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11 **UNITED STATE DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ALFRED ZAKLIT AND JESSY  
 14 ZAKLIT, individually and on behalf of  
 15 all others similarly situated,

16 Plaintiffs,

17 vs.

18 NATIONSTAR MORTGAGE LLC  
 19 and DOES 1 through 10, inclusive, and  
 20 each of them,

21 Defendants.

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

**CLASS ACTION**

**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**

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on Monday, August 19, 2019 at 9:00 a.m.,  
3 before the United States District Court, Central District of California, Courtroom  
4 8D, 350 W. 1st Street, Los Angeles, California 90012 (8th Floor) plaintiffs Alfred  
5 and Jessie Zaklit (“Plaintiffs”) will move this Court for an order granting final  
6 approval of the class action settlement as detailed in Plaintiff’s Memorandum of  
7 Points and Authorities.

8 This Motion is based upon this Notice, the accompanying Memorandum of  
9 Points and Authorities, the declarations and exhibits thereto, the Complaint, all  
10 other pleadings and papers on file in this action, and upon such other evidence and  
11 arguments as may be presented at the hearing on this matter.

12 Date: June 27, 2019

**The Law Offices of Todd M. Friedman,  
PC**

13  
14  
15 By: /s/ Todd M. Friedman  
16 Todd M. Friedman  
17 *Attorneys for Plaintiffs*  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs, Alfred and Jessy Zaklit (hereinafter referred to as “Plaintiffs” or “Class Representatives”), individually and on behalf of the “Settlement Class” (as defined below) hereby submit their Motion for Final approval of the proposed settlement (the “Settlement”) of this action (the “Action”).<sup>1</sup> Defendant, Nationstar Mortgage LLC. (hereinafter referred to as “Defendant” or ) does not oppose Plaintiffs’ Motion.<sup>2</sup> This Settlement provides for significant monetary relief for Class Members allegedly harmed by Defendant’s alleged violations of violated The California Invasion of Privacy Act, Cal. Penal Code § 630 et seq. (“IPA”), which Settlement merits final approval by the Court. The settlement agreement (“Settlement Agreement” and/or “Agreement” and/or “Agr.”) provides for a considerable financial benefit of \$6,500,000 (“Settlement Fund”) to the approximately 62,479 Settlement Class Members.

The Settlement Fund to be paid by Defendant is an all-in, non-reversionary payment. Under the Settlement, each Class Member who submitted a claim will receive a pro rata award from the Settlement Fund. Class Members are required to submit a claim form in order to receive payment, and receive a pro rata share of the settlement based on the number of claims filed. The Class Members were informed of the Settlement by Direct Mail notice, and by the Long Form Notice posted on the Settlement Website.

Due to the economics of individually suing for minimal statutory damages of \$5,000, few of the Class Members would likely be able to obtain such recovery on their own. Currently, after subtracting the attorneys’ fees and costs, the incentive award to the Class Representative, and the administrative costs from the Settlement

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<sup>1</sup> Plaintiffs and Defendant are collectively referred to as the “Parties.”

<sup>2</sup> Unless otherwise specified, defined terms used in this Memorandum are intended to have the meaning ascribed to those terms in the Agreement.



1 Fund, each of the Class Members who submitted a valid claim form is entitled to a  
2 Settlement Payment, in the amount of approximately \$380.39. Friedman Decl ¶39.<sup>3</sup>

3 This Settlement also creates an incentive for Defendant and other businesses  
4 to comply with the IPA, which benefits the Class Members, consumers in general,  
5 as well as compliant competitive businesses. *See* David R. Hodas, Enforcement of  
6 Environmental Law in A Triangular Federal System: Can Three Not Be A Crowd  
7 When Enforcement Authority Is Shared by the United States, the States, and Their  
8 Citizens?, 54 Md. L. Rev. 1552, 1657 (1995) (“[A]llowing a violator to benefit  
9 from noncompliance punishes those who have complied by placing them at a  
10 competitive disadvantage. This creates a disincentive for compliance.”).

11 Under the proposed settlement, reached with the guidance of Judge  
12 Meisinger, and which was already granted preliminary approval of this Honorable  
13 Court, Defendant will contribute \$6,500,000 towards a common fund, which will  
14 be comprised of cash distributions to Settlement Class Members, Attorneys Fees,  
15 and Costs of Suit. Settlement Class Members were required to submit a claim  
16 form to participate in the Settlement. Defendant was in possession of information  
17 relating to Class Member identities, names, addresses, and phone numbers, and has  
18 provided this information to Epiq Systems, Inc. (“Epiq” and/or the “Claims  
19 Administrator”).

20 The settlement that has been negotiated by Class Counsel is an outstanding  
21 result for the Class, given that Class Members who made claims will be getting  
22 \$380.39 and damages under the IPA are \$5,000. This represents a significant

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23 <sup>3</sup> This sum is calculated by starting with the Common Fund of \$6,500,000,  
24 subtracting class counsel’s fees of \$2,145,000, subtracting class counsel’s costs of  
25 \$25,046.52, subtracting the cost of notice at \$194,499, subtracting the incentive  
26 awards of \$20,000, and dividing the remainder (\$4,115,454.48) by the 10,819  
27 Class Members who submitted valid Claims. This is a truly outstanding figure,  
28 given that the statutory damages are \$5,000, that there were serious challenges to  
the case as demonstrated by Defendant’s position, and that this result was achieved  
on a class-wide basis.

1 recovery for Class Members. The strength of this settlement is further evidenced  
2 by the fact that to date, Epiq has received **only two valid opt outs and zero**  
3 **objections to the settlement, while reaching 98% of Class Members with**  
4 **Direct Mail Notice, in addition to Publication Notice.** Declaration of Cameron  
5 Azari (“Azari Decl.”) at ¶¶ 10-26. This is an outstanding settlement that should be  
6 given final approval. There is no reason for any other result to be reached.

7 **II. STATEMENT OF FACTS**

8 **A. Factual Background**

9 Nationstar is a servicer of home mortgages. Plaintiffs’ operative Complaint  
10 alleges that Nationstar violated The California Invasion of Privacy Act, Cal. Penal  
11 Code § 630 et seq. (“IPA”) during every outgoing call, by recording consumers’  
12 communications without telling them they are doing so at the outset of the  
13 conversation. Plaintiffs contend they and the Class are entitled to statutory  
14 damages pursuant to the IPA. Defendant has vigorously denied and continue to  
15 deny that it violated the IPA, and denies all charges of wrongdoing or liability  
16 asserted against them in the Action.

17 **B. Proceedings to Date**

18 Plaintiffs’ Complaint was filed on October 23, 2015, alleging violations of  
19 the IPA. Plaintiffs’ claims stemmed from a recorded phone calls made by  
20 Defendant that took place In October and November of 2014. The Parties  
21 engaged in written discovery. Defendant produced all policies and procedures  
22 relating to recording practices, advisory practices, training for representatives,  
23 call scripts, and IVR automated messages, as well as all documents relating to  
24 Plaintiff’s collections file.

25 Plaintiffs moved to compel further production of documents comprising of  
26 two categories: 1) the outbound dial list showing all recorded calls placed by  
27 Defendants; and 2) recordings of California area code calls with Defendants  
28 during the class period alleged in the Complaint. Thereafter, both parties entered

1 into an agreement regarding discovery and Plaintiffs withdrew their Motion to  
2 Compel. Plaintiffs filed for Certification on December 12, 2016. During the  
3 pendency of certification, the Parties attended mediation which was unsuccessful.  
4 Thereafter, the Class was certified.

5 Defendant then sought an appeal under Rule 23(f), premised largely on  
6 *Maghen v. Quicken Loans Inc.*, 680 F. App'x 554 (9th Cir. 2017), which was  
7 denied by the Ninth Circuit. Thereafter Plaintiffs filed a Motion for Approval of  
8 Class Notice Plan, which was also approved by the Court.

9 The Parties attended a second mediation with the Hon. Louis M. Meisinger,  
10 Ret. of Signature Resolution on April 27, 2018. The Parties did not resolve the  
11 case at the mediation on April 27, 2018, but subsequently resolved the matter a few  
12 months later thereafter via Judge Meisinger. Through his guidance, this  
13 Settlement was reached. This Honorable Court granted Preliminary Approval on  
14 March 4, 2019. Dkt. No. 120.

15 **C. Statement of Facts**

16 **1. The Settlement Class**

17 **a. The Settlement Class**

18 The "Settlement Class" is defined in the Agreement as follows:

19 *"All individuals who, from October 23, 2014 to May 1, 2016,*  
20 *while physically present in California and using a cellular*  
21 *device with a California area code, participated for the first*  
22 *time in an outbound telephone conversation with a*  
23 *representative of Defendant or its agent who were recording the*  
24 *conversation without first informing the individual that the*  
25 *conversation was being recorded."* (Agreement § 2.1)

26 **b. Class Membership Determination**

27 The Settlement Class consists of all persons who were called by Nationstar  
28 during Class Period, as stated above. Based on data confirmed by Defendant and

1 their counsel, the number of unique cell phone numbers is approximately 62,479.  
2 This data was confirmed by Plaintiff via discovery.

3 **2. Settlement Payment**

4 Under the Proposed Settlement, Defendants agree to establish a Settlement  
5 Fund in the amount of \$6,500,000 (Agreement § 4.1) in order to fund the  
6 following: (1) providing notice to Class Members; (2) providing settlement checks  
7 to Class Members entitled to receive a settlement check; (3) creating and  
8 maintaining the Settlement Website; (4) maintaining a toll-free telephone number;  
9 (5) providing CAFA notice (Agreement § 8.3) (6) to pay the proposed \$10,000  
10 Service Awards to the Plaintiffs (Agreement § 7); and (7) payment of the proposed  
11 Attorneys' Fees of \$2,145,000 (33% of the Settlement Fund) and litigation costs of  
12 up to \$100,000 (Agreement § 6).<sup>4</sup> Any funds remaining after payment of all  
13 settlement costs and Payments to the Settlement Class shall be paid to a recipient  
14 to be selected by the Court. Plaintiff proposes the Public Justice Foundation.  
15 (Agreement § 15.6.).

16 The amount of the Settlement Fund shall not be reduced as a result of any  
17 member(s) of the Settlement Class electing to opt out or be excluded from the  
18 Settlement or for any other reason. (Agreement § 4.4).

19 **3. Monetary Benefit to Class Members and Class Notice**

20 The Settlement Agreement provides for \$6,500,000 in cash benefits (minus  
21 Settlement Costs, attorney's fees, and litigation costs) to Class Members on a pro  
22 rata basis after the claims period. There are approximately 62,479 Class Members  
23 with unique cell phone numbers that received calls from Nationstar. Pursuant to  
24 the Agreement, the Claims Administrator provided notice first via First Class U.S.  
25 Mail on April 3, 2019. (Agreement § 9,1,4.); Azari Decl. ¶¶ 11. Claims Forms  
26 were also made available on the Settlement Website. Epiq also gave notice by

27 \_\_\_\_\_  
28 <sup>4</sup> Actual litigation costs are approximately \$23,000, which means the Class will  
receive **more** than they were informed they would receive in the Notice.

1 Publication Notice and banner advertising on the Internet. (Agreement § 9.3);  
2 Marquez Decl. at ¶¶ 10-26.

3 The Claims Period ends July 5, 2019, which is 120 days after the  
4 Preliminary Approval Order was issued. (Agreement § 10.2.1), and the opt out and  
5 objection deadline is set for July 5, 2019. Dkt. No. 120. To date, there have been  
6 19,819 Claims made. Azari Decl. ¶ 27. The Class Members who file a Claims  
7 Form and do not Opt Out and/or Object will each receive a pro-rata share. After  
8 fees, costs and administration expenses, it is estimated there will be approximately  
9 \$4,115,454.48 in available funds in the Net Settlement Fund to be distributed to the  
10 Class. Each class member who submitted a claim will receive approximately  
11 \$380.39. Friedman Decl. ¶¶ 38-39.

### 12 **III. ACTIVITY IN THE CASE AFTER PRELIMINARY APPROVAL**

13 The Claims Administrator's compliance is described below.

#### 14 **A. CAFA Notice**

15 The CAFA notice was mailed by Defendant in compliance with the § 3.4 of  
16 the Settlement Agreement. Dkt. No. 108-2 Ex. B. Counsel have received no  
17 communications from any state Attorney Generals' Offices.

#### 18 **B. Direct Mail Notice Provided**

19 Epiq complied with the notice procedure set forth in the Preliminary  
20 Approval Order. Dkt. No. 120. As required by the Preliminary Approval Order,  
21 Epiq mailed individual postcard notices by direct mail to the settlement Class  
22 Members that included a summary of the Settlement's terms. Azari Decl. at ¶ 10-  
23 14, Ex 2-3. The direct mail notice also informed the Class Members of the  
24 Settlement Website address: ([www.CallRecordingsSettlement.com](http://www.CallRecordingsSettlement.com)) and the  
25 Claims Administrator's toll-free telephone, where Class Members could obtain  
26 further information about the Settlement and also make a claim. *Id.* at ¶¶ 20-24.  
27 As part of the preparation for mailing, all names and addresses contained in the  
28

1 Class were processed against the National Change of Address (“NCOA”)  
2 database, maintained by the United States Postal Service (“USPS”), for purposes  
3 of updating and confirming the mailing addresses of the Class Members before  
4 mailing the Notice postcard. *Id.* at ¶ 13. To the extent an updated address for an  
5 individual identified as a Class Member was found in the NCOA database, the  
6 updated address was used for the mailing of the Notice Packet. *Id.*

7 Defendant provided data to Epiq containing names, addresses and phone  
8 numbers of individuals who provided their information to Defendant who were  
9 called and recorded by Defendant. *Id.* at ¶ 10. This data contained information  
10 that was used by Epiq to send out 53,512 mail notice postcards. *Id.* at ¶ 11. As of  
11 today, 831 of these Notice and Claim Forms remain undelivered, which equates to  
12 approximately 98% reach of the Potential Class Members by direct mail. *See*  
13 Azari Decl. at ¶¶ 10-14. Notice was also given by way of publication in USA  
14 Today and banner ads on the google Display Ad Network and Facebook,  
15 generating 12 million impressions. *Id.* at ¶¶ 15-24, Exs. 4-7. Looked at another  
16 way, approximately 98% of the Class Members for whom address information  
17 was available were sent direct mail notice, not even including publication notice,  
18 which clearly satisfies due process. *See e.g., Wilson v. Airborne, Inc.*, 2008 U.S.  
19 Dist. LEXIS 110411, \*13-14 (C.D. Cal. Aug. 13, 2008) (court granted final  
20 approval of settlement where measurements used to estimate notice reach  
21 suggested that 80% of adults learned of the settlement).

22 **C. Formal Notice Posted On The Settlement Website**

23 In compliance with the Preliminary Approval Order, Epiq posted on the  
24 Settlement Website the detailed and full notice in a question and answer format,  
25 the approval papers and fee request papers, the settlement agreement, and the long  
26 form notice. Azari Decl. at ¶ 20.<sup>5</sup> The Settlement Website provided notice of the

27 \_\_\_\_\_  
28 <sup>5</sup> This Motion and Plaintiffs’ Fee Petition are being posted to the website  
immediately after their filing.

1 proposed Settlement to the Class Members, in addition to the Direct Mail Notice.

2 **D. Objections, Opt Outs, and Settlement Payouts**

3 Class Members were provided no less than 90 days to review the  
 4 Settlement, make timely opt outs and objections. As of the date of filing, Epiq has  
 5 reported that, to date, there were two opt outs and zero objectors to the Settlement.  
 6 Azari Decl. at ¶ 26. The current deadline to submit a Request for Exclusion or  
 7 Object is July 5, 2019. *Id.*<sup>6</sup> The fact that there were not only zero objections, but  
 8 only two opt outs, out of 62,479 Class Members highly supports the adequacy of  
 9 the proposed Settlement. *Id.* See *In re Diamond Foods, Inc.*, 2014 U.S. Dist.  
 10 LEXIS 3252, \*9 (N.D. Cal. Jan. 10, 2014) (“Also supporting approval is the  
 11 reaction of class members to the proposed class settlement. After 67,727 notices  
 12 were sent to potential class members, there have been only 29 requests to opt out  
 13 of the class and no objection to the settlement or the requested attorney's fees and  
 14 expenses.”).

15 **1. Settlement Checks and Credits**

16 The net Settlement Fund available to pay Class Members is \$4,115,454.48,  
 17 which was determined by subtracting the anticipated Class Representative  
 18 incentive awards of \$20,000.00, Class Counsels’ requested fees of \$2,145,000,  
 19 Class Counsels’ litigation expenses of \$25,046.52, and the Settlement  
 20 Administration costs (estimated to be no more than \$194,499 after completion)  
 21 from the Settlement Fund of \$6,500,000. Friedman Decl. ¶¶ 35-39. This sum  
 22 was divided by the 10,819 valid claims submitted by Class Members. Based on  
 23 the available net Settlement Fund and, this equates to each Claimant receiving  
 24 approximately \$380.39. Friedman Decl. ¶ 39.

25 **2. Class Representative’s Incentive Payment**

26 District Courts in California have opined that in many cases, an incentive

27 \_\_\_\_\_  
 28 <sup>6</sup> The Parties have requested a continuance of this deadline to July 30, 2019. See  
 Dkt. No. 121.

1 award of \$5,000 is presumptively reasonable. *See Bellinghausen v. Tractor Supply*  
2 *Co.*, 306 F.R.D. 245, 266-67 (N.D. Cal. Mar. 20, 2015) – finding that “[i]n this  
3 district, a \$5,000 payment is presumptively reasonable. *See also In re Online*  
4 *DVD-Rental Antitrust Litigation*, 779 F.3d 934, 942-43 (9th Cir. Feb. 27, 2015)  
5 (finding that the District court did not abuse its discretion in approving settlement  
6 class in antitrust class action, despite objector's contention that the nine class  
7 representatives were inadequate because their representatives' awards, at \$5,000  
8 each, were significantly larger than the \$12 each unnamed class member would  
9 receive); *In re Toys R Us – Delaware, Inc. – Fair and Accurate Credit*  
10 *Transactions Act (FACTA) Litigation*, 295 F.R.D. 438, 472 (C.D. Cal. Jan. 17,  
11 2014) (finding that Request for recovery of \$5,000 incentive award for each  
12 named plaintiff in consumers' action against children's toy retailer alleging retailer  
13 violated the Fair and Accurate Credit Transactions Act (FACTA) by printing more  
14 than the last four digits of consumers' credit card numbers on customer receipts,  
15 was reasonable; parties' settlement agreement provided for incentive payments of  
16 \$5,000 to each named plaintiff, those awards were consistent with the amount  
17 courts typically awarded as incentive payments). Incentive awards of \$15,000-  
18 \$20,000 have been found to be reasonable. *See, e.g., In re Veritas Software Corp.*  
19 *Sec. Litig.*, 396 Fed. App'x 815, 816 (3d Cir. 2010) (\$15,000 awarded to each lead  
20 plaintiff); *Buccellato v. AT&T Operations, Inc.*, No. 10-cv-463-LHK, 2011 WL  
21 4526673, at \*4 (N.D. Cal. June 30, 2011); *Raffin v. Mediacredit, Inc.*, Case No. CV  
22 15-4912-MWF (PJWx), 2018 WL 6011551 (C.D. Cal. May 11, 2018)  
23 (preliminarily approving a \$15,000 incentive award, and later granting the award  
24 at final approval).

25 Pursuant to the Agreement and the Preliminary Approval Order, and subject  
26 to Court's final approval, Defendant has agreed that the Plaintiffs may be paid  
27 from the Settlement Fund an incentive award of up to \$10,000 per Plaintiff, in  
28 recognition of Plaintiffs' service as the Class Representative. Agr. § 7. The Court

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT



1 should approve the \$10,000 incentive payment to compensate Plaintiffs for their  
2 time and efforts in litigating this case on behalf of the Class because it is in line  
3 with the Ninth Circuit's directives in *Radcliffe v. Experian Info. Solutions, Inc.*,  
4 2013 U.S. App. LEXIS 9126 (9th Cir. Mar. 4, 2013). Plaintiffs' efforts in this  
5 litigation are outlined in Plaintiff's declarations, filed contemporaneously  
6 herewith in support of Motion for Attorneys' Fees and Costs and Incentive  
7 Award. Plaintiffs acted dutifully in their role as class representatives, and should  
8 be awarded this reasonable sum of \$10,000 per Plaintiff, for their parts in the  
9 litigation.

### 10 **3. Attorneys' Fees and Costs**

11 The Agreement permits Class Counsel to file an application for attorneys'  
12 fees, not to exceed 33% of the Settlement Fund (the benchmark in the Ninth  
13 Circuit is 25%, *Hanlon*, 150 F.3d at 1029), as well as litigation costs to be paid  
14 from the Settlement Fund, not to exceed \$100,000. Agr. § 6. That amount of  
15 Attorneys' fees requests (\$2,145,000) and litigation costs (\$23,973.02) sought to  
16 date by Class Counsel is explained in more detail in Plaintiff's Fee Brief, filed  
17 contemporaneously herewith. The Court should approve the award of the  
18 requested attorneys' fees and costs to compensate Class Counsel for their time and  
19 efforts in litigating this case on behalf of the Class and the named Plaintiffs,  
20 having obtained great results for the Class.

### 21 **4. Administrator's Expenses For Notice and Administration**

22 Defendant has agreed to pay all costs of notice and claims administration  
23 from the Settlement Fund up to an amount of \$200,000. As of August 31, 2018,  
24 Epiq's costs and expenses had been \$160,674.63. Azari Decl. at ¶ 31. Epiq will  
25 provide a supplemental declaration in support of these costs in advance of the  
26 approval hearing, once the claims period has closed.

27 ///

1 **IV. ARGUMENT**

2 **A. Final Approval of The Proposed Settlement Is Warranted**

3 The Court has already preliminarily found the requirements of Fed. R. Civ.  
4 P. 23 are satisfied. *See generally* Preliminary Approval Order, Dkt. No. 197. The  
5 relevant factors demonstrate that the proposed Settlement should be finally  
6 approved as fair, reasonable and adequate. Since preliminary approval, Plaintiff  
7 has continued to serve as an adequate Class Representative by reviewing  
8 documents and submitting declarations in support of motions, including the present  
9 motion; and Plaintiff supports final approval of the proposed settlement. Moreover,  
10 Class Counsel have also continued to adequately represent the interests of the  
11 Class Members and the named Plaintiff, having, among other things, timely  
12 disseminating Class Notice, communicating promptly with class members who  
13 contacted class counsel with questions, filing the Fee Brief, and assisting with  
14 settlement administration.

15 “Unlike the settlement of most private civil actions, class actions may be  
16 settled only with the approval of the district court.” *Officers for Justice v. Civil*  
17 *Service Com’n of City and County of San Francisco*, 688 F.2d 615, 623 (9th Cir.  
18 1982). “The court may approve a settlement . . . that would bind class members  
19 only after a hearing and on finding that the settlement . . . is fair, reasonable, and  
20 adequate.” Fed. R. Civ. P. 23(e)(1)(C). The Court has broad discretion to grant  
21 such approval and should do so where the proposed settlement is “fair, adequate,  
22 reasonable, and not a product of collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d  
23 1011, 1026 (9th Cir. 1998).

24 “To determine whether a settlement agreement meets these standards, a  
25 district court must consider a number of factors, including: ‘the strength of  
26 plaintiffs’ case; the risk, expense, complexity, and likely duration of further  
27 litigation; the risk of maintaining class action status throughout the trial; the  
28 amount offered in settlement; the extent of discovery completed, and the stage of

1 the proceedings; the experience and views of counsel; the presence of a  
2 governmental participant; and the reaction of the class members to the proposed  
3 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). “The  
4 relative degree of importance to be attached to any particular factor will depend  
5 upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief  
6 sought, and the unique facts and circumstances presented by each individual case.”  
7 *Officers for Justice*, 688 F.2d at 625. The Court must balance against the  
8 continuing risks of litigation and the immediacy and certainty of a substantial  
9 recovery. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warner*  
10 *Communications Sec. Litig.*, 618 F. Supp. 735, 741 (S.D. N.Y. 1985).

11 The Ninth Circuit has long supported settlements reached by capable  
12 opponents in arms’ length negotiations. In *Rodriguez v. West Publishing Corp.*,  
13 563 F.3d 948 (9th Cir. 2009), the Ninth Circuit expressed the opinion that courts  
14 should defer to the “private consensual decision of the [settling] parties.” *Id.* at  
15 965 (citing *Hanlon*, 150 F.3d at 1027 (9th Cir. 1998)). The district court must  
16 exercise “sound discretion” in approving a settlement. *See Torrasi v. Tucson Elec.*  
17 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Ellis v. Naval Air Rework Facility*,  
18 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d* 661 F.2d 939 (9th Cir. 1981). However,  
19 “where, as here, a proposed class settlement has been reached after meaningful  
20 discovery, after arm’s length negotiation conducted by capable counsel, it is  
21 presumptively fair.” *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671  
22 F.Supp. 819, 822 (D. Mass. 1987); *In re Ferrero Litig.*, 2012 U.S. Dist. LEXIS  
23 15174, \*6 (S.D. Cal. Jan. 23, 2012) (“Settlements that follow sufficient discovery  
24 and genuine arms-length negotiation are presumed fair.”) (citing *Nat’l Rural*  
25 *Telcoms. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

26 Application of the relevant factors here confirms that the proposed  
27 settlement should be finally approved. Notably, this Settlement was reached with  
28 the assistance of experienced mediator Hon. Louis M. Meisinger (Ret.), which

1 shows a lack of collision between the Parties. *See Jones v. GN Netcom, Inc. (In re*  
2 *Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 948 (9th Cir. Cal. 2011).  
3 Based on the facts of this case, Class Counsel and the named Plaintiff agree that  
4 this settlement is fair and reasonable; among other things, the settlement will avoid  
5 costly and time-consuming additional litigation and the need for trial. Friedman  
6 Decl., ¶¶ 21-43.

7 **1. The Strength of The Lawsuit And The Risk, Expense,**  
8 **Complexity, And Likely Duration of Further Litigation**

9 Defendant Nationstar has vigorously contested the claims asserted by  
10 Plaintiff in this Litigation, which has been in litigation for almost four years.  
11 While both sides strongly believed in the merits of their respective cases, there are  
12 risks to both sides in continuing the Litigation. Friedman Decl. at ¶¶ 22-24. In  
13 considering the Settlement, Plaintiffs and Class Counsel carefully balanced the  
14 risks of continuing to engage in protracted and contentious litigation against the  
15 benefits to the Class. As a result, Class Counsel supports the Settlement and seek  
16 its Preliminary Approval. *Id.* at ¶ 25. Similarly, Nationstar believes that it has  
17 strong and meritorious defenses not only to the action as a whole, but also as to  
18 class certification and the amount of damages sought.

19 In considering the Settlement, Plaintiff sand Class Counsel carefully  
20 balanced the risks of continuing to engage in protracted and contentious litigation  
21 against the benefits to the Class including the significant benefit and the deterrent  
22 effects it would have. Friedman Decl. at ¶ 24. As a result, Class Counsel supports  
23 the Settlement and seeks its Final Approval. *Id.* at ¶¶ 3, 25. The negotiated  
24 Settlement is a compromise avoiding the risk that the class might not recover and  
25 presents a fair and reasonable alternative to continuing to pursue the Action as a  
26 class action for alleged violations of the IPA. What is more, Judge Meisinger, who  
27 is intimately familiar with the instant litigation as well as the current climate of  
28 IPA litigation as a whole, agrees with the parties.

## 2. The Amount Offered In Settlement

As set forth above, Defendant has agreed to a common fund settlement in the amount of \$6,500,000. After administration costs, proposed attorney's fees, costs of suit, and the proposed incentive award, Settlement Class Members will collectively receive at least \$4,115,454.48 of these available funds. The amount of the check shall be calculated by the Claims Administrator on a pro-rata basis, which currently equates to approximate recoveries of \$380.39 per Class Member who submitted a valid Claim. Friedman Decl. ¶¶ 38-39.

Class Member data provided to the Claims Administrator in the course of disseminating Notice verifies that the Class is comprised of 62,479 unique individuals. The net recovery, after fees and costs, to each Class Member will be approximately \$380.39 for each Class Member who submits a valid claim form. This is a highly favorable per-person recovery for the Class. Moreover, this outstanding result was achieved without having to subject Settlement Class members to the substantial risks ahead in litigation, which include having to fight class decertification.

The settlement award that each Class Member will receive is fair, appropriate, and reasonable given the purposes of the IPA, the limitations of class-wide liability, and in light of the anticipated risk, expense, and uncertainty of continued litigation. Although it is well-settled that a proposed settlement may be acceptable even though it amounts to only a small percentage of the potential recovery that might be available to the class members at trial, here, the Settlement provides significant and meaningful relief that is comparable to what the Class Members would receive if Plaintiff was able to prevail on class certification, took the case to trial and obtained a judgment.<sup>7</sup> Moreover, Class Members were able to

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<sup>7</sup> *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate

1 avoid the time, expense and risk associated with bringing their own individual IPA  
 2 action, where they would be anticipated to receive a sum on the lower end of the  
 3 \$5,000 in statutory damages awardable under the IPA.

4 **3. Class Members were provided with the best notice possible,**  
 5 **which afforded them an opportunity to choose whether to**  
 6 **participate in the Settlement**

7 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the  
 8 court must direct to class members the “best notice practicable” under the  
 9 circumstances. Rule 23(c)(2)(B) does not require “actual notice” or that a notice  
 10 be “actually received.” *Silber v. Mabon*, 18 F. 3d 1449, 1454 (9th Cir. 1994).  
 11 Final approval of the Settlement should be granted when considering the terrific  
 12 notice provided to the Class Members, i.e., 98% of the Class Members for whom  
 13 address information was available successfully received direct mail notice, and  
 14 notice was also given by publication in USA Today, and ads on Facebook and  
 15 Google Display Ad Network, generating 12 million adult impressions. *See Azari*  
 16 *Decl.*, ¶¶ 15-19.

17 It is also noteworthy that the settlement received highly positive responses  
 18 from Class Members, as illustrated by lack of objections and just two opt outs.  
 19 Moreover, it is well-settled that a proposed settlement may be accepted where the  
 20 recovery represents a fraction of the maximum potential recovery. *See e.g., Nat’l*  
 21 *Rural Tele. Coop v. DIRECTV, Inc.*, 221 F.R.D 523, 527 (C.D. Cal. 2004) (“well  
 22 settled law that a proposed settlement may be acceptable even though it amounts to  
 23 only a fraction of the potential recovery”); *In re Global Crossing Sec. ERISA*  
 24 *Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact that a proposed settlement  
 25 constitutes a relatively small percentage of the most optimistic estimate does not,  
 26 does not, in itself, weigh against the settlement; rather, the percentage should be  
 27 considered in light of strength of the claims”); *In re Omnivision Tech., Inc.*, 559 F.  
 28 *Supp. 2d* 1036 (N.D. Cal. Jan. 9, 2008) (court-approved settlement amount that  
 was just over 9% of the maximum potential recovery); *In re Mego Fin’l Corp. Sec.*  
*Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).

1 in itself, weigh against the settlement; rather, the percentage should be considered  
2 in light of strength of the claims”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
3 459 (9th Cir. 2000) (approving a settlement that comprised one-sixth of plaintiffs’  
4 potential recovery). Again, despite this general acceptance, the settlement at issue  
5 here results in the Class receiving comparable relief to what they would potentially  
6 be able to receive in a judgment. It is an outstanding settlement in every respect.

7 The Claims Administrator sent postcard notice to 53,512 potential Class  
8 Members, identified by Defendant’s records (explained above) All but a small  
9 percentage of Class Members were reached, ultimate resulting in 98% of Class  
10 Members having received direct mail notice of the settlement. *Id.* at ¶¶ 10-14.  
11 This was excellent notice and the best notice practicable for the Class Members.

#### 12 4. The Extent of Discovery Completed

13 The proposed Settlement is the result of intensive arms-length negotiations,  
14 which included several months of discovery into the nature of the practices, and  
15 the size of the Class affected by them. The parties also engaged in a full-day  
16 mediation session before Hon. Louis Meisinger. Prior to the mediation, the  
17 Parties engaged in both formal and informal discovery surrounding Plaintiffs’  
18 claims and Defendant’s defenses. The Parties also participated in direct  
19 discussions about possible resolution of this litigation, including numerous  
20 telephonic conferences, which ultimately resulted in a general understanding of the  
21 Settlement terms.

22 The important information needed in these cases is primarily how many  
23 Class Members’ were subjected to the practices at issue. This information was  
24 obtained through both formal and informal discovery. Thus, the litigation here had  
25 reached the stage where “the parties certainly have a clear view of the strengths  
26 and weaknesses of their cases.” *Warner Communications*, 618 F. Supp. at 745.

27 Considering that the main disputed issues between the Parties are legal (i.e.,  
28 did Defendant’s failure to provide notice of recording violate the IPA? Is a class

1 action maintainable under Fed. R. Civ. P. 23?), and not factual in nature, the  
 2 Parties have exchanged sufficient information to make an informed decision about  
 3 settlement. See *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th  
 4 Cir. 1998).

### 5 **5. The Experience And Views of Class Counsel**

6 “The recommendations of plaintiff’s counsel should be given a presumption  
 7 of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.  
 8 1979). The presumption of reasonableness in this action is fully warranted because  
 9 the settlement is the product of arm’s length negotiations conducted by capable,  
 10 experienced counsel. See *M. Berenson Co.*, 671 F. Supp. at 822; *Ellis*, 87 F.R.D. at  
 11 18 (“that experienced counsel involved in the case approved the settlement after  
 12 hard-fought negotiations is entitled to considerable weight”); 2 Newberg on Class  
 13 Actions § 11.24 (4th Ed. & Supp. 2002); Manual for Complex Lit., Fourth § 30.42.

14 Here, it is the considered judgment of experienced counsel that this  
 15 settlement is a fair, reasonable and an adequate settlement of the litigation.  
 16 Friedman Decl., ¶¶ 13-26. Class Counsel are experienced consumer class action  
 17 lawyers. This Settlement was negotiated at arms’ length by experienced and  
 18 capable Class Counsel who now recommend its approval. Friedman Decl. ¶¶ 13-  
 19 25. Moreover, the Settlement was reached after the assistance of Judge Meisinger  
 20 (Ret.). Given their experience and expertise, Class Counsel are well-qualified to  
 21 not only assess the prospects of a case, but also to negotiate a favorable resolution  
 22 for the class. Class Counsel have achieved such a result here in this class action,  
 23 and unequivocally assert that the proposed Settlement should receive final  
 24 approval. Friedman Decl., ¶¶ 22-25.

### 25 **6. The Reaction of Class Members To The Settlement**

26 The fact that there are now zero objections, and two valid opt outs from the  
 27 approximately 62,479 Class Members, should say all that needs to be said about  
 28 the outstanding settlement that was reached here for the Class. See *Detroit v.*



1 *Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974); *Warner Communications*, 618 F.  
2 Supp. at 746; *Steinfeld v. Discover Fin. Servs.*, 2014 U.S. Dist. LEXIS 44855, \*21  
3 (N.D. Cal. Mar. 31, 2014) (only specific objections or comments from 9 class  
4 members, and 239 out of the approximately 8 million class members chose to opt  
5 out). There has been absolutely zero resistance to the Settlement. Friedman Decl.  
6 at ¶¶ 31-33; Azari Decl. at ¶¶ 26-27. Moreover, there was an over 17% take rate  
7 on this case, which is higher than typical in these types of cases, and indicates that  
8 Class Members were very interested in receiving settlement benefits. Friedman  
9 Decl. ¶¶ 31-33; Azari Decl. at ¶¶ 26-27.

10 **V. CONCLUSION**

11 In sum, the Parties have reached this Settlement following extensive arms'  
12 length negotiations, including with the assistance of Judge Louis Meisinger (Ret.).  
13 The Settlement is fair and reasonable to the Class Members who were afforded  
14 notice that complies with due process. For the foregoing reasons, Plaintiff  
15 respectfully requests that the Court:

- 16 • Grant final approval of the proposed settlement;  
17 • Order payment from the settlement proceeds in compliance with the Court's  
18 Preliminary Approval Order and the Agreement;  
19 • Grant the Motion For Attorney's Fees, Costs, and Incentive Payment;  
20 • Enter the proposed Final Judgment and Order of Dismissal With Prejudice  
21 submitted herewith; and,  
22 • Retain continuing jurisdiction over the implementation, interpretation  
23 administration and consummation of the Settlement.

24 Date: June 27, 2019

**The Law Offices of Todd M. Friedman,  
PC**

25  
26 By: /s/ Todd M. Friedman  
Todd M. Friedman  
27 Adrian R. Bacon  
28 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

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Filed electronically on this 27<sup>th</sup> day of June, 2019, with:

United States District Court CM/ECF system

Notification sent electronically on this 27<sup>th</sup> day of June, 2019, to:

Honorable Judge Christina A. Snyder

United States District Court

Central District of California

And all Counsel of Record as recorded on the Electronic Service List.

s/Todd M. Friedman

Todd M. Friedman, Esq.