

**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 LISA R. CONSIDINE IN SUPPORT OF PLAINTIFFS
AND CLASS COUNSEL’S PETITION FOR ATTORNEYS’ FEES AND
REIMBURSEMENT OF EXPENSES**

I, Lisa R. Considine, hereby state and certify as follows:

1. I am an attorney-at-law licensed and in good standing in the States of New Jersey and New York. I am of counsel at the law firm of Nagel Rice LLP, and *pro hac vice* counsel for Plaintiffs Nancy Murrey-Settle and Max Story and the proposed Class in this matter (the “Florida Action”). I am also counsel for plaintiffs Deborah Mazzei, Allen Call and Kristen Call in the matter captioned *Mazzei et al. v. Heartland Payment Systems, LLC*, United States District Court, District of New Jersey, Case No. 1:20-cv-14929-RMB-SAK (the “New Jersey Action”).¹ I, along with David J. DiSabato, was also a founding member of DiSabato & Considine LLC, who

¹ The New Jersey Action was stayed and administratively terminated on September 19, 2023 pending a decision on class certification in the above-captioned matter.

formerly represented plaintiffs in both the Florida and New Jersey Actions. We have never represented any of the plaintiffs in any other matter.

2. David J. DiSabato is also of counsel at the law firm of Nagel Rice LLP. He is an attorney-at-law licensed and in good standing in the State of New Jersey. Mr. DiSabato has spent his entire career litigating class actions, particularly those dealing with the financial services industry and consumer fraud, representing both defendants and plaintiffs. Both Mr. DiSabato and myself have extensive experience representing plaintiffs in class actions and consumer rights litigation in both State and Federal courts. We have experience in complex commercial litigation matters, having represented both plaintiffs and defendants over the course of our careers.

3. Nagel Rice LLP² has significant experience and success in the litigation of consumer class actions and the attorneys from that firm working on this case are well-seasoned trial and class action attorneys with many decades of experience. A sample of cases in which Nagel Rice served as lead or co-lead counsel include:

- *Gelis v BMW NA*, District of New Jersey, Civil Action No. 17-07386 (Court-appointed co-lead counsel in nationwide class action involving 575,024 vehicles containing defective timing chains in several models and model year BMWs).
- *Donnenfeld v. Petro Inc. d/b/a/ Petro Home Services*, 333 F. Supp. 3d 208 (E.D.N.Y. 2018) (Nagel Rice appointed lead counsel in nationwide class action settlement involving Petro's marketing and sale of "ceiling price plan" contracts to its home heating oil customers and providing monetary relief to each of the 92,546 Ceiling Plan customers).

² This Court preliminarily approved Lisa R. Considine, Esq. and David J. DiSabato, Esq. as Class Counsel while they were with the law firm of Siri Glimstad LLP. During the pendency of this action, Ms. Considine and Mr. DiSabato left Siri Glimstad and are now with the law firm of Nagel Rice LLP, located in Roseland, New Jersey. Counsel have updated their appearances accordingly.

- *Diaz, et al v. TD Bank, N.A.*, District of New Jersey, Civil Action No. 16-2395 (Court-appointed co-lead counsel in \$7.5 million nationwide class action settlement involving consumer fraud and other claims approved by the Honorable Jerome B. Simandle, U.S.D.J.).
- *Kuzian v. Electrolux Home Products*, 937 F.Supp. 2d 599 (D.N.J. 2013) (Co-lead counsel in case that settled on nationwide basis at class certification stage).
- *Edwards v. Horizon Blue Cross Blue Shield of New Jersey*, No. 08-CV-6160(KM), 2018 WL 10133574 (D.N.J. June 29, 2018) (Court-appointed co-lead counsel in \$160 million class action settlement involving ERISA claims and under reimbursement of surgery center fees).
- *In re Citigroup Capital Accumulation Plan*, 150 F.Supp.2d 274 (D. Mass. 2001) (Court-appointed lead counsel in class action involving deferred compensation plan of major brokerage firm for the states of Florida, Nebraska, Colorado, Louisiana, Georgia, and Michigan. Class certification granted for the states of Florida, Colorado and Louisiana. Claims in excess of \$300 million. Referenced in Farr, *The Manual for Complex Litigation*, Fourth Ed. (2004), Appendix.).
- *In re Ski Train Fire in Kaprun, Austria*, 220 F.R.D. 195 (S.D.N.Y. 2003) rev'd *Kern v. Siemens Corp.*, 393 F.3d. 120 (2d Cir. 2004) (Court-appointed co-lead counsel in multi-district certified class action involving the death of 153 individuals in a train fire in Austria. Class certification reversed on appeal. Settlement of \$16 million on behalf of the American plaintiffs.).
- *Drazin v. Horizon Blue Cross Blue Shield of NJ*, 832 F.Supp. 2d 432 (D.N.J. 2011), aff'd. 528 Fed. Appx. 211 (3d. Cir. 2013) (Court-appointed lead counsel in class action for injunctive relief and damages relating to coverage of eating disorders as biologically based mental illnesses under the New Jersey Mental Health Parity Act; resulting in settlement of \$19 million and multiple business reforms affecting 1.5 million class members).
- *Motwani v. Marina Dist. Dev. Co., LLC*, No. CIV.A. 15-2069 JLL, 2015 WL 3448171 (D.N.J. May 29, 2015) (Lead counsel in consumer class action, including New Jersey Consumer Fraud Act and New Jersey Truth in Consumer Warranty and Notice Act claims where court granted final approval of class action settlement).

- *Rosen v. Smith Barney*, 393 N.J. Super. 578 (App. Div. 2007) aff'd 195 N.J. 423 (2008) (Lead counsel in certified class action against brokerage firm involving deferred compensation plan, resulting in \$9 million judgment against the firm, reversed on appeal, and affirmed by the New Jersey Supreme Court).
- *In re African American Slave Descendants' Litig.*, 304 F.Supp.2d 1027 (N.D. Ill. 2004); *In re African American Slave Descendants' Litig.*, 307 F.Supp.2d 977 (N.D. Ill. 2004); *In re African American Slave Descendants' Litig.*, 272 F.Supp.2d 755 (N.D. Ill. 2003); and *In re African American Slave Descendants' Litig.*, 231 F.Supp.2d 1357 (J.P.M.L. 2002) (Court-appointed co-lead counsel in landmark reparations cases).

See Firm Resume, a true and correct copy of which is annexed hereto as **Exhibit A**.

4. Before joining Nagel Rice LLP, David J. DiSabato was approved as class counsel in a class action alleging violations of Illinois' Genetic Information Privacy Act ("GIPA") which resulted in a settlement of \$17,500,000 to a class of 16,000 members, in the first-of-its-kind settlement under GIPA. *See Page, et al. v. Ford Motor Company*, Case No. 2024LA000148 (Ill. Cir. Ct., Sangamon Cty.) (certifying David J. DiSabato as class counsel); *Reedy, et al., v. Everlywell, Inc.*, Case No. 1:24-cv-02713 (N.D. Ill.) (\$5 million settlement involving allegations that an online seller of test-kits wrongfully installed tracking tools on its website in violation of various privacy laws); *JM et al v. Elnahal et al*, 2:18-cv-17303-CLW (D.N.J.) (certified as class counsel in a matter in which class counsel obtained sweeping injunctive relief on behalf of the patients of Greystone Park Psychiatric Hospital).

5. Similarly, before joining Nagel Rice LLP, Lisa R. Considine was most recently appointed class counsel in the matter of *Holloway et al. v. Kohler Co. et al.*, United States District Court, Eastern District of Wisconsin, Docket No. 2:23-cv-

01242 (approved as class counsel in nationwide class action involving allegations of harm by pension plan's use of unreasonable actuarial assumptions under ERISA); *Fares et als. v. Char-Broil*, Case No. 1:24-cv-04878 (N.D. Ill. 2024) (approved as interim class counsel in nationwide matter involving fraud and warranty claims arising from product recall); *State of New Jersey. J.M. et als. v. Elnahal, M.D., M.B.A., et als.*, United States District Court, District of New Jersey, Docket No. 2:18-cv-17303-ES-CLW (D.N.J. 2018) (approved as class counsel on behalf of the patients of Greystone Park Psychiatric Hospital in a groundbreaking patients' rights action against the State of New Jersey).

6. David J. DiSabato and I have been involved in this matter since August 2020 when we, with DiSabato & Considine LLC, undertook an investigation of claims against Heartland for the purpose of filing a nationwide class action in the District Court for the District of New Jersey. We located and were retained by a qualified client in New Jersey and proceeded to research and develop claims under New Jersey law that were later incorporated into the Florida Action.

7. Because Heartland's terms of service required that all disputes against it be resolved in New Jersey, we brought the action in New Jersey. At all times, we were acting in coordination with Class Counsel Varnell & Warwick PA, who also entered appearances New Jersey.

8. We performed extensive work in developing the claims in the New Jersey Action, including work involving the New Jersey Consumer Fraud Act,

N.J.S.A. 56:8-1, *et seq.*, that was then incorporated into amended versions of the complaint in the Florida Action.

9. As dispositive motions were filed in the Florida Action in early 2021, we assisted with the assessment of those motions, as well as with the strategy, research and drafting of Plaintiffs' opposition to those motions, in concert with Varnell & Warwick.

10. As we opposed similar dispositive motions in New Jersey, we continued to contribute to the progress of the Florida Action by providing research and drafting where required by Varnell & Warwick throughout 2022.

11. In late 2022, when Class Counsel Lieff Cabraser Heimann & Bernstein, LLP ("LCHB") entered an appearance on behalf of Plaintiffs with our firm and Varnell & Warwick, we continued to work through the New Jersey Action on overlapping discovery issues in an effort to obtain the full range of discovery needed, where that discovery was limited or denied in the Florida Action.

12. Throughout the rest of 2022 and through 2023, we worked closely with LCHB to maximize the discovery we could obtain in New Jersey for the benefit of the Florida Action.

13. We invested considerable effort and time in advancing the Florida Action through our efforts in New Jersey, and, in doing so, contributed significantly to the ultimate resolution of the Florida Action. We respectfully submit that the skills, knowledge, and resources required and demonstrated in this matter support the reasonableness of the fees requested. The time incurred was reasonably spent.

14. As set forth in the accompanying Petition, our hourly rates are reasonable and the hours incurred were necessary and reasonable. Specifically, we have collectively dedicated 366.2 hours to prosecuting this litigation. I have devoted 157.5 hours to this matter, and David J. DiSabato has devoted 208.7 hours to this matter.

15. Our hourly rates are \$1,145.00 / hour. Here, the hourly rates sought for David J. DiSabato, Esq. and for Lisa R. Considine, Esq. are based on our 2025 billing rates for complex class litigation. These rates are comparable to those of other attorneys in similar actions and have been approved in similar cases. *See Page, et al. v. Ford Motor Company*, Case No. 2024LA000148 (Ill. Cir. Ct., Sangamon Cty.); *Holloway et al. v. Kohler Co. et al.*, United States District Court, Eastern District of Wisconsin, Docket No. 2:23-cv-01242.

16. Our lodestar in this matter is \$419,299.00.

17. We have also incurred \$1,520.00 in reasonable and necessary out-of-pocket expenses incurred in connection with this litigation. These expenses are for filing fees and e-discovery hosting. We have not included any expenses that were not incurred for the benefit of the class.

18. DiSabato & Considine LLC records their time contemporaneously and utilized Time59 for timekeeping and invoicing.

19. DiSabato & Considine has reviewed this bill and we respectfully submit that we have exercised reasonable billing judgment in finalizing same. Upon request, I will submit the contemporaneous billing records from this Action *in camera*.

20. We faced significant risk of non-recovery in undertaking this representation. Our representation in this matter was on a contingent basis, which exposed us to substantial risk of non-payment. We received no compensation in this matter during the entirety of this litigation and have put off other matters and declined cases we could otherwise have pursued but for the investment of substantial time and effort devoted towards this case.

21. We respectfully submit that the attorneys' fees and expenses incurred by DiSabato & Considine LLC were reasonable and necessary for the representation of the clients in this matter and we respectfully request entry of an award of attorneys' fees as set forth in the accompanying Petition.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: July 24, 2025

/s/ Lisa R. Considine
Lisa R. Considine, Esq.

EXHIBIT A

NAGEL RICE, LLP

Nagel Rice, LLP, founded in 1983, is widely recognized as one of the premier litigation firms in the New York metropolitan area having handled complex actions in federal and state courts throughout the county and garnering over \$1 billion in settlement and verdicts. The firm has the distinction of having over 200 settlements and verdicts in excess of one million dollars. The firm's experience in class action litigation has been extensive and varied.

The firm has served as lead, co-counsel or in Executive Committee positions in numerous State and Federal class actions and MDL's, including:

NATIONAL CLASS ACTIONS

Gelis v BMW NA, District of New Jersey, Civil Action No.: 17-07386, Court appointed co-lead counsel in nationwide class action involving 575,024 vehicles containing defective timing chains in several models and model year BMWs. Settlement valued at between \$27 million and \$67 granted final approval on February 16, 2021, legal fee award of \$3.7 million currently on appeal by Defendant.

Donnenfeld v. Petro Inc. d/b/a Petro Home Services, Eastern District of New York, Civil Action No. 17-02310. Court appointed lead counsel in \$3 million nationwide class action settlement involving Petro's marketing and sale of "ceiling price plan" contracts to its home heating oil customers and providing monetary relief to each of the 92,546 Ceiling Plan customers of Petro during the Class Period. Approved by Honorable Steven I. Locke, U.S.M.J. on March 26, 2020.

Diaz, et al v. TD Bank, N.A., District of New Jersey, Civil Action No.: 16-2395. Court appointed co-lead counsel in \$7.5 million nationwide class action settlement involving consumer fraud and other claims approved by the Honorable Jerome B. Simandle, U.S.D.J. on January 12, 2108.

Kuzian, et al. v. Electrolux Home Products, Inc., District of New Jersey, Civil Action No.: 12-03341. Court appointed co-lead counsel in a nationwide consumer class action involving consumer fraud claims regarding defective ice-makers impacting over 100,000 class members, resulting in a \$20 million nationwide settlement approved by the Honorable Noel L. Hillman, U.S.D.J. on February 10, 2016. Published opinion substantially defines the causes of action, Kuzian v. Electrolux Home Products, 937 F.Supp. 2d 599 (D.N.J. 2013).

In re: Discover Card Payment Protection Plan Marketing and Sales Practices Litigation, MDL No. 2217, United States District Court for the Northern District of Illinois. Court-appointed co-lead class counsel in \$10.5 million nationwide class action settlement alleging improper marketing and administration of Defendants'

Payment Protection Plan, Identity Theft Protection, Wallet Protection and Credit Score Tracker products.

Esslinger, et al. v. HSBC Bank Nevada, N.A. et als., 10-03213, United States District Court for the Eastern District of Pennsylvania. Court-appointed co-lead class counsel in \$23.5 million nationwide class action settlement involving improper marketing and practices related to Defendants' debt suspension/debt cancellation products.

O'Hara, et. al v. Medieval Times, 10-751, United States District Court of the District of New Jersey. Court-appointed co-lead class counsel in nationwide class action regarding violations of the Fair and Accurate Credit Transaction Act, resulting in multi-million dollar settlement, and other injunctive relief.

Torres-Hernandez, et al. v. STI Prepaid, et.al, 08-1089, United States District Court, District of New Jersey. Court appointed co-lead counsel in nationwide consumer class action involving sale of prepaid calling cards; \$8.2 million dollar settlement granted final approval.

In re: Bank of America Credit Protection Marketing & Sales Practices Litigation, MDL No. 2269, United States District Court of the Northern District of California. Selected to serve on the Plaintiffs' Executive Committee in this Multi-District litigation involving Bank of America's marketing and sales practices relating to its debt suspension/debt cancellation products.

In re: South African Apartheid Litigation, MDL No. 1499, United States District Court for the Southern District of New York. Co-lead counsel in a putative class action under the ATS against corporations who violated *jus cogen* standards of international human rights law.

In re African American Slave Descendants' Litig., 304 F.Supp.2d 1027 (N.D. Ill. 2004); *In re African American Slave Descendants' Litig.*, 307 F.Supp.2d 977 (N.D. Ill. 2004); *In re African American Slave Descendants' Litig.*, 272 F.Supp.2d 755 (N.D. Ill. 2003); and *In re African American Slave Descendants' Litig.*, 231 F.Supp.2d 1357 (J.P.M.L. 2002). Court appointed co-lead counsel in landmark reparation cases.

Smith, et al. v. Ticketmaster, 09-02177, United States District Court, Central District of California. Class action involving consumers who were wrongfully transferred to secondary market web-site that was owned by company recently acquired by Ticketmaster where they could only purchase tickets significantly higher than their ticket price. Bruce Nagel was a member of Executive Committee.

In re Citigroup Capital Accumulation Plan, 150 F.Supp.2d 274 (D.Mass. 2001). Court-Appointed Lead Counsel in class action involving deferred compensation plan of major brokerage firm for the states of Florida, Nebraska, Colorado,

Louisiana, Georgia, and Michigan. Class certification granted for the states of Florida, Colorado and Louisiana. Claims in excess of \$300 million. Referenced in Farr, *The Manuel for Complex Litigation*, Fourth Ed. (2004), Appendix.

In re Ski Train Fire in Kaprun, Austria, 220 F.R.D. 195 (S.D.N.Y. 2003) *rev'd Kern v. Siemens Corp.*, 393 F.3d. 120 (2d Cir. 2004). Court appointed co-lead counsel in multi-district certified class action involving the death of 153 individuals in a train fire in Austria. Class certification reversed on appeal. Settlement of \$16 million on behalf of the American plaintiffs.

NEW JERSEY CLASS ACTIONS

Edwards, et al, v Horizon Blue Cross Blue Shield of New Jersey, District of New Jersey, Civil Action No. 08-6160. After 12 years of litigation, court appointed co-lead counsel in \$160 million class action settlement involving ERISA claims and under reimbursement of surgery center fees. Approved by the Honorable Kevin McNulty, U.S.D.J. on June, 29, 2018.

Drazin v. Horizon Blue Cross-Blue Shield of New Jersey, 06-06219, United States District Court, District of New Jersey. Lead Counsel in class action for injunctive relief and damages relating to coverage of eating disorders as biologically based mental illnesses under the New Jersey Mental Health Parity Act; resulting in settlement of \$19 million and multiple business reforms affecting 1.5 million class members; final approval granted by Hon. Faith Hochberg; Court finds Nagel Rice to be “fine lawyers,” and “honorable counsel” who “settled on terms that provided class members with very valuable relief.” *Drazin v. Horizon Blue Cross Blue Shield of NJ*, 832 F.Supp. 2d 432 (D.N.J. 2011), *aff'd*. 528 Fed. Appx. 211 (3d. Cir. 2013)

Finkelman v. Nat'l Football League, 877 F.3d 504 (3d Cir. 2017) and *Finkelman v. Nat'l Football League* 810 F.3d 187 (3d Cir. 2016), Lead counsel in consumer class action brought on behalf of all attendees at the Super Bowl who bought tickets in the secondary market at prices above the face value of the tickets. Action asserts statutory violations of the New Jersey Consumer Fraud Act due to withholding more than 5% of tickets from sale to the public. Third Circuit reversed trial court and found Article III standing and certified a question to the New Jersey Supreme Court. After the New Jersey Supreme Court's opinion in Finkelman v. Nat'l Football League, 080501, 2019 WL 149446 (N.J. Jan. 9, 2019) the Third Circuit dismissed.

DeVito v. Aetna, 07-418 (FSH) United States District Court, District of New Jersey. Lead counsel in class action for injunctive relief and damages relating to coverage of eating disorders as biologically based mental illnesses under the New Jersey Mental Health Parity Act. Settlement involving reimbursement of past denials and multiple business reforms affecting 250,000 class members. *DeVito v. Aetna*, 536 F.Supp.3d 523 (D.N.J. 2008).

Ravi Motwani, et al. v. Marina District Development Company, LLC, et al., District of New Jersey, Civil Action No.: 15-2069. Lead counsel in consumer class action, including New Jersey Consumer Fraud Act and New Jersey Truth in Consumer Warranty and Notice Act claims on behalf of class members. On December 22, 2016, Honorable John Michael Vazquez, U.S.D.J. granted final approval of a settlement class predicated upon Defendant Borgata's use of deceptive and misleading parking vouchers. The sum of \$405,650.00 in benefits automatically distributed to Class Members without the need to file a claim.

Englewood Hospital and Medical Center for v. Esurance Holdings, Inc. d/b/a Esurance (NJ), District of New Jersey, Civil Action No. 10-05585. Lead counsel in consumer class action where court approved class action settlement provided for monetary relief and the termination of the offending practices.

Rosen v. Smith Barney, 393 N.J. Super. 578 (App. Div. 2007) *aff'd* 195 N.J. 423 (2008). Lead counsel in certified class action against brokerage firm involving deferred compensation plan, resulting in \$9 million judgment against the firm, reversed on appeal, and affirmed by the New Jersey Supreme Court.

Nagel Rice also has extensive experience in complex litigation. Among other cases, the firm represented the State of New Jersey in establishing liability for natural resource damages against Exxon Mobil in connection with pollution at two refinery sites, *N.J.D.E.P. v. Exxon Mobil*, 393, N.J. Super, 388 (App. Div. 2007), and is handling a multi-billion dollar RICO action against major hedge funds in connection with a short selling scheme. *Fairfax Financial Holdings Limited v. S.A.C. Capital Management, LLC, et al.*, Docket No.: MRS-L-2032-06, Superior Court, State of New Jersey.