with the Honorable Sidney Schenkier (approximately 14 hours).

9. Time spent communicating between Beaumont and Costales, 70 hours. This quantity of hours is based on the exchange of at least 102 emails between myself and Mr. Beaumont (approximately 10 hours), in addition to, at minimum, a one hour-long conference per week during the period of April 16, 2020 to July 18, 2021 (approximately 60 hours).

10. Not included in the reconstruction of undersigned counsel's hours are the times our firm expended in:

- verbal and written communications with other Plaintiffs' counsel in this case;
- review of all draft settlement documents and providing redlines where applicable;
- drafting/filing of boilerplate status reports and the protective order in this matter;
- providing periodic updates to Plaintiffs about the status of the case; and

- retaining and working with a private investigator to locate former-plaintiff Shawn Brown (deceased) and his next of kin.

11. The foregoing reconstruction of hours totals 1,060 hours of billable time that my firm spent in the pursuit of this matter.

12. In the absence of contemporaneous time records neither myself or Attorney Beaumont can affix the precise number of hours that each of us spent on this case. As a general matter we endeavor to share responsibility for all tasks in a given case so that our total time expended is approximately equal. Thus, we request that the Court find for the purposes of a lodestar cross-check that Attorney Beaumont worked 530 hours on this case and Attorney Costales worked 530 hours.

13. Attorney Beaumont and I are both partners at our firm, Beaumont Costales, LLC. We are both admitted to practice before the Illinois Supreme Court, the Trial Bar of the Northern District of Illinois, and the Seventh Circuit Court of Appeal.

14. Both Attorney Beaumont and myself have been practicing law for more than 11 years. We have our principle office in Chicago. We began our practice in the areas of criminal defense and personal injury, and have accrued experience in all phases of litigation, including extensive trial experience, in the course of representing many hundreds of individual litigants. Since beginning our class action practice we have earned more than 28 million dollars for class members in claims under the Americans with Disabilities Act, the Fair Labor and Standards Act, the Telephone Consumer Protection Act, and the Illinois Biometric Information Privacy Act.

15. Both Attorney Beaumont and myself have been named lead class counsel in more than twenty other collective and class action cases, including but not limited to: *Novak v. Southshore Enterprises Inc.*, Case No. 2021-L-47 (Cir. Ct. McLean County 2022); *Moore v. Lutheran Senior Services*, Case No. 2021-L-1506 (Cir. Ct. Madison County 2022); *Fischer, et al.*

v. Instant Checkmate LLC, No. 19-cv-04892, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022); *Mohn v. Chronister Oil Company*, No. 20-L-249 (Cir. Ct. Sangamon County 2021); *Kelly v. Peryam and Kroll Research Corporation*, Case No. 20-CH-4665 (Cir. Ct. Cook County 2021); *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); *Salgado v. Greenway Resource Recovery, LLC*, Case No. 18-cv-00889 (N.D. Ill. Nov. 15, 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); *Esparza v. Kostmayer Construction*, Case No. 15-CV-4644 (E.D. La. July 1, 2016); *Calix v. Ashton Marine LLC*, Case No. 14-CV-2430 (E.D. La. March 25, 2015).

16. Both Attorney Beaumont and myself practice law almost exclusively in the Chicago legal market. We both command an hourly rate of \$600 per hour. This rate is comparable to those charged by attorneys with equivalent experience, skill, and reputation for similar services in the Chicago legal market. *See e.g., Barnes v. Aрызta, LLC*, No. 17-CV-7358, 2019 WL 277716, at *3 (N.D. Ill. Jan. 22, 2019) (finding \$610 per hour a reasonable hourly rate for a class action attorney with 11 years of experience in 2017).

17. Multiplying our hourly rate by the hours reasonably expended in this case results in a lodestar of \$318,000 for Beaumont and \$318,000 for Costales, or a total for our firm of \$636,000.

18. Additionally, our firm has expended out-of-pocket costs and expenses in connection with the investigation, prosecution, and resolution of this litigation. In total, our firm has expended \$13,655.81 dollars in costs and expenses.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed August 10, 2022 in Chicago, Illinois.

/s Roberto Luis Costales
Roberto Luis Costales