

THE LAW OFFICES OF TODD M. FRIEDMAN, PC  
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**UNITED STATE DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ALFRED ZAKLIT AND JESSY  
ZAKLIT, individually and on behalf of  
all others similarly situated,  
  
Plaintiffs,  
  
vs.  
  
NATIONSTAR MORTGAGE LLC  
and DOES 1 through 10, inclusive, and  
each of them,  
  
Defendants.

Case No 5:15-CV-02190-CAS-KK

**CLASS ACTION**

**DECLARATION OF TODD M.  
FRIEDMAN IN SUPPORT OF  
PLAINTIFF'S NOTICE OF  
MOTION & MOTION FOR FINAL  
APPROVAL OF CLASS  
SETTLEMENT**

Assigned to the Hon. Christina A. Snyder

**DATE: AUGUST 19, 2019  
TIME: 9:00 AM  
COURTROOM: 8D**

**DECLARATION OF TODD M. FRIEDMAN**

**I, TODD M. FRIEDMAN, declare:**

1. I am one of the attorneys for the plaintiffs in this action, Alfred and Jessy Zaklit (“Plaintiffs”). I am an attorney licensed to practice law in the State of California since 2001, the State of Illinois since 2002, and the State of Pennsylvania since 2011. I have been continuously licensed in California since 2001, Illinois since 2002, and Pennsylvania since 2011, and am in good standing with the California State Bar, Illinois State Bar, and Pennsylvania State Bar. I have litigated cases in both state and federal courts in California and Illinois. I am also admitted in every Federal district in California and have handled federal litigation in the federal districts of California.
2. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
3. I submit this declaration in support of the Plaintiffs’ Motion for Final Approval of Class Action Settlement and Certification of Settlement Class in the action against defendant, Nationstar Mortgage (“Nationstar” or “Defendant”).

**CASE HISTORY**

4. Plaintiffs’ Complaint was filed on October 23, 2015, alleging violations of the IPA. (Dkt. No. 1.)
5. The Parties engaged in written discovery. Defendants produced all policies and procedures relating to recording practices, advisory practices, training for representatives, call scripts, and IVR automated messages, as well as all documents relating to Plaintiffs’ collections file.
6. Plaintiffs moved to compel further production of documents comprising of two categories: 1) the outbound dial list showing all recorded calls placed by Defendants; and 2) recordings of California area code calls with

1 Defendants.

- 2 7. Plaintiffs filed for Certification on May 27, 2016 (Dkt. No. 44.). During  
3 the pendency of certification, the Parties attended a full day mediation in  
4 San Francisco at JAMS before the Honorable Ronald M. Sabraw (Ret),  
5 which was unsuccessful.
- 6 8. Before the mediation, Plaintiffs had previously filed their Motion for Class  
7 Certification on December 12, 2016 (Dkt. 35.) After extensive briefing and  
8 discovery on said Motion, The Honorable Judge Snyder granted Plaintiffs'  
9 Motion for Class Certification on July 24, 2017 (Dkt. 74.)
- 10 9. On August 9, 2017, Defendant filed a Petition to Appeal to the Ninth Circuit  
11 regarding the Order granting Plaintiffs' Motion for Class Certification, which  
12 Plaintiffs Opposed. The Ninth Circuit denied Defendant's Petition on  
13 October 16, 2017.
- 14 10. On February 2, 2018, Plaintiffs filed their Motion for Approval of Class  
15 Notice, which Defendant opposed. (Dkt. 83.) The Honorable Judge Snyder  
16 granted Plaintiffs' Motion for Class Certification on March 12, 2018 (Dkt.  
17 86.)
- 18 11. The Parties attended a second mediation with the Hon. Louis M. Meisinger,  
19 Ret. of Signature Resolution on April 27, 2018. My office prepared a  
20 mediation brief, extensively reviewing the law and the facts, as yielded by  
21 the evidence to date, along with several pages of exhibits. Defendant  
22 submitted a similar brief. The Parties did not resolve the case at the mediation  
23 on April 27, 2018, but subsequently resolved the matter a few months later  
24 with the assistance of Judge Meisinger.
- 25 12. Defendant strongly contested both the legal and factual issues in this matter.  
26 Defendant further contested class certification on numerous grounds as  
27 evidenced by its Oppositions to Plaintiffs' Motion for Class Certification, and  
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1 the Appeal of the same, as well as its Subsequent planned Motion to  
2 Decertify.

3 13. With Judge Meisingers' guidance, a Settlement Agreement and Release  
4 ("Settlement Agreement") was ultimately agreed upon in principle by the  
5 Parties. The Parties spent several weeks discussing the terms and negotiating  
6 the precise language of the agreement.

7 14. The parties attended a Preliminary Approval Hearing on February 25, 2019.  
8 The Honorable Court thereafter approved the settlement as fair, reasonable  
9 and adequate, approved the proposed notice as the best practicable means of  
10 notifying the class, and preliminarily appointed myself and Adrian Bacon  
11 from my office as class counsel and Alfred and Jessy Zaklit as class  
12 representatives. Dkt. No. 120.

13 15. The Court ordered Plaintiffs to file a fee petition by June 3, 2019. Due to a  
14 calendaring error on my firm's part, where we incorrectly calendared the  
15 filing deadline, my office did not file the brief on that date. However, we  
16 have directed the claims administrator to post the final approval and fee briefs  
17 contemporaneously to their filing to ensure that the class has notice through  
18 the website of these filings in advance of the opt out and objection deadlines.  
19 We are also requesting the Court, via a stipulation and proposed order, extend  
20 the opt out and objection period until July 19, 2019, which we will instruct  
21 the administrator to post on the settlement website. Further, no class  
22 members have objected to the fees requested, and all class members were  
23 provided with the amounts that my office would request as class counsel in  
24 our fee brief, through the class notice. Accordingly, I believe that the class  
25 had sufficient notice and opportunity to object to our fee request in advance  
26 of the objection deadline. Any class member who is considering an objection  
27 may still review our fee petition in advance of the extended deadline.  
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SETTLEMENT TERMS AND CLASS DEFINITION

1  
2 16. Pursuant to the Settlement Agreement (the “Agreement”), those persons in  
3 the Settlement Class (defined below) who have submitted a valid claim form,  
4 will receive a pro rata distribution from the Settlement Fund after payment  
5 of administration costs, attorneys’ fees, costs of litigation, and any incentive  
6 payment.

7 17. As part of that Agreement, Defendant will make a Payment of \$6,500,000 as  
8 the settlement benefits (the “Settlement Fund”) for all approved claims.  
9 Defendant will also pay all attorneys’ fees and expenses, and costs of notice  
10 and claims administration from the Settlement Fund. Further, Defendant has  
11 paid for the Class Action Fairness Act Notice.

12 18. Available Settlement Funds will be apportioned in the form of a check mailed  
13 to all Class Members who submit valid claim forms. The amount of the check  
14 received by each such claimant will be calculated on a pro rata basis by  
15 deducting all attorney’s fees, costs, administration expenses and incentive  
16 award distributions from the net Settlement Fund, and dividing the remainder  
17 by the total number of valid claims submitted by Class Members. The Claims  
18 Administrator will send payment via mail by check to each such claimant.

19 19. The parties agreed to cap the costs of providing notice at \$194,499.

20 20. The Class or Settlement Class Members refers to:

21 All individuals who, from October 23, 2014 to May 1, 2016,  
22 while physically present in California and using a cellular device  
23 with a California area code, participated for the first time in an  
24 outbound telephone conversation with a representative of  
25 Defendant or its agent who were recording the conversation  
26 without first informing the individual that the conversation was  
27 being recorded.” (Agreement § 2.1)  
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1 21.Plaintiffs contend that the class as so defined satisfies the requirements of Rule  
2 23 because all persons in the Settlement Class are persons whose calls from  
3 Nationstar were recorded on their cell phones between October 23, 2014 and  
4 May 1, 2016. The total number of class members was approximately 62,479.  
5 This was confirmed in discovery from Defendants.

6 22.The Settlement Class consists of all persons who were called by Nationstar  
7 during Class Period, as stated above. Based on data confirmed Defendants  
8 and their counsel, the number of unique class members is approximately  
9 62,479. This data was confirmed by Plaintiffs via formal written discovery.  
10 Furthermore, the majority of mortgage files containing phone numbers also  
11 contained data that identified the class members by name and their addresses.

12  
13 RISK OF CONTINUED LITIGATION

14 23.Taking into account the burdens, uncertainty and risks inherent in this  
15 litigation, Class Counsel have concluded that further prosecution of this  
16 action could be protracted, unduly burdensome, and expensive, and that it is  
17 desirable, fair, and beneficial to the class that the action now be fully and  
18 finally compromised, settled and terminated in the manner and upon the  
19 terms and conditions set forth in the Settlement Agreement.

20 24.The named Plaintiffs and their counsel believe that the claims asserted in the  
21 action have merit. However, taking into account the risks of continued  
22 litigation, as well as the delays and uncertainties inherent in such litigation  
23 including the risks in any subsequent appeal, they believe that it is desirable  
24 that the action be fully and finally compromised, settled and terminated now  
25 with prejudice, and forever barred pursuant to the terms and conditions set  
26 forth in this Settlement Agreement. Class Counsel have concluded that with  
27 the Settlement Benefit and with the deterrent effects of the this Settlement,  
28 the terms and conditions of this Settlement Agreement are fair, reasonable

1 and adequate to the proposed class, and that it is in the best interests of the  
2 proposed class to settle the Action.

3 25.As such, it is my belief as class counsel that this Settlement represents an  
4 outstanding result for the Class. The result that was achieved is highly  
5 favorable in my opinion to the Class, and was achieved without subjecting  
6 Class Members to the risks and delay associated with further litigation.

7 26.A settlement was finalized, agreed upon by all Parties and counsel and a  
8 formal Settlement Agreement was executed. This motion for preliminary  
9 approval of class action settlement followed, which Defendant has agreed in  
10 the Settlement Agreement not to oppose.

11 **NOTICE GIVEN**

12 27.For the details involved in giving the notice, and administering the claims  
13 procedure, and the claims received, see the Declaration of Lindsey Marquez,  
14 filed concurrently.

15 28.I am informed that data relating to potential class members was provided to  
16 Epiq in connection with disseminating the class notice. Because of the  
17 methods in which records were maintained by Defendant, it was important to  
18 my office that we err on the side of caution, and give notice to anyone who  
19 potentially could be a class member, for whom we had data and information,  
20 including name, address and phone number, even if that notice was slightly  
21 overbroad.

22 29.Accordingly, Defendant provided data relating to names/addresses of  
23 individuals, as well as phone number for the approximately 62,479 potential  
24 Class Members who received an initial phone call from Nationstar with a  
25 California area code. Epiq was able to reach over 98% of the Potential Class  
26 Members for whom Nationstar had address information by direct mail.

27 30.As of June 24, 2019, Epiq has received 10,819 valid Claims. Of those claims  
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1 that were made, either online or by return postcard, all of them were deemed  
2 valid, i.e. which matched Class Member contact data produced by Defendant.  
3 31. Upon final approval, it is my understanding that Defendants will issue  
4 payment by funding the Common Fund following Final Approval (the  
5 Funding Date). Epiq will then issue compensation in the form of the  
6 Settlement Checks to the Class Members within 30 days of the Funding Date.  
7 If any Settlement checks are returned, the Claims Administrator shall attempt  
8 to obtain a new mailing address for that Settlement Class Member by taking  
9 the steps described in the Agreement.

### 10 OPT OUTS AND OBJECTIONS

11 32. Class Members were permitted to opt-out or to file an objection. Epiq has  
12 received only two opt outs and received zero objections. This is described in  
13 more detail in the Declaration of Lindsey Marquez.

14 33. The deadline to submit a Request for Exclusion or Object is July 5, 2019.

15 34. I believe that the lack of any opt outs or objections from the approximately  
16 62,479 Class Members, highly supports the adequacy of the proposed  
17 Settlement. I also believe that the take rate in this case of 17%  
18 (10,819/62,479) is an above average take rate in a consumer class action,  
19 indicative of a high level of interest by Class Members in this settlement.

20 35. Therefore, I believe that, overall, the Class Members have responded very  
21 favorably to the Settlement.

### 22 ADEQUACY OF SETTLEMENT

23 36. Defendant shall provide class benefits of \$6,500,000. The Settlement Class  
24 Members who submitted a valid Claim Form stand to receive a cash payment  
25 from the Settlement Fund in the form of a check per Approved Claim, on a  
26 pro rata basis after deducting Settlement Costs.

27 37. Costs of litigation, notice, claims administration and attorneys' fees are being  
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1 paid by the Defendant from the Settlement Fund.

2 38. Any incentive payment awarded to the Representative Plaintiffs, any  
3 attorneys' fees and costs awarded to Class Counsel and certain expenses  
4 including Claims Administration Costs, are to be paid from the Settlement  
5 Fund by Defendant as follows:

6 Administration Expenses and payment of notice, by EPIQ will be capped at  
7 \$194,499;

8 Attorneys' fees to Class Counsel, as approved by the Court, up to \$2,145,000;  
9 Incentive/Service Award to Representative Plaintiffs in an amount up to  
10 \$10,000 per Plaintiff (\$20,000); and, payment of reasonable and appropriate  
11 costs of litigation currently in an amount of \$25,046.52.

12 39. Given the foregoing, and assuming that the full \$194,499 amount of expenses  
13 are incurred with respect to Class Notice, the amount of the residual Net  
14 Settlement Fund is anticipated to be \$4,115,454.48.

15 40. Assuming that there is not a significant influx of valid claims made in the  
16 next week following the claims deadline, then each class member who  
17 submitted a valid claim will receive approximately \$380.39. In my opinion,  
18 given the risks of litigation and my experience working on IPA class actions,  
19 this represents an outstanding result for the class.

20 41. I am unaware of any conflict of interest between Plaintiff and any Class  
21 Member or between Plaintiff and Plaintiff's attorneys.

22 42. I am unaware of any competing litigation.

23 CLASS COUNSEL'S EXPERIENCE

24 43. I have outlined my experience in the Declaration of Todd M. Friedman in  
25 Support of Motion for Preliminary Approval (Dkt. No. 108) and in the  
26 Declaration of Todd M. Friedman in Support of Attorney's Fees, filed  
27 contemporaneously herewith and to be heard at the same time as this motion.  
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I will not be repeating it here for sake of brevity.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on June 27, 2019.

By: /s/ Todd M. Friedman  
Todd M. Friedman, Esq.