

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RAVI MOTWANI, Individually and  
on behalf of a Class of  
Similarly Situated Individuals,  
  
Plaintiffs,

v.

MARINA DISTRICT DEVELOPMENT  
COMPANY, LLC d/b/a BORGATA  
HOTEL CASINO AND SPA,

Defendant.

Civil Action No.  
2:15-cv-02069-JMV-MF

*Civil Action*

PLAINTIFF'S MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS AND  
CLASS REPRESENTATIVE SERVICE  
AWARD

PLEASE TAKE NOTICE that pursuant to this Court's July 28, 2016 Preliminary Approval Order, and the Court's subsequent date change, on November 30, 2016 at 10:00 a.m., or as soon thereafter as the Court shall direct, Representative Plaintiff, Ravi Motwani will move pursuant to Federal Rule of Civil Procedure 23(h) and the terms of the Settlement Agreement before the Honorable John Michael Vazquez, U.S.D.J., for an order awarding attorneys' fees and reimbursement of expenses to Plaintiffs' counsel in an agreed upon amount not to exceed \$175,000 and Class Representative Service Fees Awards in the amount of \$2,500 for Plaintiff Motwani.

In support plaintiffs will rely upon Plaintiffs' Brief in Support of Motion for Agreed-Upon Attorneys' Fees and Expenses and Class Representative Service Fee Awards, and the

Certification of Bruce H. Nagel.

Respectfully submitted this 22<sup>nd</sup> day of November, 2016.

NAGEL RICE, LLP

By: /s/ Bruce H. Nagel  
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103 Eisenhower Parkway  
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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Bruce H. Nagel  
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Dated: November 22, 2016

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RAVI MOTWANI, Individually and  
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v.

MARINA DISTRICT DEVELOPMENT  
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HOTEL CASINO AND SPA,

Defendant.

Civil Action No.  
2:15-cv-02069-JLL-JAD

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PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR  
AWARD OF ATTORNEY'S FEES AND COSTS AND CLASS REPRESENTATIVE  
SERVICE AWARD

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PREFATORY STATEMENT

The brief, and the Certification of Bruce H. Nagel, are submitted in support of Plaintiffs' Motion for an award of attorney's fees and costs and Class Representative Service Awards. This case has been litigated for almost two years on a complete contingency fee basis. After participating in motion practice, engaging in discovery, and engaging in mediation with the well-respected mediator, the Hon. Joel Rosen (ret.), a settlement<sup>1</sup> was successfully negotiated which provides substantial benefits for a class of more than 8,000 class members.

Plaintiffs seek an award of counsel fees and costs in the amount of \$175,000.00 in accordance with ¶50 of the Settlement Agreement, and a Class Representative Services Awards in the amount of \$2,500.00 pursuant to ¶52 of the Settlement Agreement. Significantly, neither the legal fees award nor Class Representative Service Awards reduces or impacts the payments available to Class Members, as these payments will be paid by Defendant, Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa ("Borgata") separate from the funds available to the class. (See ¶ 49) The parties did not negotiate

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<sup>1</sup> The Amended Settlement Agreement approved by the Court appears on the Docket as D.E. 41-1 and is attached to the proposed Final Approval Order and Judgment at Exhibit A.



or reach agreement with respect to the legal fees and Class Representative Service Awards until they had agreed to all other material terms of the settlement. (Nagel Cert. ¶11.)

Consistent with the Settlement Agreement, Borgata does not oppose the requests made by Plaintiffs in this motion and has agreed to pay them if the Court approves this application. (See ¶50) The amount of the proposed fee award and Class Representative Service Awards was included in the Notice of Pendency of Class Action Proposed Settlement (Exhibit 2 to Settlement Agreement) which was disseminated to Class Members as detailed in the Declaration of Kristen Fulmer submitted in connection with the companion final approval motion. This notice is also included on the Nagel Rice website. Further, the instant motion papers will also be posted on the Nagel Rice website upon filing for the Class Members' perusal. (See Matloff Cert. filed in companion motion). Finally Borgata's counsel provided the requisite notice to all state Attorneys General and the United States Attorney General as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (See Dec. of Michie dated 8/9/16, D.E. 46) The cut-off date for objections was February 8, 2016 and no Class Members have objected to the proposed legal fee award or Class Representative Service Awards, or any other aspect of the settlement.

Given the amount of work performed by Class Counsel, and the significant, favorable results obtained for the class, we submit that the fee award requested is consistent with the fee awards in this District. Similarly, the Class Representative Service Awards are within the range of awards approved in this Court and recognize the time and effort of the Class Representatives which was crucial to the successful resolution of this case. This settlement and the relief to the class is fair, reasonable and adequate. Hence, Class Counsel respectfully requests that the negotiated award for attorneys' fees and costs and Class Representative Service Awards be granted in full at the final approval hearing presently scheduled for November 30, 2016. (Nagel Cert.)

#### STATEMENT OF FACTS<sup>2</sup>

##### A. PROCEDURAL HISTORY

The Complaint in this matter was initially filed on January 12, 2015 in Superior Court of New Jersey, Law Division, Bergen County and was amended on January 21, 2015. Borgata then removed the Action to this Court.

The underlying litigation concerns the issuance of "free" parking vouchers by Borgata to certain favored customers [known

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<sup>2</sup> A full recitation of the Statement of Facts is included in the Brief in Support of Final Approval filed today. Plaintiff's Counsel merely highlights the salient facts and benefits

as "Borgata Rewards Members"] as part of a customer loyalty program. These vouchers are supposed to enable Borgata Rewards Members to self-park for free when they visit the casino. Plaintiff and the class contend that these parking vouchers, which contain language indicating "Unlimited Free Parking," are misleading. Contrary to the language, the vouchers could not be used more than once on the same day. While the vouchers also contained language indicating "Offer Valid Once Per Day," that language was in such fine print that it was too small to be read by Class Members. Consequently, certain Class Members, including Mr. Motwani, were improperly required to pay a \$5 fee to exit the Borgata parking lot when they attempted to use the voucher for a second time on the same day. The Complaint asserted five separate causes of action: (1) the NJCFA, (2) the TCCWNA, (3) common law fraud, (4) negligent misrepresentation, and (5) promissory estoppel. The relief sought included compensatory, consequential and punitive damages, as well as civil penalties.

The Borgata filed a motion to dismiss the action pursuant to Federal Rule 12(b)(6) on April 20, 2015. Judge Linares denied the Defendant's motion in its entirety on May 29, 2015 finding that Plaintiffs had adequately pled all of the elements

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provided to the Class which are especially pertinent to the instant fee application to avoid repetition.

of each claim asserted. See Motwani v. Marina Dist. Development Co., 2015 WL 3448171 at \*3 (D.N.J. May 29, 2015).

The Borgata filed an Answer on June 11, 2015. On March 18, 2016 Plaintiff filed a Second Amended Complaint, which modified the class definition and deleted claims based on allegations about vouchers other than the Original Parking Vouchers<sup>3</sup>.

B. DISCOVERY CONDUCTED BY THE PARTIES

The plaintiffs conducted a preliminary fact investigation before filing this lawsuit. Once the motion to dismiss was denied, the parties exchanged Interrogatories and Requests for Production, and Borgata also propounded Requests for Admissions. Plaintiffs<sup>4</sup> responded to all of the Borgata's discovery requests. Prior to the Borgata serving their formal discovery responses, and at the suggestion of the Court, the parties agreed to enter into the mediation process. Borgata provided certain information requested by the Plaintiff prior to the mediation.

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<sup>3</sup> The plaintiffs' claims were originally based on two different forms of vouchers, one that stated "Unlimited Free Parking" on its face (the Original Parking Voucher) and another that was in fact a composite of two or more coupons, separated by a perforation, each one stating "Free Parking One Time Per Month." Based upon informal discovery and multiple conversations with counsel for the defendant concerning the policies and procedures employed at the Casino, we were persuaded that the allegations concerning the second voucher (or collection of vouchers) were not sustainable and that claim was dismissed.

<sup>4</sup> At that point in the litigation the second Plaintiff, Barry Cassell, was part of the case. Cassell had the second voucher type and an individual settlement was reached with the Borgata

C. SETTLEMENT NEGOTIATIONS

The parties agreed to mediation with former Magistrate Judge Joel B. Rosen (ret) which occurred at the offices of Montgomery McCracken on November 19, 2015. During the course of this mediation, which took the entire day, counsel engaged in arms-length negotiations with the assistance of Judge Rosen. With Judge Rosen's help, the parties ultimately reached an agreement in principle to settle the claims of the Settlement Class. Once an agreement in principle regarding the merits of the litigation was reached, the Parties then negotiated an agreement in principle regarding attorneys' fees and costs, as well as the Service Award for the Class Representative. The Parties notified the Court within days that they had reached agreement on material terms of the Settlement, subject to approval of final documents, and that they were in the process of drafting documents to be submitted for preliminary approval. It took several months, many discussions and numerous drafts for the documents to be finalized.

On May 16, 2016, this Court entered an Order (D.E. 38) granting the Plaintiff's motion for preliminary approval of a class action settlement between the Parties ("the Initial

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as to his claim. This Class Action Settlement does not release or compromise any claims regarding the second form of voucher.

Settlement"), certifying a class for settlement purposes and directing the issuance of notice to members of the class.

Subsequent to the entry of that Order, but before class notice was issued, the Parties discovered that a small subset of the class members (less than one per cent) would not benefit from the Initial Settlement because they were not permitted to enter upon the premises of the Borgata, either because they were "excluded" (voluntarily or by Order of the Division of Gaming Enforcement) or because they had been permanently evicted from the Borgata in the past. See generally N.J.S.A. 5:12-71 (discussing exclusion and eviction under New Jersey's Casino Control Act).

Upon this discovery, the Parties contacted the Court and advised the Court of the relevant facts. On June 10, 2016, the Court entered an Order staying the issuance of class notice. Thereafter, the Parties began negotiations in an effort to reach agreement on an alternative benefit to be offered to those class members who would not benefit from the Initial Settlement.

The Parties reached such an agreement, which is reflected in the Amended Settlement Agreement fully executed and submitted to the Court on July 21, 2016. (D.E. 41-1)

D. THE PERTINENT SETTLEMENT TERMS

This Court granted Preliminary Approval of the Amended Settlement on July 28, 2016 (D.E. 44), and in accordance with

the Amended Settlement Agreement, preliminarily certified the following agreed-upon Settlement Class:

All individuals who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating "Unlimited Free Parking," (b) sought to utilize such vouchers at any time, and (c) do not timely and properly request exclusion from the Settlement Class (as provided in paragraph 57 of the Settlement Agreement).

Excluded from the Settlement Class are officers, directors or employees of the Borgata and their immediate family members, and any judge presiding over this action and their immediate family members.

For purposes of settlement distribution, the Court further certifies the following two subclasses pursuant to Fed. R. Civ. P. 23(c)(5):

Subclass A:

All members of the Class who (a) have not been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) have not been permanently evicted from the Borgata.

Subclass B:

(a) All members of the Class who have been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) all members of the Class who have been permanently evicted from the Borgata.

The Amended Class Action Settlement Agreement provides injunctive relief, in the form of modifying the language of the parking vouchers distributed by Borgata to Borgata Rewards Members going forward to address any possible ambiguity about their terms of use. (¶46) Additionally, the Revised Class Action Settlement Agreement provides other tangible relief which is

useful to the class. Under the Settlement, within forty-five (45) days of the final approval by the Court, the Borgata shall issue to each Settling Class Member who is a member of Subclass A:

(a) \$20 in Slot Dollars® which must be used within 12 months of the date of issue<sup>5</sup>; and

(b) six (6) New Parking Vouchers which must be used within 12 months of the date of issue.<sup>6</sup> (§43)

Within forty-five (45) days of the final approval by the Court, the Borgata shall issue to each Settling Class Member who is a member of Subclass B:

a \$20 voucher that can be exchanged for one of a variety of items (hats, t-shirts, golf balls, phone cases, keychains, mugs, shot glasses, drink cozies) on a special website maintained by the Borgata. These vouchers must be used within twelve (12) months of the date of issue. (§44)

No claim form or other action is required of the Settling Class Members to receive these benefits. (§45) They will be sent the Slot Dollars® and New Parking Vouchers, and \$20 voucher if they are in Subclass B, automatically unless they elect to opt out of

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<sup>5</sup> "Slot Dollars®" means Borgata vouchers in dollar amounts that can be used instead of cash to play at a slot machine in the Casino. Once the User activates the Slot Dollars®, the Slot Dollars® must be used within the same gaming day. A gaming day is between 6 a.m. on one day and 5:59 a.m. the following day. Slot Dollars® are non-transferable and cannot be converted into cash. (§28)

<sup>6</sup> Each New Parking Voucher shall entitle the Settling Class Member to park one time for free at the Casino. New Parking Vouchers are valid on any day of the year, including weekends



the Settlement and exclude themselves from the Class<sup>7</sup>. As discussed below, only 14 individuals have excluded themselves from the class. (See Matloff Cert. filed in companion motion) Thus, if the Class Members avail themselves of the benefits they will automatically receive, which is likely since the Class Members are already Borgata Rewards Members who frequently visit the casino, the financial benefit to the class will exceed \$405,000.

The Borgata will also pay the notice and administration costs separately from monies paid to Class Members. (¶36 and ¶48)

As part of the Settlement, the parties have also agreed that, subject to the Court's final approval, the named Plaintiff, Ravi Motwani, is entitled to seek a service award in

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and holidays. New Parking Vouchers are not transferable and cannot be redeemed for cash. (¶14)

<sup>7</sup> This is not a coupon settlement, which the court might otherwise review with greater scrutiny under CAFA, because (a) it does not require the plaintiffs to buy anything to get the benefit, and (b) the Borgata is replacing like for like, by providing additional and improved vouchers in place of ambiguous vouchers. See, e.g., Chakejian v. Equifax Information Services, LLC, 275 F.R.D. 201, 206, 215 n.17 (E.D. Pa. 2011) (ceasing practice that gave rise to the suit and class members' receipt of eighteen months of credit monitoring service free of charge was not coupon settlement subject to CAFA because "class members do not have to purchase a product in order to obtain a benefit"); In re Wireless Telephone Federal Cost Recovery Fees Litigation, 2004 WL 3671053 (W.D. Mo. 2004) (free cell phone minutes were "not a 'coupon' settlement. Class members will not be required to purchase any additional services or items to receive a benefit or cash payment").

recognition of the amount of time and effort he expended in acting as Class Representative in the amount of \$2,500.00. (¶52)

Finally, the parties have agreed that, subject to the Court's final approval, Class Counsel shall be entitled to seek an award of attorneys' fees and costs of up to \$175,000. (¶50) The payment of service awards and attorneys' fees and costs is also separate from the payment to Class Members. (¶49)

These settlement benefits serve as the consideration for dismissal of this action against the Borgata, and the Release by Plaintiffs and Settling Class Members as set forth in ¶39 of the Settlement Agreement.

#### E. OBJECTIONS AND EXCLUSIONS

Pursuant to the Amended Settlement Agreement and the Preliminary Approval Order, the deadline for Settlement Class Members to object or opt out of the settlement was November 8, 2016. No objections to the settlement were filed with the Court or received by counsel. A total of 14 opt outs were received to date and as the deadline is long past no additional opt outs are anticipated. (See Matloff Cert. and Ex. B filed in companion motion)

LEGAL ARGUMENT

POINT I

THE COURT SHOULD GRANT FINAL APPROVAL OF THE ATTORNEYS  
FEES PROVISION IN THE SETTLEMENT AGREEMENT

A. Rule 23(h) Authorizes Agreements on Attorneys' Fees in  
Settlements

Rule 23(h) of the Federal Rules of Civil Procedure explicitly provides, with respect to class action settlements, that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The awarding of fees is within the court's discretion so long as the proper legal standard is employed, proper procedures are followed and the court makes findings of fact that are not clearly erroneous. In re Cendant Corp. PRIDES Litig., 243 F.3d 722, 727 (3d Cir. 2001) cert. den. sub nom. 534 U.S. 889 (2001); McCoy v. Health Net, Inc., 569 F. Supp.2d 448, 475 (D.N.J. 2008).

In accordance with Rule 23(h) and the Parties' Settlement Agreement, Plaintiffs apply for a total fee and expense award of \$175,000.00. Class Counsel has submitted, as part of this application, the print out of the attorneys' fees for Class Counsel with their billing and disbursement records. Based upon the records received, Plaintiffs' counsel have spent a total of 285.2 hours working on the case and amassed a lodestar of

\$194,177.50, with litigation expenses of \$4,015.62, for a total of \$198,193.12. (Nagel Cert. ¶26-30 and Exhibit A thereto)

We submit that an award in the amount of \$175,000 is reasonable given the work performed and the results achieved. Class Counsel worked strenuously and efficiently to achieve this settlement by conducting a thorough investigation, engaging in discovery, and participating in adversarial litigation in a complex case involving unique issues of fact and law. Moreover, the fees and costs (as well as the Class Representative Service Awards) will be paid separately from, and in addition to, the other benefits which are available to the Settlement Class. Hence, these requests should be approved.

**B. The Requested Fee Award is Reasonable**

The two primary methods for assessing attorneys' fees in class action settlements are the percentage of recovery method and the lodestar method. In re Cendant PRIDES Litigation, supra 243 F.3d at 732.

To determine the attorney's lodestar, the court multiplies "the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000). The lodestar method is "designed to reward counsel for undertaking socially beneficial

litigation in cases where the expected relief has a small enough monetary value that a percentage of recovery method would provide inadequate compensation." It may also be applied in cases where the nature of the recovery does not allow the determination of the settlement's value necessary for application of the percentage-of-recovery method. In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 333 (3d Cir. 1998).

The percentage of recovery method, which is favored in common fund cases, is calculated by applying "a certain percentage to the settlement fund." Milliron v. T-Mobile United States, 423 Fed. Appx. 131, 135 (3d Cir. 2011).

Which method is used rests within the district court's sound discretion. Charles v. Goodyear Tire & Rubber Co., 976 F. Supp. 321, 324 (D.N.J. 1997). As noted by this Court in Doherty v. Hertz Corp., 2014 WL 2916494 (D.N.J. June 25, 2014), "whichever method is chosen, 'we have noted previously that "it is sensible for a court to use a second method of fee approval to cross check" its initial fee calculation.'" Citing In re Baby Prods. Antitrust Litig., 708 F.3d 163, 176-77 (3d Cir. 2013). See In re Philips/Magnavox Television Litig., No. CIV.A. 09-3072 CCC, 2012 WL 1677244, at \*16 (D.N.J. May 14, 2012) ("Although this case does not involve a fee shifting statute, the combination of cash awards and vouchers 'evades the precise

evaluation needed for the percentage of recovery method.' The Court will perform a percentage-of-recovery analysis to crosscheck the lodestar analysis and ensure the reasonableness of the fee.")

We submit that in this case it is appropriate to use the lodestar method and apply the common fund method as a cross check.

C. Application of the Lodestar Method

The first step to calculate the lodestar is to determine the appropriate hourly rate, based on the attorneys "usual billing rate" and can consider the "prevailing market rates" in the relevant community. In re Schering-Plough/Merck Merger Litigation, 2010 WL 1257722 at \*18 (D.N.J. 2010). The attorney rates in this litigation have been "consistent with the market rates for complex class actions." Loughner v. Univ. of Pittsburg, 260 F.3d 173, 180 (3d. Cir. 2001). When attorneys' fees are awarded, the rate at the time of the fee petition should be used. Lanni v. New Jersey, 259 F.3d. 146, 149 (3d. Cir. 2001).

The second step is to determine whether the billable time was reasonably expended. See Schering-Plough, supra. "Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary to secure the final result obtained from the litigation.'" Public Interest Research

Group of N.J., Inc. v. Windall, 51 F.3d 1179, 1188 (3d Cir. 1985). The lodestar amount will be deemed "presumptively reasonable" where it arises from a reasonable hourly rate and a reasonable number of hours. See Planned Parenthood of Central New Jersey v. Attorney General of the State of New Jersey, 297 F.3d 253, 265 n.5 (3d Cir. 2002).

The fact that the fees were agreed upon after lengthy negotiations under the auspices of the Mediator further supports approval of Plaintiffs' fee request. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) ("Ideally, of course, litigants will settle the amount of a fee.")

The time records and disbursement information for Nagel Rice, LLP's work in this case are submitted as attachments to the Nagel Certification. All counsel billed at their current billing rates charged to their clients, which was consistent with hourly rates routinely charged in complex class action litigation. A review of these time records shows that partner rates were between \$525 and \$800 per hour depending on expertise and level of experience and associate rates were \$300 per hour. (See Nagel Cert. ¶¶26-30 and Exhibits A)

Similar rates have been approved by other Courts in this District in cases where Nagel Rice LLP has been appointed as Class Counsel. See McDonough v. Horizon Healthcare Servs., Inc., No. CIV.A. 09-571 SRC, 2014 WL 3396097, at \*11 (D.N.J. July 9,

2014) aff'd sub nom. McDonough v. Horizon Blue Cross Blue Shield of New Jersey, No. 14-3558, 2015 WL 5573821 (3d Cir. Sept. 23, 2015) ("The Court finds that the requested fee award is warranted. Plaintiffs have demonstrated a lodestar of \$3.4 million based on billing rates consistent with the market rate for complex class actions." In that case partner rates were between \$525 and \$750); See also In re Electrolux Home Products ice Maker Cases, Master Docket No. 1:12-cv-03341-NLH-AMD (Court awards similar billing rate in class action settlement involving defective ice-makers).

Once the lodestar amount is calculated, the court "may increase or decrease that amount by applying a lodestar multiplier," which "attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorney's work." In re Diet Drugs Prod. Liab. Litig., 582 F3d 524, 540 (3d Cir. 2009). The lodestar multiplier is obtained by dividing the proposed fee award by the lodestar amount. In re Brokerage Antitrust Litig., 579 F.3d 241, 280 (3d Cir. 2009).

Although Courts routinely find in complex class actions that a multiplier between one and four of counsel's lodestar is fair and reasonable, Doherty v. Hertz Corp., No. CIV. 10-359 NLH/KMW, 2014 WL 2916494, at \*7 (D.N.J. June 25, 2014), in this case, we are not asking for a multiplier since Plaintiff's



counsel's actual lodestar already exceeds the maximum amount of attorney's fees that the parties negotiated.<sup>8</sup>

Common Fund Cross-Check

As a cross-check, a percentage of common fund should also be considered.<sup>9</sup> In re Cendant, 243 F.3d at 736-742; In re Rite Aid Corp. Sec. Litig, 396 F.3d 294, 306-07 (3d. Cir. 2005) (Percentage of common fund is proper approach to awarding counsel fees); In re Prudential, 148 F.3d 283, 333 (3d. Cir. 1998).

In undertaking a common fund analysis, the court must first value the settlement and then decide what percentage of the settlement should be awarded as attorneys' fees. See, GM Pickup Truck, 55 F.3d 768, 822 (3d Cir. 1994); accord Varacallo, 226 F.R.D. at 249. In this case the total value of the settlement is estimated at over \$400,000. This is because there are approximately 8,000 Class Members who will receive \$20 in slot dollars, \$30 worth of free parking vouchers, or for the sub-class a \$20 voucher redeemable for merchandise. If the costs of notice and claims administration and the attorneys' fees and

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<sup>8</sup> Moreover the time records provided do not include time spent drafting this motion, finalizing the companion motion for final approval or appearances in Court on November 30, 2016.

<sup>9</sup> In Cendant, 243 F.3d at 734, the Third Circuit approved the use of the common fund method as appropriate despite the fact that it was not a traditional common fund case, since the unclaimed portion of the fund would return to Cendant.

Class Representative Service Awards are added to this amount, the total benefits to the class are \$580,000. Consequently, the total requested fee award is approximately 30% of the common fund. (Nagel Cert. ¶¶33-34)

D. Application of Gunter Factors Confirms That Fee Request is Reasonable

The Third Circuit in Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 (3d. Cir. 2000), set forth several factors to be considered by the court when setting a fee award in a common fund case:

(1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

In Prudential, supra, 148 F.3d at 336-40, the court detailed three additional facts which may be relevant in certain cases: "(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as governmental agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private

contingent fee agreement at the time counsel was retained; and  
(3) any innovative terms of settlement."

Each of these factors weigh heavily in favor of granting the fees and disbursements requested:

1. Size of Fund and Persons Benefited

This settlement provides significant monetary relief to more than 8,000 Class Members. The \$20 in slot dollars, \$30 worth of parking vouchers and for some \$20 in merchandise, without the need to file any claims forms, is valuable to the class members who are Borgata Rewards Members and frequently visit the casino. In short, this settlement has a value to the class well in excess of \$400,000.

2. Presence or Absence of Substantial Objections

The deadline by which Class Members may object was November 8, 2016 and not one Objection was received despite effective notice being provided. (See Michie Cert filed in connection with the motion for final approval). The lack of objections is a significant factor and supports the reasonableness of the fee request. McCoy, supra, 569 F.Supp. 2d. at 476. Gunter, 223 F.3d at 195 n.1.

3. Skill and Efficiency of Class Counsel

As pointed out in McCoy, the quality of class counsel's representation is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of

the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." McCoy, supra, 569 F.Supp. 2d. at 476, quoting Mehling v. New York Life Ins. Co., 248 F.R.D. 455, 465 (E.D. Pa. 2008); In re Safety Components, 166 F.Supp. 2d. 76, 96 (D.N.J. 2001) (Lechner, J.) (The "single clearest factor reflecting the quality of class counsel's services to the class are the results obtained"). The results in this case are in large measure based upon the tenacity with which Plaintiffs' Counsel handled this litigation. The significant benefits available to Settlement Class Members flow directly from Class Counsel's aggressive pursuit of the litigation and vigorous negotiations. Skilled Class Counsel negotiated this settlement, and did so without facing the enormous risks of trial, let alone the risks of certifying a national class.

#### 4. Complexity and Duration of the Litigation

This was a complex class action which took more than two years to bring to a resolution. Plaintiffs' Counsel engaged in extensive work through discovery, motion practice, and mediation in order to bring the case to a successful conclusion. The complexity of the action and the highly efficient work performed provides ample basis for this court to approve the requested fee award. See In re Rite Aid, supra, 396 F.3d at 305 (district

court did not abuse its discretion in concluding that- given legal issues, duration of the case, discovery and necessity of resorting to mediation to reach settlement-the matter was complex).

5. Risk of Non-Payment

As the Court stated in Remeron, "[a] determination of a fair fee must include consideration of the sometimes undesirable characteristics of a contingent [class] action, including the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in a [class action] are extremely high." Remeron, 2005 WL 3008808, at \*14 (citations omitted). Indeed, courts recognize the risk of non-payment as a major factor in considering an award of attorney fees. In re Ins. Brokerage Antitrust Litig., 282 F.R.D. 92, 122 (D.N.J. 2012).

Here, Class Counsel undertook this litigation more than two years ago solely on a contingent fee basis. Plaintiffs' Counsel expended several hundred hours over \$4,000 in expenses. Class Counsel undertook this litigation which had a big risk of no recovery or inability to certify a class and resolved the case with enormous benefits to the class. (Nagel Cert.)

At the time the case settled, there were several hurdles yet to be overcome. For example, Defendants were planning to file a summary judgment motion and it would have been difficult

to certify the class. All of these risks undertaken by bringing this litigation on a contingency basis weighs heavily in favor of granting the fee request.

6. Amount of Time Devoted by Plaintiffs' Counsel

Plaintiffs' Counsel spent over 285 hours to date on this action in analysis, drafting, strategy, discovery, motion practice and intricate settlement negotiations. A total of 7 attorneys and support staff contributed to this case. The effort resulted in a very good settlement which was reached long prior to trial. (Nagel Cert.)

7. Awards in Similar Cases

In Milliron v. T-Mobile USA, Inc., No. CIV.A. 08-4149 (JLL), 2009 WL 3345762, at \*13 (D.N.J. Sept. 10, 2009), as amended (Sept. 14, 2009), aff'd, 423 F. App'x 131 (3d Cir. 2011), the court noted that this factor requests that the court (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney would have received had the fee been negotiated on the open market. After conducting an analysis, in Milliron, Judge Linares approved a fee of 33 1/3 % finding that this "is a standard figure for recovery in a consumer class action of the contingent-fee variety." In Doherty v. Hertz Corp., No. CIV. 10-359 NLH/KMW, 2014 WL 2916494, at \*7 (D.N.J. June 25, 2014) this court awarded fees of \$3,026,100

representing approximately 20% of the value of the aggregated class recoveries, in a case where the Common Fund was found to total \$11,004,000.

See also General Motor Pickup Truck, 55 F.3d at 822 ("[F]ee awards have ranged from nineteen percent to forty-five percent of the settlement fund"); In re Ins. Brokerage Antitrust Litig., 297 F.R.D. 136 (D.N.J. 2013) (court approves fee award in amount of \$3.465 million, or 33% of settlement fund); In re Automotive Refinishing Paint Antitrust Litig., 2008 WL 63269, at \*5-6 (E.D. Pa. Jan. 3, 2008) ("We have previously noted that it is not unusual in antitrust class actions for the attorneys to receive awards for fees in the 30% range." (citation omitted; collecting cases); In re Lucent Tech. Ins. Sec. Litig., 327 F.Supp. 2d 426, 439-41 (D.N.J. 2004) ("more than twenty relatively recent class action decisions in the Third Circuit reflect fee awards between 33 1/3% and 22.5%; listing cases); In re Safety Components Int'l., Inc. Sec. Litig., 166 F.Supp. 2d 72, 101-02 (D.N.J. 2001) (Lechner, J.) (Listing ten common funds cases with awards between 27.5% and 33.8% with nine awards constituting 30% or more of settlement fund).

We are seeking an award of approximately 30% of the value of the settlement. This request is clearly within the range of fees awarded in similar cases by courts in this District and the Third Circuit. Applying the lodestar method, with a percentage

of common funds crosscheck, the fee application is fair and reasonable and should be granted. (Nagel Cert. ¶38)

POINT II

THE COURT SHOULD GRANT FINAL APPROVAL OF PLAINTIFFS'  
COUNSELS' EXPENSES

As the Court held in In re Ins. Brokerage Antitrust Litig., 297 F.R.D. 136, 157-58 (D.N.J. 2013), "Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." In re Safety Components Inc., 166 F.Supp.2d 72, 108 (D.N.J.2001) (citing Abrams v. Lightolier, Inc., 50 F.3d 1204, 1225 (3d Cir.1995)).

In this case Class Counsel has incurred \$3,984.62 in properly documented expenses that were for the common benefit of Class Members. These expenses will be paid out of the \$175,000 fee and expense request. These expenses include, but are not limited to, the costs of Xerox and postage, travel expenses, legal research, mediation, messengers, as well as court fees. Nagel Cert. ¶39.

The payment of these expenses should be approved as part of this application.



POINT III

THE REQUEST FOR CLASS REPRESENTATIVE SERVICE AWARDS  
SHOULD BE PRELIMINARILY APPROVED

Pursuant to ¶48 of the Settlement Agreement, Borgata has agreed to pay a Class Representative Service Award in the amount of \$2,500 to Plaintiff, subject to Court approval. In view of the time devoted to this action, the risks involved, and the significant benefits obtained on behalf of the Class, the Class Representative Service Awards should be preliminarily approved by this Court. (Nagel Cert. ¶40)

It has been long recognized by numerous courts that the time, risk, and benefits to the class should not go unrecognized. See, In re Remeron End-Payor Antitrust Litig., 2005 WL 2230314, at \*32 (D.N.J. 2005); Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 145 (E.D. Pa 2000). The amount sought is well within amounts approved in a variety of class actions. See, In re Remeron Direct Purchase Antitrust Litigation, 2005 WL 3008808 (D.N.J. 2005) and cases cited therein. The incentive award is both justified and reasonable and this Court should grant preliminary approval of the payment.

CONCLUSION

For all of the foregoing reasons, we respectfully request that this Court award Plaintiffs' Counsel the payment of \$175,000 in attorneys' fees and expenses, and approve the Class

Representative Service Awards in the amount of \$2,500 for  
Plaintiff, Ravi Motwani.

NAGEL RICE, LLP  
Attorneys for Plaintiffs

By: s/Bruce H. Nagel  
BRUCE NAGEL

Dated: November 22, 2016

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RAVI MOTWANI, Individually and  
on behalf of a Class of  
Similarly Situated Individuals,

Plaintiffs,

v.

MARINA DISTRICT DEVELOPMENT  
COMPANY, LLC d/b/a BORGATA  
HOTEL CASINO AND SPA,

Defendant.

Civil Action No.  
2:15-cv-02069-JMV-MF

*Civil Action*

CERTIFICATION OF BRUCE H. NAGEL

I, BRUCE H. NAGEL, of full age, do hereby certify:

1. I am an attorney at law of the State of New Jersey and a partner with Nagel Rice, LLP, class counsel for plaintiff in the above matter. I submit this certification in support of Plaintiffs motion for an award of fees and costs and a class representative service fee in connection with the above referenced matter which is returnable at the final approval hearing presently scheduled for November 30, 2016.

2. This case has been litigated for more than two years on a complete contingency fee basis. After participating in motion practice, engaging in discovery, and engaging in mediation with the Hon. Joel Rosen (ret.), a settlement was successfully negotiated which provides valuable benefits for a class of more than 8,000 Borgata Rewards Club Members.

3. Plaintiffs seek an Order that provides for Defendant, Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa ("Borgata") to pay \$175,000.00 to Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses in accordance with ¶50 of the Settlement Agreement and a Class Representative Services Award in the amount of \$2,500 to the Class Representative pursuant to ¶52 of the Settlement Agreement. Significantly, neither the legal fees award nor class representative service awards reduce or impact the payments available to Class Members, as these payments are separate from the funds available to the Class. (See ¶ 49 of the Settlement Agreement). The parties did not negotiate or reach agreement with respect to the legal fees and class representative service awards until they had agreed to all other material terms of the settlement.

4. Consistent with the Settlement Agreement, Borgata does not oppose the requests made by Plaintiffs in this motion and has agreed to pay them if the Court approves this application. (¶50) The amount of the proposed fee award and class representative premiums was included in the notice provided to class members, (Exhibit 2 to Settlement Agreement) and is posted on the links on the Nagel Rice Website. The instant motions papers will also be posted on the website for the class members' perusal. Finally counsel for Borgata provided the requisite notice to all state

Attorneys General and the United States Attorney General as required by the Class Action Fairness Act, 28 U.S.C. § 1715. The cut-off date for objections was November 8, 2016 and no objections have filed with respect to the proposed legal fee award or class representative premiums or any other issue.

5. Given the amount of work performed by Class Counsel and the significant, favorable results obtained for the Class we submit that the fee award requested is consistent with the fee awards in this District and the Third Circuit. Similarly, the Class Representative Premiums are within the range of awards approved in this Court and recognizes the time and effort of the class representatives which was crucial to the successful resolution of this case. This settlement and the relief to the class is fair, reasonable and adequate.

A. PROCEDURAL HISTORY

6. The Complaint in this matter was initially filed on January 12, 2015 in Superior Court of New Jersey, Law Division, Bergen County. An Amended Complaint was filed on January 21, 2015. Borgata removed the Action to the United States District Court for the District of New Jersey, where it is now pending under Civil Action No. 2:15-cv-02069.

7. The underlying litigation concerns the issuance of "free" parking vouchers by Borgata to certain favored customers [known as "Borgata Rewards Members"] as part of a customer loyalty

program. These vouchers are supposed to enable Borgata Rewards Members to self-park for free when they visit the casino. Plaintiff and the class contend that these parking vouchers, which contain language indicating "Unlimited Free Parking," are misleading. Contrary to the language, the vouchers could not be used more than once on the same day. While the vouchers also contained language indicating "Offer Valid Once Per Day," that language was in such fine print that it was too small to be read by Class Members. Consequently, certain Class Members, including Mr. Motwani, were improperly required to pay a \$5 fee to exit the Borgata parking lot when they attempted to use the voucher for a second time on the same day. The Complaint asserted five separate causes of action: (1) the NJCFA, (2) the TCCWNA, (3) common law fraud, (4) negligent misrepresentation, and (5) promissory estoppel. The relief sought included compensatory, consequential and punitive damages, as well as civil penalties.

8. The Borgata filed a motion to dismiss the action pursuant to Federal Rule 12(b)(6) on April 20, 2015. Judge Linares denied the Defendant's motion in its entirety on May 29, 2015 finding that Plaintiffs had adequately pled all of the elements of each claim asserted. See Motwani v. Marina Dist. Development Co., 2015 WL 3448171 at \*3 (D.N.J. May 29, 2015).

9. The Borgata filed an Answer on June 11, 2015. On March 18, 2016 Plaintiff filed a Second Amended Complaint, which modified

the class definition and deleted claims based on allegations about vouchers other than the Original Parking Vouchers<sup>1</sup>.

B. DISCOVERY CONDUCTED BY THE PARTIES

10. The plaintiffs conducted a preliminary fact investigation before filing this lawsuit. Once the motion to dismiss was denied, the parties exchanged Interrogatories and Requests for Production, and Borgata also propounded Requests for Admissions. Plaintiffs<sup>2</sup> responded to all of the Borgata's discovery requests. Prior to the Borgata serving their formal discovery responses, and at the suggestion of the Court, the parties agreed to enter into the mediation process. Borgata provided certain information requested by the Plaintiff prior to the mediation.

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<sup>1</sup> The plaintiffs' claims were originally based on two different forms of vouchers, one that stated "Unlimited Free Parking" on its face (the Original Parking Voucher) and another that was in fact a composite of two or more coupons, separated by a perforation, each one stating "Free Parking One Time Per Month." Based upon informal discovery and multiple conversations with counsel for the defendant concerning the policies and procedures employed at the Casino, we were persuaded that the allegations concerning the second voucher (or collection of vouchers) were not sustainable and that claim was dismissed.

<sup>2</sup> At that point in the litigation the second Plaintiff, Barry Cassell, was part of the case. Cassell had the second voucher type and an individual settlement was reached with the Borgata as to his claim. This Class Action Settlement does not release or compromise any claims regarding the second form of voucher.

C. SETTLEMENT NEGOTIATIONS

11. The parties agreed to mediation with former U.S. Magistrate Judge Joel B. Rosen. The case was ripe for mediation because further discovery had become essentially irrelevant. The crux of the dispute turned on the issue of whether the vouchers were deceptive and misleading on their face. This issue was vigorously disputed and Borgata indicated its intention to pursue this issue by way of summary judgment motion. Hence an all-day mediation session was held at the offices of Montgomery McCracken on November 19, 2015. During the course of this mediation, counsel engaged in arms-length negotiations with the assistance of Judge Rosen. With Judge Rosen's help, the parties ultimately reached an agreement in principle to settle the claims of the Settlement Class. Once an agreement in principle regarding the merits of the litigation was reached, the Parties then negotiated an agreement in principle regarding attorneys' fees and costs, as well as the Service Award for the Class Representative. The Parties notified the Court within days that they had reached agreement on material terms of the Settlement, subject to approval of final documents, and that they were in the process of drafting documents to be submitted for preliminary approval. It took several months, many discussions and numerous drafts for the documents to be finalized.

12. On May 16, 2016, this Court entered an Order (ECF No. 38) granting the Plaintiff's motion for preliminary approval of a



class action settlement between the Parties ("the Initial Settlement"), certifying a class for settlement purposes and directing the issuance of notice to members of the class.

13. Subsequent to the entry of that Order, but before class notice was issued, the Parties discovered that a small subset of the class members (less than one per cent) would not benefit from the Initial Settlement because they were not permitted to enter upon the premises of the Borgata, either because they were "excluded" (voluntarily or by Order of the Division of Gaming Enforcement) or because they had been permanently evicted from the Borgata in the past. See generally N.J.S.A. 5:12-71 (discussing exclusion and eviction under New Jersey's Casino Control Act).

14. Upon this discovery, the Parties contacted the Court and advised the Court of the relevant facts. On June 10, 2016, the Court entered an Order staying the issuance of class notice. Thereafter, the Parties began negotiations in an effort to reach agreement on an alternative benefit to be offered to those class members who would not benefit from the Initial Settlement.

15. The Parties reached such an agreement, which is reflected in the Amended Settlement Agreement fully executed and submitted to the Court on July 21, 2016. (ECF No. 41-1)

D. THE PERTINENT SETTLEMENT TERMS

16. This Court granted Preliminary Approval of the Amended Settlement on July 28, 2016, and in accordance with the Amended

Settlement Agreement, preliminarily certified the following agreed-upon Settlement Class:

All individuals who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating "Unlimited Free Parking," (b) sought to utilize such vouchers at any time, and (c) do not timely and properly request exclusion from the Settlement Class (as provided in paragraph 57 of the Settlement Agreement).

Excluded from the Settlement Class are officers, directors or employees of the Borgata and their immediate family members, and any judge presiding over this action and their immediate family members.

For purposes of settlement distribution, the Court further certifies the following two subclasses pursuant to Fed. R. Civ. P. 23(c)(5):

Subclass A:

All members of the Class who (a) have not been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) have not been permanently evicted from the Borgata.

Subclass B:

(a) All members of the Class who have been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) all members of the Class who have been permanently evicted from the Borgata.

17. The Amended Class Action Settlement Agreement provides injunctive relief, in the form of modifying the language of the parking vouchers distributed by Borgata to Borgata Rewards Members going forward to address any possible ambiguity about their terms of use. (¶46) Additionally, the Revised Class Action Settlement

Agreement provides other tangible relief which is useful to the class. Under the Settlement, within forty-five (45) days of the final approval by the Court, the Borgata shall issue to each Settling Class Member who is a member of Subclass A:

(a) \$20 in Slot Dollars® which must be used within 12 months of the date of issue<sup>3</sup>; and

(b) six (6) New Parking Vouchers which must be used within 12 months of the date of issue.<sup>4</sup> (§43)

Within forty-five (45) days of the final approval by the Court, the Borgata shall issue to each Settling Class Member who is a member of Subclass B:

a \$20 voucher that can be exchanged for one of a variety of items (hats, t-shirts, golf balls, phone cases, keychains, mugs, shot glasses, drink cozies) on a special website maintained by the Borgata. These vouchers must be used within twelve (12) months of the date of issue. (§44)

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<sup>3</sup> "Slot Dollars®" means Borgata vouchers in dollar amounts that can be used instead of cash to play at a slot machine in the Casino. Once the User activates the Slot Dollars®, the Slot Dollars® must be used within the same gaming day. A gaming day is between 6 a.m. on one day and 5:59 a.m. the following day. Slot Dollars® are non-transferable and cannot be converted into cash. (§28)

<sup>4</sup> Each New Parking Voucher shall entitle the Settling Class Member to park one time for free at the Casino. New Parking Vouchers are valid on any day of the year, including weekends and holidays. New Parking Vouchers are not transferable and cannot be redeemed for cash. (§14)

18. No claim form or other action is required of the Settling Class Members to receive these benefits. (¶45) They will be sent the Slot Dollars® and New Parking Vouchers, or \$20 voucher if they are in Subclass B, automatically unless they elect to opt out of the Settlement and exclude themselves from the Class. As discussed below, only 14 individuals have excluded themselves from the class. (See Matloff Cert.) Thus, if the Class Members avail themselves of the benefits they will automatically receive, which is likely since the Class Members are already Borgata Rewards Members who frequently visit the casino, the financial benefit to the class will exceed \$405,000.

19. The Borgata will also pay the notice and administration costs separately from monies paid to Class Members. (¶36 and ¶48)

20. As part of the Settlement, the parties have also agreed that, subject to the Court's final approval, the named Plaintiff, Ravi Motwani, is entitled to seek a service award in recognition of the amount of time and effort he expended in acting as Class Representative in the amount of \$2,500.00. (¶52)

21. Finally, the parties have agreed that, subject to the Court's final approval, Class Counsel shall be entitled to seek an award of attorneys' fees and costs of up to \$175,000. (¶50) The payment of service awards and attorneys' fees and costs is also separate from the payment to Class Members. (¶49)

22. These settlement benefits serve as the consideration for dismissal of this action against the Borgata, and the Release by Plaintiffs and Settling Class Members as set forth in ¶39 of the Settlement Agreement. The Released Claims, are defined as:

[A]ny and all claims, known or unknown, rights, demands, actions, causes of action, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses that have been alleged, or which could have been alleged, whether at law, in equity, or under any statute or regulation, in the Action by any member of the Settlement Class arising from, or in any way related to, the issuance or use of the Original Parking Vouchers during the Class Period; provided, however, the Released Claims do not include any claim for enforcement of this Agreement and/or the Final Judgment. (¶22)

F. IMPLEMENTATION OF NOTICE TO THE CLASS

23. In accordance with the Amended Settlement Agreement (ECF No. 41-1) and this Court's Preliminary Approval order (ECF No. 44) Borgata has provided notice of the terms of the settlement to Class Members and government officials. See Declaration of the Borgata's Senior Marketing Manager, Kristen Fulmer filed in companion motion and Declaration of Christopher J. Michie dated August 9, 2016. (D.E. No. 46).

24. Additionally, as indicated in the Notice provided to the Class, a link was provided on the Nagel Rice, LLP website which enabled Class Members to directly view all of the salient documents entered in the Case, including the Notice of Pendency of Class Action and Proposed Settlement; Motion for Preliminary Approval of

Class Action Settlement, Brief of Plaintiff in Support of Motion for Preliminary Approval of Class Action Settlement, Certification of Bruce Nagel in Support of Preliminary Approval of Class Action with Exhibits, Order granting preliminary approval of class action settlement, the Amended Settlement Agreement and both Plaintiff's and Borgata's Letter to the Court explaining the reason for the amendment to the Settlement Agreement. See [http://nagelrice.com/index.aspx?TypeContent=CUSTOMPAGEARTICLE&custom\\_pages\\_articlesID=16672](http://nagelrice.com/index.aspx?TypeContent=CUSTOMPAGEARTICLE&custom_pages_articlesID=16672) (See Certification of Randee Matloff filed in companion motion and Ex. A thereto) Attorneys and staff at Nagel Rice fielded calls from numerous class members. Id.

#### G. OBJECTIONS AND EXCLUSIONS

25. Pursuant to the Amended Settlement Agreement and the Preliminary Approval Order, the deadline for Settlement Class Members to object or opt out of the settlement was November 8, 2016. No objections to the settlement were filed with the Court or received by counsel. A total of 14 opt outs were received to date and as the deadline is long past no additional opt outs are anticipated. (Matloff Cert. filed in companion motion and Exhibit B thereto)

#### F. Request For Fees And Expenses Using Lodestar Analysis

26. We submit that an award of fees and expenses in the amount of \$175,000 is reasonable given the work performed and the results achieved. Class Counsel worked efficiently to achieve this

settlement by conducting a thorough investigation, engaging in discovery, and participating in adversarial litigation in a complex case involving unique issues of fact and law. Moreover, the fees and costs (as well as the Class Representative Premiums) will be paid separately from, and in addition to, the other benefits which are available to the Settlement Class.

27. Nagel Rice, LLP, Class Counsel in this case billed 285.2 hours at a total lodestar of \$194,177.50 as set forth on the computerized time records annexed hereto as Exhibit A. The firm's total paid expenses are \$4,015.62. Our disbursements are also detailed on Exhibit A annexed hereto.

28. All counsel billed at their current billing rates charged to their clients, which was consistent with hourly rates routinely charged in complex class action litigation. A review of these time records shows that partner rates were between \$525 and \$800 per hour depending on expertise and level of experience and associate rates were \$300 per hour.

29. These rates have been approved by other Courts in this District in cases where Nagel Rice LLP has been appointed as Class Counsel. See McDonough v. Horizon Healthcare Servs., Inc., No. CIV.A. 09-571 SRC, 2014 WL 3396097, at \*11 (D.N.J. July 9, 2014) aff'd sub nom. McDonough v. Horizon Blue Cross Blue Shield of New Jersey, No. 14-3558, 2015 WL 5573821 (3d Cir. Sept. 23, 2015) ("The Court finds that the requested fee award is warranted. Plaintiffs

have demonstrated a lodestar of \$3.4 million based on billing rates consistent with the market rate for complex class actions." In that case partner rates were between \$525 and \$750). See also In re Electrolux Home Products ice Maker Cases, Master Docket No. 1:12-cv-03341-NLH-AMD (Court Awards similar billing rate in class action settlement involving defective ice-makers).

30. These sums do not include the time which will continue to accrue with the finalization of the final approval motion and hearing.

31. A true and correct copy of the firm resume for Nagel Rice LLP is annexed hereto as Exhibit B.

32. Based upon the figures above, the requested fee amount (\$175,000) does not have any lodestar multiplier as the total amount of fees and expenses actually expended totals \$198,193.12 and is thus less than the amount being sought in fees and expenses.

G. Common Fund Cross-Check

33. In this case the total value of the settlement is estimated at over \$400,000 (\$580,000 if legal fees and Class Representative Premiums are included). This is because there are approximately 8,000 Class Members who will be eligible for \$20 in slot dollars, \$30 worth of parking vouchers and for some \$20 in merchandise, without the need to file any claims forms.

34. Consequently, the total requested fee award is approximately 30% of the common fund.



35. The results in this case are in large measure based upon the tenacity with which Plaintiffs' Counsel handled this litigation. The benefits available to Settlement Class Members flow directly from Class Counsel's aggressive pursuit of the litigation and vigorous negotiations. Skilled class counsel negotiated this settlement without facing the enormous risks of trial, let alone the risks of certifying a national class.

36. At the time the case settled, there were several hurdles yet to be overcome. For example, Defendants were planning to file a summary judgment motion and it would have been difficult to certify the class. All of these risks undertaken by bringing this litigation on a contingency basis weighs heavily in favor of granting the fee request.

37. Plaintiffs' Counsel spent over 285 hours to date on this action in analysis, drafting, strategy, discovery, motion practice and intricate settlement negotiations. A total of 7 attorneys and support staff contributed to this case. The effort resulted in a very good settlement which was reached long prior to trial.

38. We are seeking an award of 30% of the value of the settlement. This request is clearly within the range of fees awarded in similar cases by courts in this District and the Third Circuit. Applying the lodestar method, with a percentage of common funds crosscheck, the fee application is fair and reasonable and should be granted.

#### H. Details Related to Expenses

39. In this case Class Counsel has incurred \$4,015.62 in properly documented expenses that were for the common benefit of Class Members. These expenses will be paid out of the \$175,000 fee and expense request. These expenses include, but are not limited to, the costs of Xerox and postage, travel expenses, legal research, mediation, messengers, as well as court fees.

#### I. Class Representative Service Awards

40. Pursuant to ¶ 52 of the Settlement Agreement, Borgata has agreed to pay Class Representative Service Awards in the amount of \$2,500 to Plaintiff Ravi Motwani. In view of the time devoted to this action, the risks involved, and the significant benefits obtained on behalf of the Class, the Class Representative Service Awards should be approved by this Court.

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

Dated: November 22, 2016

By: /s/ Bruce H. Nagel  
Bruce H. Nagel, Esq.

# **EXHIBIT**

## **A**

**DRAFT STATEMENT**

BILL AS IS \_\_\_\_\_ HOLD \_\_\_\_\_

REVISE TIME/DISB &amp; RETURN \_\_\_\_\_

W/O \$ \_\_\_\_\_ and Bill \$ \_\_\_\_\_

Trust Balance \$0.00

**Date of Draft Statement Nov 22/16**

Client #: 6354

Ravi Motwani

Matter #: 6354-1

Motwani v. Borgata

OPENED 12/30/14

Client Ravi Motwani

772 Prospect Street

Westfield, NJ 07090

**UNBILLED HOURS & FEES**

<b>INIT</b>	<b>DATE</b>	<b>HOURS</b>	<b>DESCRIPTION</b>	<b>RATE</b>	<b>FEES</b>
BHN	8/5/14	0.50	Review status of matter; call adversary	800.00	\$400.00
RMM	12/30/14	0.50	Finalize complaint; emails with Gregg regarding retainers	700.00	\$350.00
RMM	1/20/15	0.50	Review article; TCW Gregg D; revise complaint; TCW BHN regarding same;	700.00	\$350.00
RMM	2/3/15	0.20	file first amended complaint Correspondence and emails	700.00	\$140.00
BHN	3/12/15	0.40	Telephone conference with adversary; conference with RHS	800.00	\$320.00
RMM	3/26/15	1.10	Review removal petition; research regarding ability to remand	700.00	\$770.00
RMM	3/30/15	0.50	enter notice of appearance; review removal papers	700.00	\$350.00
RMM	3/31/15	0.30	Enter appearances; review efilings	700.00	\$210.00
RMM	4/20/15	0.50	Review motion; emails with Gregg D	700.00	\$350.00
BHN	4/26/15	0.40	Review status of matter	800.00	\$320.00
RMM	4/28/15	0.30	Correspondence	700.00	\$210.00
DES	5/8/15	6.50	Research all case law for Opp to SJ	650.00	\$4,225.00
DES		1.00	Emails to Marshall; Revise OPRA request and specifics and subpoena to Poyner	650.00	\$650.00

DES	5/11/15	9.00	Computer research and preparation of brief	650.00	\$5,850.00
RMM	5/12/15	0.30	OCW DES regarding motion opposition; email with client	700.00	\$210.00
MD		1.00	Discuss matter with Diane; research Admin code for font size guidelines	300.00	\$300.00
DES		11.00	Preparation of Brief in Opposition to Motion to Dismiss	650.00	\$7,150.00
DES	5/13/15	3.00	Preparation of Brief	650.00	\$1,950.00
RMM	5/14/15	1.90	Discuss with DES re status; proofread and revise	700.00	\$1,330.00
DES		7.00	Research and preparation of Brief in Opp to SJ	650.00	\$4,550.00
RMM	5/15/15	1.30	Review brief; respond to emails; legal research	700.00	\$910.00
MD		3.40	Discuss brief with Diane; cite check	300.00	\$1,020.00
DES		9.00	Preparation and revisions to brief	650.00	\$5,850.00
RMM	5/18/15	3.80	Finalize brief	700.00	\$2,660.00
MD		1.70	Make edits to brief	300.00	\$510.00
DES		5.00	Final edits to brief regarding Opp to Motion to Dismiss	650.00	\$3,250.00
DES		4.00	Memo to BHN regarding verdict sheet and cases on whether intentional tortfeasors must be included; Discussion with Marshall regarding Nordstrom's deposition	650.00	\$2,600.00
RMM	5/26/15	0.30	TCW adversary; email amended complaint; review and respond to emails	700.00	\$210.00
BHN	5/29/15	1.00	Review reply papers	800.00	\$800.00
RMM		2.40	Review reply brief and attachments; forward to client; review decision	700.00	\$1,680.00
RMM	6/11/15	0.50	Review Answer; review file; forward to Gregg	700.00	\$350.00
RMM	7/15/15	0.20	Emails re discovery plan	700.00	\$140.00

BHN	7/20/15	0.40	Review status of matter	800.00	\$320.00
RMM		1.10	Review proposed discovery plan; telephonic meet and confer with Chris and Russell	700.00	\$770.00
BHN	7/21/15	0.60	Review discovery plan, status, and emails	800.00	\$480.00
RMM		3.80	Review revisions to Joint discovery plan; make further revisions; email with Chris M.	700.00	\$2,660.00
BHN	7/28/15	0.40	Review status of matter	800.00	\$320.00
RMM		1.50	Review confidentiality agreement and revisions to joint discovery plan; TCW Chris Michie regarding same	700.00	\$1,050.00
RMM	7/29/15	1.50	Review and sign off on joint discovery plan and confidentiality agreement; work on EDP	700.00	\$1,050.00
GK		1.50	Review and revise EDP	575.00	\$862.50
RMM	7/30/15	3.70	Complete draft of proposed EDP; complete draft of initial disclosures and serve defendant's counsel; review efiled joint discovery plan	700.00	\$2,590.00
RMM	7/31/15	2.30	Review and finalize proposed EDP	700.00	\$1,610.00
RMM	8/5/15	0.30	Commence preparation of discovery requests	700.00	\$210.00
RMM	8/6/15	2.90	Preparation for and attend Rule 16 conference in Newark; work on discovery requests; emails re mediation	700.00	\$2,030.00
RMM	8/7/15	1.30	Review and respond to emails regarding mediation; review court's order; email to Gregg; work on discovery requests	700.00	\$910.00
RMM	8/10/15	3.80	Work on discovery requests	700.00	\$2,660.00
RMM	8/11/15	3.90	Draft first request for production of documents	700.00	\$2,730.00
RMM	8/13/15	0.30	Correspondence re discovery; emails to DES and Gregg D	700.00	\$210.00
DES		1.00	Review discovery requests	650.00	\$650.00
RMM	8/14/15	2.50	Review and revise discovery requests; finalize same; emails with DES; email with Chris Michie, serve discovery requests	700.00	\$1,750.00

RMM	0.10	Emails with C. Michie	700.00	\$70.00
RMM 8/20/15	1.50	Review defendants discovery requests to plaintiffs; emails with Chris Michie, email with Gregg D	700.00	\$1,050.00
RMM 8/24/15	0.20	Review file; email to Gregg D regarding time frame for discovery; forward first amended complaint	700.00	\$140.00
RMM 8/27/15	0.60	Emails and phone calls with Gregg regarding discovery responses	700.00	\$420.00
DES	0.30	Discussion with Randee regarding discovery	650.00	\$195.00
RMM 9/1/15	0.20	Review and respond to email; OCW BHN regarding same	700.00	\$140.00
RMM 9/10/15	3.50	legal research in furtherance of responding to requests to admit; emails with adversary regarding mediation	700.00	\$2,450.00
RHS	1.00	Meet with Randee M re admissions; review status	700.00	\$700.00
RMM 9/15/15	1.50	OCW BHN; emails with adversary; work on responses to RFA	700.00	\$1,050.00
RMM 9/16/15	3.40	Work on discovery responses; email to adversary regarding mediation	700.00	\$2,380.00
RMM 9/17/15	2.50	Revise responses to admissions; OCW DES; emails with Gregg D, correspondence; serve same	700.00	\$1,750.00
RMM 9/21/15	0.40	Telephone conference with adversary and mediator; emails to BHN regarding same	700.00	\$280.00
BHN 9/29/15	0.60	Review status of matter re: review emails	800.00	\$480.00
RMM	0.20	Emails and phone calls in furtherance of setting up mediation	700.00	\$140.00
RMM 10/1/15	1.20	Finalize mediation ; review file for responding to discovery requests	700.00	\$840.00
RMM 10/5/15	0.00	Draft responses to interrogatories and document requests	700.00	\$0.00
RMM	6.20	Review file; draft responses to interrogatories and requests for production of documents; review letter agreement from mediator; OCW BHN regarding same	700.00	\$4,340.00
RMM 10/6/15	1.90	Correspondence to mediator; provide check; review discovery responses and forward to Gregg for client review; emails with Gregg regarding same	700.00	\$1,330.00

BHN	10/7/15	0.90	Review correspondence; review emails from Gregg, revise discovery responses	800.00	\$720.00
RMM	10/19/15	1.40	Finalize and serve discovery responses	700.00	\$980.00
RMM	10/22/15	0.20	Review file; email adversary	700.00	\$140.00
RMM	10/27/15	0.30	TCW BHN; email to adversary	700.00	\$210.00
RMM	10/28/15	0.30	Review file; review and respond to emails	700.00	\$210.00
RMM	11/4/15	4.90	Work on mediation statement	700.00	\$3,430.00
RMM	11/5/15	1.50	Work on mediation statement	700.00	\$1,050.00
RMM	11/10/15	4.50	Mediation statement; research in furtherance of same	700.00	\$3,150.00
RMM	11/11/15	4.50	Review and revise mediation statement; OCW BHN; emails with adversary; draft correspondence to Judge Dickson and efile same	700.00	\$3,150.00
RMM	11/12/15	4.50	Revise mediation statement; finalize, serve and submit same to mediator; review defendants statement and cases cited therein	700.00	\$3,150.00
RMM	11/17/15	0.90	prep for mediation	700.00	\$630.00
RMM	11/18/15	0.50	Prepare for mediation; TCW mediator; OCW BHN	700.00	\$350.00
BHN	11/19/15	8.00	Attendance at mediation in Cherry Hill, NJ; preparation for mediation	800.00	\$6,400.00
RMM		9.00	Prepare for and attend mediation	700.00	\$6,300.00
BHN	11/20/15	0.80	Review status of matter; emails re: settlement issues	800.00	\$640.00
RMM	11/23/15	2.40	Review file; TCW Chris Michie; OCW BHN	700.00	\$1,680.00
RMM	11/30/15	0.30	TCW Magistrate's chambers; correspondence regarding conference	700.00	\$210.00
RMM	12/1/15	7.10	Phone conference with Magistrate; work on settlement agreement	700.00	\$4,970.00
RMM	1/4/16	0.20	Review status; email adversary	700.00	\$140.00



RMM 1/7/16	0.20	Review and respond to emails	700.00	\$140.00
RMM 1/8/16	0.30	status letter to court; TCW Chris M	700.00	\$210.00
RMM 1/11/16	0.50	Review efilings; review C Michie's revised draft; provide copy for BHN to review	700.00	\$350.00
RMM 1/21/16	0.20	Review and respond to emails	700.00	\$140.00
BHN 1/23/16	1.00	Settlement agreement; revisions	800.00	\$800.00
RMM 2/1/16	2.90	Review BHN's comments to settlement agreement and make revisions	700.00	\$2,030.00
RMM 2/2/16	0.60	OCW BHN regarding changes to draft settlement agreement; emails with C Michie	700.00	\$420.00
RMM 2/3/16	0.90	Review settlement agreement; TCW Chris Michie to discuss proposed revisions	700.00	\$630.00
RMM 2/11/16	0.90	Letter to court and emails	700.00	\$630.00
RMM 2/23/16	2.20	Work on motion to amend; review and make final	700.00	\$1,540.00
RMM 2/24/16	7.50	Draft amended complaint; preliminary approval order; motion papers	700.00	\$5,250.00
RMM 2/26/16	1.50	TCW Clerk; finalize and file motion to amend; emails with adversary	700.00	\$1,050.00
RMM 3/1/16	0.50	Emails with C. Michie, review changes to preliminary approval order	700.00	\$350.00
RMM 3/2/16	1.50	Work on revisions to preliminary approval orders	700.00	\$1,050.00
RMM	2.70	TCW Chris Michie re revisions; work on revisions and forward same	700.00	\$1,890.00
RMM 3/4/16	2.50	Work on preliminary approval motion and further revisions to settlement agreement	700.00	\$1,750.00
RMM 3/8/16	0.00	Work on preliminary approval motion, emails with	700.00	\$0.00
RMM	2.50	Work on preliminary approval papers	700.00	\$1,750.00
RMM 3/9/16	2.10	Revise preliminary approval brief	700.00	\$1,470.00
RMM 3/10/16	0.90	Review efilings; letter to Judge Vazquez; emails with C. Michie	700.00	\$630.00

RMM 3/11/16	2.20	Review notices and research regarding same; review letter from C. Michie; emails with C Michie	700.00	\$1,540.00
RMM 3/15/16	2.20	Work on revisions to preliminary approval brief; review settlement agreement; Email with Chris M. regarding long form notice	700.00	\$1,540.00
RMM 3/16/16	2.50	Review and revise long form notice; review motion papers; review and respond to emails	700.00	\$1,750.00
RMM 3/17/16	3.70	Work on final approval papers	700.00	\$2,590.00
RMM 3/18/16	1.50	File the second amended complaint; finalize the Cassell Release and forward	700.00	\$1,050.00
BHN 3/21/16	2.00	Review brief; agreement; preliminary approval papers, etc.	800.00	\$1,600.00
RMM	1.50	Finalize settlement documents and preliminary approval papers	700.00	\$1,050.00
BHN 3/22/16	1.50	Review status of matter; email review; revise motion papers	800.00	\$1,200.00
RMM	2.20	Revise motion papers; OCW BHN regarding settlement agreement	700.00	\$1,540.00
RMM 3/23/16	3.50	Work on revisions to brief	700.00	\$2,450.00
RMM 3/24/16	5.00	Work on preliminary approval papers; revise and efile same	700.00	\$3,500.00
RMM 3/25/16	0.20	Review Law 360 article	700.00	\$140.00
RMM 3/28/16	0.30	Arrange for phone conference via call to Judge 's secretary and email to adversary	700.00	\$210.00
RMM 3/30/16	0.30	Telephone CMC	700.00	\$210.00
RMM 3/31/16	1.40	Organize filings	700.00	\$980.00
BHN 4/23/16	0.40	Review status of matter	800.00	\$320.00
RMM 4/25/16	0.00	TCW Judge Vazquez clerk	700.00	\$0.00
RMM 5/8/16	0.50	Review file; TCW Judge Vazquez's law clerk; call C. Michie; email re same; forward class notice and proposed order to Eric the law clerk via email	700.00	\$350.00
RMM 5/10/16	0.20	Emails with Gregg D	700.00	\$140.00

RMM	5/17/16	0.30	Download and review efiled entered order and notice	700.00	\$210.00
GK	6/2/16	1.00	Review files to put on website; create website page	575.00	\$575.00
RMM	6/3/16	0.20	Revise language to go up on website with approval papers	700.00	\$140.00
GK		1.00	Create webpage re settlement documents	575.00	\$575.00
RMM	6/9/16	1.20	TCW court and Chris Michie; OCW RHS; email to BHN; review proposed order and efilng	700.00	\$840.00
RMM	6/10/16	0.30	Emails with C. Michie; review order; send to Greg K to post	700.00	\$210.00
RMM	6/22/16	0.30	TCW adversary	700.00	\$210.00
RMM	7/6/16	0.50	TCW adversary ; TCW court	700.00	\$350.00
RMM	7/11/16	0.30	Email to Gregg Donnenfeld; letter to Cassell enclosing settlement check; Emails with Chris Michie and forward documents to him	700.00	\$210.00
RMM	7/13/16	0.30	Review modified class definitions, emails with adversary	700.00	\$210.00
RMM	7/14/16	0.10	Send settlement check to Barry Cassell	700.00	\$70.00
RMM	7/18/16	0.50	Review modified preliminary approval papers; TCW Chris Michie and Judge Vazquez's clerk Eric	700.00	\$350.00
RMM		0.50	Finalize revised approval papers	700.00	\$350.00
RMM	7/21/16	1.50	Review documents with Chris Michie; draft correspondence; finalize papers and efile with court	700.00	\$1,050.00
RMM	8/11/16	0.50	Provide updated documents for website	700.00	\$350.00
BHN	8/16/16	0.40	Review status of matter	800.00	\$320.00
GK	8/19/16	0.60	Edit website re settlement documents	575.00	\$345.00
RMM	8/25/16	0.20	Review and respond to emails; review pleadings	700.00	\$140.00
RMM	8/29/16	1.10	TCW class members; prepare script; OCW Audrey to assist class members who call for information	700.00	\$770.00

RMM 8/30/16	0.50	Deal with class members	700.00	\$350.00
RMM 8/31/16	0.30	Deal with class members and opt outs; emails with adversary	700.00	\$210.00
Para 9/7/16	3.00	Telephone Calls	100.00	\$300.00
RMM 9/8/16	0.10	Log opt outs	700.00	\$70.00
RMM 9/14/16	0.60	Review new case on class actions; log opt outs	700.00	\$420.00
RMM 9/19/16	0.20	Review file status	700.00	\$140.00
RMM 9/23/16	0.20	Review efilng and emails with adversary	700.00	\$140.00
RMM 10/4/16	0.10	TCW class member	700.00	\$70.00
BHN 11/11/16	2.00	OCW RM; review mediation statement	800.00	\$1,600.00
RMM 11/14/16	0.10	Email adversary re opt outs	700.00	\$70.00
RMM 11/15/16	0.20	EMails with Chris Michie; TCW book keeper	700.00	\$140.00
RMM 11/16/16	0.50	Review file; emails with Chris M	700.00	\$350.00
RMM 11/17/16	5.00	Work on final approval papers; telephone conference with Chris Michie re: same	700.00	\$3,500.00
RMM 11/18/16	9.20	Work on final approval papers	700.00	\$6,440.00
RMM 11/20/16	0.30	Emails with BHN; review motion papers and revise	700.00	\$210.00
RMM 11/21/16	0.80	OCW BHN; revise motion papers; emails with Chris Michie	700.00	\$560.00
Totals			285.20	\$194,177.50

**FEE SUMMARY:**

<b>Lawyer</b>	<b>Hours</b>	<b>Effective Rate</b>	<b>Amount</b>
Bruce H. Nagel	21.30	\$800.00	\$17,040.00
Randee M. Matloff	192.90	\$700.00	\$135,030.00
Greg Kohn	4.10	\$575.00	\$2,357.50

Marshall Dworkin	6.10	\$300.00	\$1,830.00
Diane E. Sammons	56.80	\$650.00	\$36,920.00
Robert H. Solomon	1.00	\$700.00	\$700.00
Paralegal	3.00	\$100.00	\$300.00

**DISBURSEMENTS****Disbursements****Receipts**

Jan-09-15	Messenger/Process Server	5.00
	Expense Recovery	
Jan-12-15	Court Fees	250.00
	Expense Recovery	
Jan-20-15	Messenger/Process Server	5.00
	Expense Recovery	
Feb-03-15	Postage	2.66
	Expense Recovery	
Feb-04-15	Postage	8.66
	Expense Recovery	
Mar-11-15	Copy Jobs from Computers	5.25
Apr-21-15	Copy Jobs from Computers	9.25
May-14-15	Copy Jobs from Computers	5.50
	Copy Jobs from Computers	7.75
May-15-15	Copy Jobs from Computers	7.75
	Copy Jobs from Computers	7.50
	Copy Jobs from Computers	0.25
May-18-15	Xerox	6.30
	Copy Jobs from Computers	10.25
	Copy Jobs from Computers	8.50

	Copy Jobs from Computers	3.50
	Copy Jobs from Computers	8.00
	Copy Jobs from Computers	8.25
	Copy Jobs from Computers	8.25
May-19-15	Postage	2.45
	Expense Recovery	
	Xerox	0.30
Jun-11-15	Copy Jobs from Computers	4.00
Jul-30-15	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	2.50
Aug-06-15	Travel Expense ck#15018	12.00
	Expense Recovery	
	Copy Jobs from Computers	2.50
	Copy Jobs from Computers	3.25
	Copy Jobs from Computers	3.25
	Copy Jobs from Computers	2.50
	Copy Jobs from Computers	4.00
Aug-10-15	Copy Jobs from Computers	5.25
	Copy Jobs from Computers	7.00
Aug-11-15	Copy Jobs from Computers	4.00

Aug-14-15	Xerox	7.05
	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	7.25
Aug-18-15	Postage	2.74
	Expense Recovery	
Sep-16-15	Copy Jobs from Computers	2.50
Sep-17-15	Copy Jobs from Computers	2.50
Sep-18-15	Postage	1.42
	Expense Recovery	
Oct-05-15	Copy Jobs from Computers	3.00
	Copy Jobs from Computers	3.75
Oct-06-15	Messenger/Process Server	0.49
	Expense Recovery	
	Xerox	1.05
	Mediation Fee	3,000.00
	Montgomery Mcracken Walter & RI	
Oct-19-15	Xerox	14.10
	Copy Jobs from Computers	3.00
Oct-20-15	Postage	2.52
	Expense Recovery	
	Postage	2.74
	Expense Recovery	
Nov-11-15	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	4.00

Nov-12-15	Messenger/Process Server	5.00
	Expense Recovery	
	Xerox	3.75
	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	4.25
	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	3.50
	Copy Jobs from Computers	4.00
Nov-17-15	Copy Jobs from Computers	6.25
	Copy Jobs from Computers	4.00
Nov-23-15	Copy Jobs from Computers	8.25
Nov-30-15	West Law	139.42
	Expense Recovery	
Jan-11-16	Copy Jobs from Computers	8.50
Jan-21-16	Copy Jobs from Computers	8.25
Jan-25-16	Conference Call Service - JJR - 12/1/15	1.54
Feb-01-16	American Express	
	Copy Jobs from Computers	6.50
	Copy Jobs from Computers	8.25
Feb-23-16	Copy Jobs from Computers	6.75
Mar-01-16	Copy Jobs from Computers	3.00



	Copy Jobs from Computers	0.25
Mar-04-16	Copy Jobs from Computers	6.75
Mar-08-16	Copy Jobs from Computers	5.75
Mar-15-16	Copy Jobs from Computers	5.75
	Copy Jobs from Computers	6.75
	Copy Jobs from Computers	3.00
Mar-17-16	Copy Jobs from Computers	6.00
	Copy Jobs from Computers	6.75
	Copy Jobs from Computers	3.25
Mar-18-16	Copy Jobs from Computers	4.00
Mar-21-16	Copy Jobs from Computers	6.00
Mar-22-16	Copy Jobs from Computers	2.50
Mar-23-16	Copy Jobs from Computers	7.00
Mar-24-16	Postage	0.49
	Expense Recovery	
	Xerox	0.30
	Xerox	17.70
	Xerox	17.70
	Xerox	0.15

	Copy Jobs from Computers	6.75
	Copy Jobs from Computers	3.00
	Copy Jobs from Computers	7.00
	Copy Jobs from Computers	6.75
	Copy Jobs from Computers	3.00
	Copy Jobs from Computers	3.25
	Copy Jobs from Computers	6.75
	Copy Jobs from Computers	8.50
	Copy Jobs from Computers	14.00
	Copy Jobs from Computers	3.25
Apr-15-16	Conference Call Service	3.39
	American Express	
May-09-16	Copy Jobs from Computers	3.25
May-17-16	Copy Jobs from Computers	3.00
	Copy Jobs from Computers	3.25
Jul-14-16	Messenger/Process Server	5.00
Jul-21-16	Copy Jobs from Computers	7.25
	Copy Jobs from Computers	3.50
	Copy Jobs from Computers	7.00

	Copy Jobs from Computers	3.50
	Copy Jobs from Computers	4.00
	Copy Jobs from Computers	15.50
Jul-22-16	Postage	6.80
	Expense Recovery	
	Xerox	19.65
Aug-01-16	Copy Jobs from Computers	3.50
	Copy Jobs from Computers	4.00
Aug-11-16	Copy Jobs from Computers	3.50
Aug-29-16	Copy Jobs from Computers	2.75
Aug-30-16	Copy Jobs from Computers	3.50
Nov-17-16	Copy Jobs from Computers	9.75
Nov-18-16	Copy Jobs from Computers	8.75
	Copy Jobs from Computers	8.25
	Copy Jobs from Computers	4.25

<b>Disbursement Type</b>	<b>Amount</b>
Conference Call Service	\$4.93
Court Fees	\$250.00
Travel Expense	\$12.00
West Law	\$139.42
Xerox	\$88.05
Mediation Fee	\$3,000.00

Messenger/Process Server	\$20.49	
Postage	\$30.48	
Copy Jobs from Computers	\$470.25	
	<hr/>	<hr/>
Totals	\$4,015.62	\$0.00
		<hr/>
<b>Total Fees &amp; Disbursements</b>		<b>\$198,193.12</b>
Previous Balance		\$0.00
<b>Balance Due Now</b>		<b>\$198,193.12</b>

**Matter Statement History**

Inv Date	Inv #	Total Fees	Total Disb	Inv Total	Amount Paid	Amount Due
	<b>Totals:</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

# **EXHIBIT B**

## **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 100 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, including:

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

*Electrolux Home Products Ice Maker Case*, Master Docket No. 1:12-cv-03341-NLH-AMD. Nagel Rice was co-lead class counsel and Bruce Nagel was chair of the Executive Committee in a nationwide class action settlement valued at more than \$20 million involving defective ice-makers in certain refrigerators approved on February 10, 2016.

*Esslinger, et al. v. HSBC Bank Nevada, N.A. et als.*, 2:10-cv-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 marking and practices related to its debt suspension/debt cancellation products. In appointing Nagel Rice as co-lead counsel, the Court noted "[a]ccording to the criteria set forth in R. 23(g)(1)(A), Nagel Rice...are best qualified as Interim Co-Lead to represent the interests of the putative class." *Walker v. Discover*, 2011 WL2160889 (N.D.Ill 2011)

*In re: Bank of America Credit Protection Marketing & Sales Practices Litigation*, MDL No. 2269, United States District Court of the Northern District of California. Member of Executive Committee in \$20 million nationwide class action settlement involving Bank of America's marketing and sales practices relating to its debt suspension/debt cancellation products.

*Mc-Kay Sales, Inc., Cantina 134, LLC v. DFS Inc., et als.*, 1:10-cv-02964, United States District Court for the Northern District of Illinois, Eastern Division. Plaintiff's Steering Committee in multi-million dollar national class settlement

alleging involuntary enrollment in discount programs offered to Discover merchants.

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

*Franco v. Cigna*, 07-CV-6039 (SRC) (PS), United States District Court, District of New Jersey. Court appointed co-lead counsel for subscriber claims in multi-billion class action seeking proper reimbursement for out of network medical services.

*Drazin v. Horizon Blue Cross-Blue Shield of New Jersey*, 06-06219 (FSH) (PS), 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 insureds. *Drazin v. Horizon Blue Cross Blue Shield of N.J.*, 832 F. Supp. 2d. 432 (D.N.J. 2011) *aff'd* 528 Fed. Appx. 211 (3d. Cir. 2013); *Beye/Drazin v. Blue Cross Blue Shield of NJ*, 568 F.Supp. 2d 556 (D.N.J. 2008).

*Torres-Hernandez, et al. v. STI Prepaid, et.al*, 2:08-cv-1089 (SDW) (MCA), United States District Court, District of New Jersey. Court appointed co-lead counsel in class action involving sale of prepaid calling cards; \$8.2 million nationwide settlement.

*DeVito v. Aetna*, 536 F.Supp.3d 523 (D.N.J. 2008), 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 insureds.

*In re: South African Apartheid Litigation*, MDL No. 1499, United States District Court for the Southern District of New York. One of several firms leading a putative class action under the ATS against corporations who violated *jus cogen* standards of international human rights law. Settled a portion of claim against GM bankruptcy estate, entitling plaintiffs to share of the new General Motors.

*Smith, et al. v. Ticketmaster*, 2:09-cv-02177 (SRC) (MAS), 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. Nationwide settlement. 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 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.

*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.

*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 Smith Barney, reversed on appeal.

*Bahramipour v. Citigroup Global Markets, Inc.*, Case No. 04-04440 CW, United States District Court, Northern District of California, represented numerous brokers in major brokerage house in claims for failure to pay overtime. Nagel Rice was signatory on the \$95 million Settlement Agreement and designated as Class Counsel.

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 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.



## INDIVIDUAL ATTORNEYS

### MEMBERS OF FIRM

**BRUCE H. NAGEL**, born Paterson, New Jersey, August 28, 1952; admitted to bar 1977, New Jersey, U.S. District Court, District of New Jersey and U.S. Court of Appeals, Third Circuit; 1995, U.S. Court of Appeals, Fourth Circuit; 2001, U.S. Court of Appeals, First Circuit 2014, U.S. Supreme Court. EDUCATION: Cornell University (B.S., 1974); New York University (J.D., 1977). Author: "Griggs Settlements: Dead or Alive," New Jersey Law Journal, May 2008; "The Evolving Torts of Wrongful Life and Wrongful Birth," New Jersey Lawyer, October, 1997. Co-Author: "Critical Pattern Requirement under RICO," New Jersey Law Journal, September 1, 1988. Moderator and Lecturer: Trying Breast Cancer Cases, Institute for Continuing Legal Education, September 2004; Winning the Big Verdict, Institute for Continuing Legal Education, November, 2003; "Trying a Wrongful Birth Case," ATLA, New Jersey Symposium, 2002; First Annual Tort Law Forum, Institute for Continuing Legal Education, June, 1997, July 2008. Lecturer: Tort Law Conference, Institute for Continuing Legal Education, 2007, 2008; Annual Convention, Top Ten Tort Cases of 1997, The Association of Trial Lawyers of America-New Jersey, 1997; Third Annual At-Will Employment Law Symposium, 1989; Civil Trial Institute, Institute for Continuing Legal Education, July, 2005. Adjunct Professor, Medical Malpractice, New Jersey Practice, Seton Hall University School of Law. Included on 2008-2013 top 10 *New Jersey Super Lawyers* list, New Jersey Monthly Magazine; Best Lawyers in America, 2006-2013. Best Lawyers in New York

Metropolitan Area, New York Magazine, 2006-2013. MEMBER: Essex County and New Jersey State Bar Associations; The Association of Trial Lawyers of America; The Association of Trial Attorneys of New Jersey (Board of Governors); Million Dollar Advocates Forum. (Certified Civil Trial Attorney, Supreme Court of New Jersey, Board on Trial Attorney Certification) SPECIAL AGENCIES: Special Counsel to New Jersey Department of Environmental Protection for Natural Resource Damage Litigation. REPORTED CASES: *Kuzian v. Electrolux Home Products, Inc.*, 937 F.Supp.2d 599 (D.N.J. 2013); *Clark v. Prudential*, 289 F.R.D. 144 (D.N.J. 2013); *Clark v. Prudential Ins. Co. of America*, 736 F.Supp.2d 902 (D.N.J. 2010); *Drazin v. Horizon Blue Cross Blue Shield of NJ*, 832 F.Supp. 2d. 432 (D.N.J. 2011) *aff'd* Fed. Appx. 211 (3d Cir. 2013); *Franco v. Conn. Gen. Life Ins. Co.*, 818 F.Supp. 2d. 792 (D.N.J. 2011); *Devito v. Aetna*, 536 F. Supp. 2d 523 (D.N.J. 2008); *New Jersey Dept. of Environmental Protection v. Exxon Mobil Co.* 393 NJ Super, 388 (App. Div. 2007); *New Jersey Eye Center v. Princeton Ins. Co.*, 394 N.J. Super. 557 (App. Div. 2007); *Rosen v. Smith Barney*, 195 N.J. 423 (2008); *In re Citigroup, Inc., Capital Accumulation Plan Litigation*, 150 F. Supp. 2d 274 (D. Mass. 2001); *In re Citigroup, Inc., Capital Accumulation Plan Litigation*, 2001 WL 1423721 (D. Mass. 2001); *Brodsky v. Grinnell Haulers, Inc.* 181 N.J. 102 (2004); *Macedo v. Dello Russo*, 178 N.J. 340 (2004); *Howard v. UMDNJ*, 172 N.J. 537 (2002); *Couri v. Gardner*, 173 N.J. 328 (2002); *Myers v. Epstein*, 282 F. Supp. 2d 151 (S.D. N.Y., 2003); *Ponzo v. Pele*, 166 N.J. 481 (2001); *Teaneck FMBA v.*

Township of Teaneck, 177 N.J. 560 (2003); *Liquito v. Siegel*, 370 N.J. Super. 21 (App. Div. 2004); *Hummel v. Reiss*, 129 N.J. 118 (1992); *Jacobs v. Great Pacific Century Corp.*, 104 N.J. 580 (1986); *Lodato v. Kappy*, 353 N.J. Super. 439 (App. Div. 2002); *Moscattello v. UMDNJ*, 342 N.J. Super. 351 (App. Div. 2001); *RFE Industries, Inc. v. SPM Corp.*, 105 F.3d 923 (4th Cir. 1997); *National Property Investors VIII v. Shell Oil Co.*, 917 F. Supp.324 (D.N.J. 1995); *Caputa v. Antiles*, 296 N.J. Super. 123 (App. Div. 1996); *Ladner v. Mercedes-Benz of North America, Inc.*, 266 N.J. Super. 481 (App. Div. 1993); *Town of Kearny v. Hudson Meadows Urban Renewal Corp.*, 829 F.2d 1263 (3rd Cir. 1987). PRACTICE AREAS: Trial Practice; Class Actions; Medical Malpractice; Serious Personal Injury; Products Liability; Employment Law; Professional Liability; Mass Torts; Toxic Torts; Wrongful Birth; Environmental Litigation; Qui Tam Litigation. EMAIL: [BNagel@nagelrice.com](mailto:BNagel@nagelrice.com) Mr. Nagel has tried over 150 cases to conclusion and handled over 100 appeals in federal and state courts throughout the country (including 12 before the New Jersey Supreme Court). He has approximately 70 published opinions in the field of class action, medical malpractice, trial practice, product liability, consumer fraud and other related areas of law; he is an adjunct professor at Seton Hall Law School; and he has also lectured extensively for both ICLE and ATLA-NJ on a variety of trial related topics. He is a certified civil trial attorney, a designation held by less than 2% of New Jersey attorneys. He has the unique distinction of arguing three class actions before the New Jersey Supreme Court.

**JAY J. RICE**, born New York, N.Y., February 12, 1952; admitted to bar 1977,

New Jersey and U.S. District Court, District of New Jersey; 1979, U.S. Court of Appeals, Third Circuit; 1981, U.S. Supreme Court; 2002, U.S. Court of Appeals, Second Circuit; 2003, U.S. District Court, Southern District of New York. EDUCATION: Rutgers University (B.A., with honors, 1974; J.D., 1977). Recipient, Pro Bono Chancery Achievement Award, Essex County Bar Association, 1995. Listed, Top 100 Lawyers New Jersey Monthly Magazine, 2007, 2008, 2009, 2010 and 2011. Top 10 Lawyer, New Jersey Monthly Magazine 2012. Law Clerk to the Honorable Baruch S. Seidman, New Jersey Superior Court, Appellate Division, 1977-1978. Author: "Equity Procedures," New Jersey Practice, Vol. 19, Chapter 4, 1993; "Responsibility of Insolvent Corporation for Environmental Cleanup," New Jersey Law Journal, September 25, 1986. Lecturer: "Restrictive Covenants," New Jersey State Bar Association Convention, 1989; "The Corporate Deadlock Statute," New Jersey State Bar Convention, 1990; "Law Firm Dissolution," New Jersey State Bar Association Convention, 1991; "The Corporate Deadlock Statute," Institute of Continuing Legal Education, 1991; "Successfully Litigating The Closely Held Corporate Dispute When Those in Control Have Engaged in Fraud and Mismanagement," Essex County Bar Association, 1993; "Litigating Fraud and Mismanagement Disputes in Closely Held Corporations," Institute of Continuing Legal Education, 1995; "Marketability Discounts in the Sale of Closely Held Stock," Equity Jurisprudence Committee, 1999; "Law Firm Breakups Ten Years After Norris," New Jersey State Bar Association General Equity Jurisprudence Committee, 2003; "Chancery 2010 Corporate Divorces", New Jersey State Bar Association Convention 2010. Member: District Ethics Committee for Essex County

District V-B, 1994-1999; N.J. Lawyer Editorial Board, 1996-2008. Program Administrator, Superior Court Chancery Division Essex County Early Settlement Program, 1990-. MEMBER: Essex County, New Jersey State (Member, Committee on Equity Jurisprudence, 1982-; Chairman, 1989-1991; Member, Certified Trial Attorneys Section) and American Bar Associations. (Certified Civil Trial Attorney, Supreme Court of New Jersey, Board on Trial Attorney Certification) REPORTED CASES: Pappas v. Coach House Diner & Restaurant, Inc., 2005 WL 1010359 (N.J.Super.Ch. March 28, 2005); Tannen v. Tannen, 416 N.J. Super. 248 (App. Div. 2010), *aff'd*, 208 N.J. 409 (2011); Pappas v. Coach House Diner & Restaurant, Inc., 2005 WL 1421375 (Ch. Div. June 17, 2005); Sherman v. Wellbrock, 761 F.Supp. 1135 (D.N.J. 1991); Dairy Stores, Inc. v. Sentinel Pub. Co., Inc., 104 N.J. 125 (1986); National Recovery Systems v. Feltman, 211 N.J. Super. 526 (1986); Consolidated Precast, Inc. v. Action Builders Co., Inc., 190 N.J. Super. 92 (1983); Franklin Mint Corp. v. Master Mfg. Co., 667 F.2d 1005 (1981); *In re* Ski Train Fire in Kaprun, Austria, on November 11, 2000, 2004 WL 1048233 (S.D.N.Y. 2004); Kern v. Oesterreichische Elektrizitaetswirtschaft Ag, 178 F.Supp.2d 367 (S.D.N.Y. 2001); Sherman v. Wellbrock, 761 F.Supp. 1135 (D.N.J. 1991); *In re* Shopping Cart Antitrust Litigation, 95 F.R.D. 309 (S.D.N.Y. 1982). PRACTICE AREAS: Commercial Litigation; Complex Litigation; Alternative Dispute Resolution; Corporate Law; Chancery Practice; Class Action Litigation; Estate Litigation; Construction Litigation. EMAIL: [JRice@nagelrice.com](mailto:JRice@nagelrice.com)

**ROBERT H. SOLOMON**, born Glen Ridge, New Jersey, 1964; admitted to bar 1990, New Jersey and U.S. District Court, District of

New Jersey; 1997, U.S. Court of Appeals, Third Circuit; 2014, United States Supreme Court. EDUCATION: University of Rochester (B.A., 1986); University of Pittsburgh (J.D., 1990). Member: Moot Court Board; National Appellate Moot Court Competition. Law Clerk, Honorable Freda L. Wolfson, U.S. District Court, District of New Jersey. Former Adjunct Professor of Law, Seton Hall University School of Law. Included in 2008-2016 *New Jersey Super Lawyers*; Listed in 2010-2016 Top 100 *New Jersey Super Lawyers*. MEMBER: New Jersey State Bar Association; New Jersey Association for Justice; The Association of Trial Lawyers of America. REPORTED CASES: Clark v. Prudential Ins. Co. of Am., 940 F. Supp. 2d 186 (D.N.J. 2013); Clark v. Prudential Ins. Co. of Am., 289 F.R.D. 144 (D.N.J.) reconsideration denied, 940 F. Supp. 2d 186 (D.N.J. 2013); USI Ins. Servs. LLC v. Miner, 801 F. Supp. 2d 175 (S.D.N.Y. 2011); Noble v. Porsche Cars N. Am., Inc., 694 F. Supp. 2d 333 (D.N.J. 2010); Clark v. Prudential Ins. Co. of America, 736 F.Supp.2d 902 (D.N.J. 2010); Meyers v. Epstein, 232 F.Supp. 2d 192 (S.D.N.Y., 2002); Meyers v. Epstein, 282 F.Supp. 2d 151 (S.D.N.Y., 2003); Couri v. Gardner, 173 N.J. 328 (2002); Howard v. UMDNJ, 172 N.J. 537 (2002); 1530 Owners Corp. v. Borough of Fort Lee, 135 N.J. 394 (1994); Geler v. Akawie, 358 N.J. Super. 437 (App. Div. 2003); Lodato v. Kappy, 353 N.J. Super. 439 (App. Div. 2002); Moscatello v. UMDNJ, 342 N.J. Super. 351 (App. Div. 2001); Michelman v. Ehrlich, 311 N.J. Super. 57 (App. Div. 1998); Caputo v. Antiles, 296 N.J. Super. 123 (App. Div. 1996); Finkelman v. Nat'l Football League, 2016 WL 158507 (3d Cir. Jan. 14, 2016); Reed v. Swatch Grp. (US), Inc., 2015 WL 5822669 (D.N.J. Oct. 1, 2015); McDonough v. Horizon Blue Cross Blue Shield of New Jersey, 2015 WL

5573821 (3d Cir. Sept. 23, 2015); NAF Holdings, LLC v. Li & Fung (Trading) Ltd., 2015 WL 3896792 (Del. June 24, 2015); Reed v. Swatch Grp. (US), Inc., 2014 WL 7370031 (D.N.J.); McDonough v. Horizon Healthcare Servs., Inc., 2014 WL 3396097 (D.N.J.); WorldScape, Inc. v. Sails Capital Mgmt., 2014 WL 1342983 (D.N.J.); Leibholz v. Hariri, 510 F. App'x 112 (3d Cir. 2013); Friedfertig Family P'ship 2 v. Lofberg, 2013 WL 6623896 (D.N.J.); Worldscape, Inc. v. Sails Capital Management, 2011 WL 3444218 (D.N.J.); Glen Ridge SurgiCenter, LLC v. Horizon Blue Cross and Blue Shield of New Jersey, Inc., 2011 WL 5882019 (D.N.J.); McDonough v. Horizon Blue Cross Blue Shield of New Jersey, Inc., 2011 WL 4455994 (D.N.J.); Glen Ridge SurgiCenter, LLC v. Horizon Blue Cross and Blue Shield of New Jersey, Inc., 2011 WL 5881924 (D.N.J.); Clark v. Prudential Ins. Co. of America, 2011 WL 1833355 (D.N.J.); Leibholz v. Hariri, 2011 WL 1466139 (D.N.J.); Clark v. Prudential Ins. Co. of America, 2011 WL 940729 (D.N.J.); Rabinowitz v. Rayman, 2010 WL 2867909 (N.J.App.Div.); Wayne Surgical Center v. Concentra, 2009 WL 961389 (D.N.J.); Gregory Surgical Center v. Horizon, 2009 WL 749795 (D.N.J.); Glen Ridge SurgiCenter, LLC v. Horizon Blue Cross and Blue Shield of New Jersey, Inc., 2009 WL 3233427 (D.N.J.); Abrahams v. Hygrosol Pharmaceutical Corp., 2009 WL 3055372 (D.N.J.); Clark v. Prudential Ins. Co. of America, 2009 WL 2959801 (D.N.J.); McDonough v. Horizon Blue Cross Blue Shield of New Jersey, Inc., 2009 WL 3242136 (D.N.J.); Gregory Surgical v. Horizon, 2007 WL 4570323 (D.N.J.); Wayne Surgical v. Concentra, 2007 WL 2416428 (D.N.J.); Fairfax Financial v. S.A.C. Capital Management, 2007 WL 1456204 (D.N.J.); ABS Associates v. Hartz Mountain, 2006

WL 1519577 (N.J. Ch. Div. 2006); Gregory Surgical v. Horizon, 2006 WL 3751385 (D.N.J.); Kantha v. Pacific Life, 2006 WL 2583239 (D.N.J.); Gregory Surgical v. Horizon, 2006 WL 1541021 (D.N.J.); Samco Rockaway 90, Inc. v. Lawyers Title, 1995 WL 328141 (D.N.J.).

EMAIL: [RSolomon@nagelrice.com](mailto:RSolomon@nagelrice.com)

**DIANE ELIZABETH SAMMONS**, born Jersey City, New Jersey, December 18, 1955; admitted to bar 1981, New Jersey, New York and U.S. District Court, District of New Jersey; 2003, U.S. District Court, Southern and Eastern Districts of New York; 2005, U.S. Court of Appeals, Second Circuit; 2012, U.S. Supreme Court; U.S. Court of Appeals, Third Circuit (2013). EDUCATION: College of William and Mary (B.A., in Government); Seton Hall School of Law (J.D., 1981). Assistant District Attorney, New York County, 1981-1985. Author: "Corporate Reparations for Descendants of Enslaved African Americans - Practical Obstacles," Max DuPlessis, Stephen Pete; Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses, (Intersentia 2007) at 315. "Retaliation", Michele Paludi, DeSouza, Prager Handbook on Workplace Discrimination: Legal, Management and Social Science Perspectives (Praeger, 2010). Presenter and Lecturer: "Canonical Development: Standing Commission on Constitution and Canons", "Title IV Implementation and Education Issues", Western Chancellors' Conference (2011); "Modeling Civil Discourse in Negotiation and Governance Settings"; Western Chancellors' Conference (2011); "New Title IV Disciplinary Code"; Chancellors' Conference (2010); "Report of Title IV Task Force," Province II Synod (May 2009), Western Chancellors' Conference (May 2009), Standing Committee



on Ministry Development (November 2008); "Breakthrough on Statute of Limitations Issue", North Carolina Conference of the NAACP CLE Seminar (October 2008); "Reconciliation at the Roundtable," The Desmond Tutu Center; General Theological Seminary (September 2007); "The Misuse of Church Computers: What You May Want to Know More About," National Chancellors' Conference (May 2007); "National Canons: History and Application of Title IV," Drew University Theological School (May 2007); "Authority in the Anglican Communion and the Windsor Report," Episcopal Lawyers' Volunteer Network (May 2007); "The Legal Case for Reparations," Brooklyn Law School (February 2007); "The Moral and Legal Basis for Reparations for Historical Wrongs," Plainfield Unitarian Society (January 2007); "Excellence, Justice, Honor Through an Unflinching Look at the Harms of the Transatlantic Slave Trade," Horace Mann High School Honor Society (May 2006); "The Case for Reparations and Comments on Film: 'Slavery Reparations: The Final Passage'," Brooklyn Film Festival (February 2006); "Human Rights Through Reparations Litigation," United Universalist Association Diversity Conference, New York (February 2006); "Bishop and Clergy Development Search Processes/Letter of Agreement", Western Chancellor's Conference, 2005; "Human Rights as Tool for Social Change", UNESCO, Institute of Comparative Human Rights Conference, 2005, 2006, 2007, 2008, 2009, 2010; "Update on Reparations Litigation," Congressional Black Caucus Conference (September 2005); "Update in African-American Slave Descendants' Litigation and Apartheid Litigation," Stanford Law School (2004); "Reparations, a Legal Model," University of Connecticut School of Law (2002); "A Review on African-American Slave Descendants'

Litigation," Union Theological Seminary (2002); "Class Action as a Mechanism for Enforcement of Human Rights Violations," Kean University (Fall 2002). Member: Hogan Morgenthau Associates; Board Member, Episcopal Chancellors' Network; Ecclesiastical Law Society; Disciplinary Board for Bishops of the Episcopal Church; Chair, Standing Commission of the Constitution and Canons of the National Episcopal Church (2009-2012); Subcommittee on Title IV Revision of the National Episcopal Church (2006-2009); Presiding Bishop's Chancellor's Council of Advice; Episcopal Lawyers' Volunteer Network - Diocese of Newark; Committee on Constitution and Canons - Diocese of Newark; New Jersey State District Ethics Committee for Essex County, District V-B, 1998-2002. Chancellor, Episcopal Diocese of Newark (2004-) (Legal Advisor to Bishop and 112 congregations). LISTED: 2010, 2012 Super Lawyer New Jersey Monthly Magazine MEMBER: New Jersey State and American Bar Associations. REPORTED CASES: In re African American Slave Descendants' Litig., 304 Supp.2d 1027 (N.D. Ill. 2004); In re African American Slave Descendants' Litig., 471 F.3d (7th Cir. 2006); In re Apartheid Litig., 238 F.Supp.2d 1379 (Jud. Pan. Mult. Lit. 2002); In re Apartheid Litig., 346 F. Supp.2d 538 (S.D.N.Y. 2004); Khulumani v. Barclay Nat. Bank, 504 F. 3d 245 (2d Cir. 2007); American Isuzu Motors v. Ntsebeza, 128 S. Ct. 2424, 171 L. Ed 2d 225, 76 USLW 3405, 76 USLW 3603, 76 USLW 3608 (U.S. May 12, 2008); In re South African Apartheid Litig. F. Supp.2d, 2009 WL 960078 (S.D.N.Y. April 8, 2009); In re Ski Trian Fire in Kaprun, 175 F.Supp.2d 1379 (Jud. Pan. Mult. Lit. 2001). PRACTICE AREAS: Class Actions; International Human Rights; Canon Law; Commercial Litigation; Criminal Law; Municipal Law; Personal

Injury; Labor and Employment. EMAIL: [DSammons@nagelrice.com](mailto:DSammons@nagelrice.com)

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**RANDEE M. MATLOFF**, born Jersey City, New Jersey, August 20, 1956; admitted to bar 1981, New Jersey, U.S. District Court, District of New Jersey and U.S. Court of Appeals, Third Circuit. EDUCATION: Rutgers University (B.A., highest honors, 1978; J.D., 1981). Phi Beta Kappa. Articles Editor, Women's Rights Law Reporter, 1980-1981. REPORTED CASES: Tannen v. Tannen, 416 N.J. Super. 248, 277 (App. Div. 2010); DeVito v. Aetna, 536 F. Supp. 2d 523 (D.N.J. 2008); Beye v. Horizon Blue Cross Blue Shield of New Jersey, 568 F. Supp. 2d 446 (D.N.J. 2008); Ravin, Sarasohn, Cook,

Baumgarten, Fisch & Rosen, P.C. v. Lowenstein Sandler, P.C., 365 N.J. Super. 241 (App. Div. 2003); In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 220 F.R.D. 195 (S.D.N.Y. 2003); In re Ski Train Fire in Kaprun, Austria, on November 11, 2000, 257 F. Supp. 2d 717 (S.D.N.Y. 2003); In re Ski Train Fire in Kaprun, Austria, November 11, 2000, 257 F. Supp.2d 648 (S.D.N.Y. 2003); Couri v. Gardner, 173 N.J. 328 (2002); Reynolds v. Lancaster County Prison, 325 N.J. Super. 298 (App. Div. 1999); Hartford Acc. and Indem. Co., v. Marley Industries Corp., 245 A.D. 2d 554, 666 N.Y.S. 2d 503 (Mem), Dec. 19, 1997; Dawson Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa. 285 N.J. Super. 137 (App. Div. 1995); National Recovery Systems v. Feltman, 211 N.J. Super. 526 (Law Div. 1986); Gregory Marketing Corp. v. Wakefern Food Corp., 207 N.J. Super. 607 (Law Div. 1985). Listed, 2010 and 2011 Super Lawyer New Jersey Monthly Magazine. PRACTICE AREAS: Commercial Litigation; Product Liability; Class Action; Employment; Chancery; Appellate Practice. EMAIL: [RMatloff@nagelrice.com](mailto:RMatloff@nagelrice.com)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

RAVI MOTWANI, Individually and  
on behalf of a Class of  
Similarly Situated Individuals,

Plaintiffs,

v.

MARINA DISTRICT DEVELOPMENT  
COMPANY, LLC d/b/a BORGATA  
HOTEL CASINO AND SPA,

Defendant.

Civil Action No.  
2:15-cv-02069-JMV-MF

*Civil Action*

PROPOSED ORDER GRANTING  
PLAINTIFF'S MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS AND  
CLASS REPRESENTATIVE SERVICE  
AWARD

WHEREAS, Plaintiff and Defendant Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa ("Borgata") entered into a Settlement Agreement subject to Court approval;

WHEREAS the Court preliminarily approved the Settlement Agreement on July 28, 2016. (D.E. 44)

WHEREAS, ¶50 of the Settlement Agreement (D.E. 41-1) provides that Defendant has agreed not to oppose the amount of \$175,000.000 to Plaintiffs' counsel for their attorneys' fees and expenses, subject to Court approval;

WHEREAS, Plaintiffs have filed a motion seeking the payment of \$175,000.00 for their attorneys' fees and expenses, and the Court has been advised that Defendants do not oppose it.

WHEREAS, the Settlement Agreement also provides, in ¶52

that Defendant agrees to pay (and shall pay, if approved by the Court), a Class Representative Service Awards totaling \$2,500 to the Class Representatives, Ravi Motwani;

WHEREAS, Plaintiffs have filed a motion seeking approval of the payment of the Class Representative Service Award and the Court has been advised that Defendants do not oppose it;

WHEREAS, after considering Plaintiffs motion, Brief in support and Certification of Bruce H. Nagel, as well as any materials that may be filed in opposition thereto, and the Court having concluded that Plaintiff's request for fees, expenses and payment of Class Representative Service Awards is reasonable, permissible under the applicable law and in accordance with the Settlement Agreement.

IT IS HEREBY ORDERED:

1. Plaintiffs' Unopposed Motion for an Award of Attorney's Fees, the reimbursement of expenses, and the approval of Class Representative Service Awards is hereby GRANTED.
2. Defendant shall pay Class Counsel \_\_\_\_\_ [\$175,000.00] for attorneys' fees and expenses to be paid in accordance with ¶51 of the Settlement Agreement.
3. In accordance with the Settlement Agreement, Defendant shall also make an additional payment of \$2,500.00 to the Class Representative Ravi Motwani in accordance with ¶52 of the Settlement Agreement.

IT IS SO ORDERED.

DATED:

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HON. JOHN MICHAEL VAZQUEZ  
UNITED STATES DISTRICT JUDGE