

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MAX STORY, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HEARTLAND PAYMENT SYSTEMS,
LLC,

Defendant.

No. 3:19-cv-724-TJC

**DECLARATION OF JASON L. LICHTMAN IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein, LLP (“LCHB”), and I am counsel of record for Plaintiffs Max Story and Nancy Murrey-Settle in this matter.¹ Unless otherwise indicated, I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein. I have directed my colleagues at LCHB to attach four exhibits to this declaration:

- a. As **Exhibit A**, a true and correct copy of Plaintiffs and Defendant Heartland Payment System, LLC’s Settlement Agreement and Exhibit 1 to the Settlement Agreement (the Proposed Order Granting Preliminary Approval of Class Action Settlement).
- b. As **Exhibit B**, Plaintiffs’ proposed email notice.
- c. As **Exhibit C**, Plaintiffs’ proposed mailed notice.
- d. As **Exhibit D**, Plaintiffs’ proposed long form notice.

CLASS COUNSEL QUALIFICATIONS

2. My firm joined this litigation in August 2022, after the Court denied Heartland’s motion to dismiss the Third Amended Complaint. Dkt. 138. I have personally been responsible for overseeing my firm’s involvement in this matter since that time.

3. Since joining the litigation, my colleagues and I at LCHB have played a significant role in every aspect of the case, including: engaging in more than 1.5 years of active discovery, reviewing more than 12,600 documents and data files produced by Heartland; initiating and resolving discovery disputes; responding to 21 requests for production, 29 interrogatories, and 24 requests for admission; hosting and

¹ I am a member in good standing of the bars of Illinois, New Jersey, New York, Utah, and Washington DC.

managing document review; defending two depositions of the named Plaintiffs; taking nine fact depositions and a 30(b)(6) deposition; identifying, retaining, and producing three experts and five reports regarding Heartland's compliance with the network roles, the reliability of Heartland's survey evidence, and the source code produced by Heartland for its MySchoolBucks website; defending three expert depositions; reviewing the three expert reports produced by Heartland's three experts, and taking three expert depositions; briefing class certification, *Daubert*, and summary judgment; and presenting oral argument on all three.

4. LCHB has extensive experience investigating, prosecuting, and resolving complex class actions and are well-qualified to serve as Class Counsel. LCHB's firm résumé, including biographical information for each attorney, can be found here: https://www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf.

5. I am a partner in the law firm and Chair of the firm's Economic Injury Product Defect Practice Group. I graduated with a B.A. from Northwestern University in 2000 and a J.D. with honors from the University of Michigan law School in 2006, where I also was the recipient of the Clarence M. Darrow Scholar award. After law school, I clerked for the Honorable Kathleen M. O'Malley of the U.S. District Court for the Northern District of Ohio. I joined LCHB as an associate in 2010 and was later promoted to partner. My career at LCHB has focused on consumer class actions, including economic injury product defect cases and data breach litigation. I have been admitted pro hac vice in this matter.

6. Numerous courts have appointed me as lead or class counsel, including *Corker, et al. v. Costco Wholesale Corp., et al.*, 2:19-cv-290 (W.D. Wash.); *Moore v. Samsung Electronics America, Inc.*, 5:17-mj-2792 (W.D. Okla.); *In re Whirlpool Corp. Front-Loading Washer Products Litigation*, No. 1:08-WP-65000 (N.D. Ohio); *In re LG Front Loading Washing Machine Class Action Litigation*, No. 2:08-cv-51 (D.N.J.); *In re Sears, Roebuck & Co Front-Loading Washer Products Liability Litigation*, No. 1:06-cv-7023

(N.D. Ill.); *Dover v. British Airways, PLC (UK)*, No. 1:12-cv-5567 (E.D.N.Y.); *Chabak v. Somnia, Inc.*, No. 7:22-cv-9341 (S.D.N.Y.); and *In re American Medical Collection Agency, Inc., Customer Data Security Breach Litigation*, No. 2:19-md-2904 (D.N.J.).

7. I have been recognized by Lawdragon as a “Lawdragon 500 Leading Plaintiff Consumer Lawyers in America” for 2023, 2024, and 2025; and as a “Lawdragon 500 Global Plaintiff Lawyer” for 2024, by Super Lawyers as a “Super Lawyer for New York Metro” 2017-2024, and as a “Rising Star” 2013-2016. Law360 named me as a “Rising Star” for Consumer Protection law in 2017, and I served on the Law360 Privacy and Consumer Protection Editorial Advisory Boards. I am also an Executive Committee Member of Public Justice.

BACKGROUND OF THE PROPOSED CLASS SETTLEMENT

8. Prompted by the Court’s comments at the July 17, 2024 hearing, the parties mediated this case with Hunter Hughes. Before the mediation, the parties exchanged detailed mediation statements setting forth their views on the merits and value of the case. The parties participated in an all-day, in-person mediation with Mr. Hughes in San Diego, CA on November 8, 2024. Negotiations were always adversarial and often contentious. The parties failed to reach a settlement during the in-person mediation, and I personally left the mediation doubtful that the parties could reach a settlement in the foreseeable future.

9. Discussions between Mr. Hughes and each party continued over the ensuing week. On November 20, 2024, Mr. Hughes made a mediator’s proposal for both parties to take or leave. On November 26, 2024, both parties accepted the mediator’s proposal, which became the basis for the Settlement.

10. The Settlement provides \$18,250,000 in non-reversionary cash.

11. In my view, based on my experience litigating and settling class actions, as well as my personal familiarity with the facts of this case, the Settlement

represents excellent value for the Class considering the risks, costs, and delay of further litigation.

NOTICE PROCEDURES

12. My firm engaged in a competitive bidding process to select the Settlement Administrator. We solicited and received bids from three vendors before selecting Eisner Advisory Group LLC (“Eisner”), an experienced settlement administrator. In my opinion, the proposal submitted by Eisner Advisory Group LLC reflected the best value for the Class.

13. My colleague Sarah D. Zandi has conferred with Eisner Manager of Legal Administrator Services Elena MacFarland. Ms. Zandi confirmed for me the remaining contents of this paragraph. The email notices will be created using embedded html text format, presenting a user-friendly and easily readable layout that avoids the inclusion of tables, graphs, or any other elements that may increase the likelihood of the email landing in SPAM folders and/or being blocked by Internet Service Providers. Additionally, Eisner utilizes email best practices including “unsubscribe” links, administrator contact information and maintaining multiple IP addresses with strong sender reputations to avoid spam filters. Use of IP addresses with strong sender reputations is designed to maximize deliverability and minimize e-mails being delivered to spam and junk folders so that recipients do not inadvertently miss seeing them. Prior to sending, the email notices will be put through a hygiene and verification process to safeguard the integrity of the email campaign and optimize deliverability. This process includes deduplication, syntax validation, misspelled domain detection and correction, domain validation, and risk validation. Emails will be batched into smaller groups and sent over multiple days to decrease the likelihood of them being erroneously flagged as bulk junk email.

14. Plaintiffs considered making automatic payments to the method of payment used to pay Program Fees, but we ultimately determined that this option is impractical given that the Class Period dates back to 2013.

Executed in Salt Lake City, Utah on this 1st day of April, 2025.

/s/ Jason L. Lichtman
Jason L. Lichtman