

THE LAW OFFICES OF TODD M. FRIEDMAN, PC
WOODLAND HILLS, CA 91367

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8 **UNITED STATE DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 TERRY FABRICANT, individually
11 and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 vs.

15 AMERISAVE MORTGAGE
16 CORPORATION, and DOES 1
17 through 10, inclusive, and each of
18 them,

19 Defendant.

Case No. 2:19-cv-04659-AB-AS

CLASS ACTION

**DECLARATION OF TODD M.
FRIEDMAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Assigned to the Honorable Andre'
Birotte, Jr.

DATE: NOVEMBER 20, 2020

TIME: 10:00 A.M.

COURTROOM: 7D

[Filed and Served Concurrently with
Motion for Final Approval of Class
Settlement and Certification of
Settlement Class; [Proposed] Order]

DECLARATION OF TODD M. FRIEDMAN

I, TODD M. FRIEDMAN, declare:

1. I am one of the attorneys for the plaintiff in this action, Terry Fabricant (“Mr. Fabricant” or “Plaintiff”). 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 Plaintiff’s Motion for Attorneys’ Fees and Costs in the action against defendant, AmeriSave Mortgage Corporation (“AmeriSave” or “Defendant”).
4. Plaintiff seeks the Court’s approval of the following to be paid from \$6,250,000 Settlement Fund:
 - i. Attorneys’ fees in the amount of \$1,250,000, representing 20% of the \$6,250,000 Settlement Fund;
 - ii. Costs of litigation incurred by Class Counsel in the amount of \$30,061.51 as of August 31, 2020; and
 - iii. An Incentive Award to Plaintiff in the amount of \$5,000.
5. As part of the Settlement Agreement, previously filed as Exhibit A to the Declaration of Todd M. Friedman In Support of Preliminary Approval of Class Action Settlement and Certification of Settlement Class (Dkt. No.18-1), Plaintiff and Defendant (hereinafter the “Parties”), agreed that Defendant

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1 would pay the following from the Settlement Fund: (i) the settlement
2 administration and notice costs, currently estimated by P&N at \$1,550,000;
3 (ii) attorneys' fees not to exceed 20% of the Settlement Fund (iii) costs of
4 litigation not to exceed \$50,000; (iv) an incentive award of \$5,000 for the
5 named Plaintiff.

6 6. The Settlement Agreement was the result of good faith, arm's length
7 settlement negotiations, including a full-day mediation session before the
8 Honorable George H. King (Ret.). The Parties engaged in written discovery.
9 Defendants produced all information, data and documents relating to the
10 applicable calling practices, the source and volume of leads from vendors,
11 as well as the outbound dial list, and financial information. In my opinion,
12 having worked on over 100 TCPA class actions, I strongly believe there was
13 no stone unturned when it came to the discovery that would have been
14 necessary for my firm to evaluate risk and damages issues. Defendant gave
15 us everything we asked for, so the mediation could be fully informed and
16 productive on both sides.

17 7. My office hired an experienced data consultant firm that has been
18 experienced in TCPA class litigation and upheld under the *Daubert*
19 standards, to analyze the call records in advance of mediation. Based on this
20 analysis, which was confirmed by the claims administrator, the Parties
21 believe that there are approximately 2,375,245 Class Members.

22 CLASS COUNSEL'S EXPERIENCE

23 8. The Law Offices of Todd M. Friedman, P.C. seeks appointment as Class
24 Counsel in this Action. I am informed and believe that Class Counsel are
25 qualified and able to conduct this litigation as a class action.

26 9. As one of the main plaintiff litigators of consumer rights cases in Southern
27 of California, I have been requested to and have made regular presentations
28 to community organizations regarding debt collection laws and consumer

1 rights.

2 10.I have extensive experience prosecuting cases related to consumer issues.

3 My firm, The Law Offices of Todd M. Friedman, P.C., in which I am a
4 principal, has litigated over 1000 individual based consumer cases and
5 litigated over 100 consumer class actions. These class actions were litigated
6 in federal courts in California, as well as California State Courts.
7 Approximately 100% percent of my practice concerns consumer litigation in
8 general, with approximately 90% of my class action experience involving
9 consumer protection, and approximately one third of my class action practice
10 involves litigating claims under TCPA.

11 11.My firm has numerously been approved by courts as adequate class counsel,
12 and is highly experienced in litigating TCPA class actions, including
13 obtaining contested class certification in several matters, specifically the
14 following cases:

- 15 a. *Caldera v. American Medical Collection Association*, Case No. 2:16-
16 cv-00381-CBM-AJW (C.D. Cal.) (TCPA class action certified by
17 contested motion);
- 18 b. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-
19 E (C.D. Cal.) (TCPA class action certified on behalf of approximately
20 2,000,000 class members under Rule 23(b)(2) and 23(b)(3));
- 21 c. *Stemple v. QC Financial Services Group of California, Inc.*, Case No.
22 3:12-cv-01997-CAB-WVG (S.D. Cal.) (certified class achieved by
23 motion, and subsequent class-wide settlement);
- 24 d. *Abdeljalil v. General Electric Capital Corporation*, Case No. 12-CV-
25 02078-IEG-RBB (S.D. Cal.) (certified class achieved by motion, and
26 subsequent class-wide settlement); and
- 27 e. *McCurley v Royal Seas Cruises, Inc.*, Case No. 17-cv-986 BAS (AGS)
- 28

1 (one of, if not the first TCPA class actions certified by contested motion
2 on a contested manufactured consent theory, certified on behalf of over
3 2 million consumers).

4
5 12.The certification and merits theory in this case was developed primarily by
6 my office over the course of several years, and with a great deal of experience
7 and effort. For instance, we had a nearly identical case which we litigated to
8 certification in the *McCurley* case, in which discovery is complete and there
9 are currently cross summary judgment motions under submission. There is
10 a very good chance that our motion is granted, which could result in what I
11 estimate to be a billion dollar judgment against Royal Seas. If it is not
12 granted, the case is likely to go to trial.

13 13.To my knowledge, our firm was one of the first, if not the first, law firms to
14 successfully prove up the certifiability of a manufactured consent TCPA class
15 action.

16 14.We are also heavily involved in numerous other TCPA cases that have seen
17 their way up through the courts of appeal and the U.S. Supreme Court. We
18 were lead counsel on the case of *Gallion v United States*, 772 Fed.Appx. 604
19 (9th Cir. July 8, 2019), the reasoning of which was recently upheld by the
20 Supreme Court in the case of *Barr v. American Association of Political*
21 *Consultants, Inc.*, 140 S.Ct. 2335 (2020), in which myself and my partner
22 Adrian Bacon assisted with the briefing. We are fulfilling a similar role in
23 the *Duguid v. Facebook, Inc.*, 926 F.3d 1146 (9th Cir. 2019) case, which was
24 previously the subject of a SCOTUS Petition for Cert, has since been taken
25 up by the Supreme Court and will be heard next term. My office is writing
26 an Amicus brief in support of the consumers' position, and also assisting with
27 the brief in chief. In addition, my partner Adrian Bacon and I have co-
28 authored three comments that my firm submitted to the FCC on behalf of

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1 advancing consumer privacy rights. We are also acting as lead counsel in the
2 California Supreme Court case of *Smith v. Loanme*, Case No. S260391, a
3 consumer privacy class action in which the California Supreme Court
4 unanimously granted our petition for review.

5 15. In short, we are highly experienced in consumer privacy class action
6 litigation, and our fingerprints are all over this law (the TCPA). Thus, we are
7 in a position to fully evaluate the risk in this case, and make informed
8 settlement decisions on behalf of Class Members.

9 16. Therefore, my experience in litigating class actions and my years in practice
10 allow me to provide outstanding representation to the Settlement Class. I will
11 continue to strive to fairly, responsibly, vigorously and adequately represent
12 the putative class members in this action.

13 17. The Law Offices of Todd M. Friedman has served as plaintiff's counsel in at
14 least the following class actions where a settlement was reached on a class-
15 wide basis and has achieved over \$200,000,000 in class-wide relief for
16 consumers and employees.

- 17 a. *Dancer v. L.A. Times*, Case No. BC472154 (Los Angeles County
18 Superior Court) (common fund class-wide settlement of \$3 million to
19 \$4 million granted final approval);
- 20 b. *Couser v. Comenity Bank*, Case No. 3:12-cv-02484-MMA-BGS (S.D.
21 Cal.) (\$8.475 million class-wide settlement achieved and granted final
22 approval);
- 23 c. *Stemple v. QC Financial Services Group of California, Inc.*, Case No.
24 3:12-cv-01997-CAB-WVG (S.D. Cal.) (certified class achieved by
25 motion, and subsequent class-wide settlement of \$1.5 million
26 achieved, with final approval granted);
- 27 d. *Couser v. Apria Healthcare, Inc.*, Case No. 8:13-cv-00035-JVS-RNB
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- 1 (C.D. Cal.) (common fund class-wide settlement of \$400,000 to
2 \$750,000, granted final approval);
- 3 e. *Abdeljalil v. General Electric Capital Corporation*, Case No. 12-CV-
4 02078-IEG-RBB (S.D. Cal.) (class-wide settlement with common
5 fund of \$6.125 million achieved, preliminary approval granted, final
6 approval granted);
- 7 f. *Fox v. Asset Acceptance*, Case No. 3:13-CV-00922-DMS-BGS (S.D.
8 Cal.) (common fund of \$1 million in class-wide relief achieved,
9 granted final approval);
- 10 g. *Friedman v. LAC Basketball Club, Inc.*, Case No. 2:13-cv-00818-
11 CBM-AN (C.D. Cal.) (class-wide settlement achieved and granted
12 final approval);
- 13 h. *Gerich et al. v. Chase Bank USA et al.*, Case No 1:12-cv-5510 (N.D.
14 Ill.) (class-wide settlement of \$34 million, granted final approval);
- 15 i. *Than Zaw v. Nelnet Business Solutions Inc., et al.*, Case No. 3:13-cv-
16 05788 (N.D. Cal.) (Penal Code § 632 class – achieved class-wide
17 settlement of \$1,188,110, granted final approval of court);
- 18 j. *Medeiros, et al. v. HSBC Card Services Inc., et al.*, Case No. 2:15-cv-
19 09093-JVS-AFM (C.D. Cal.) (common fund settlement of between
20 \$4.5 million and \$6.5 million achieved, final approval granted);
- 21 k. *Ann Fox v. Spectrum Club Holding Company et al.*, Case No. 2:14-
22 CV-06766-PSG-FFMx (class-wide settlement, final approval
23 granted);
- 24 l. *Sayan Aboudi v. T-Mobile USA, Inc.*, Case No. 3:12-cv-02169-BTM-
25 NLS (class-wide settlement in TCPA case, with common fund of \$2.5
26 million to \$5 million);
- 27 m. *Andrew Roseman v. BGASC, LLC, et al.*, Case No. EDCV 15-1100-
28 VAP (SPx) (C.D. Cal.) (class-wide relief achieved, final approval

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- 1 granted);
- 2 n. *Everado Gonzalez v. The Scotts Company*, Case No. BC577875,
- 3 Consolidated with Case No: BC570350 (Los Angeles County Superior
- 4 Court) (class-wide settlement of \$925,000 in wage and hour class
- 5 action on behalf of approximately 603 employees achieved, final
- 6 approval granted);
- 7 o. *Payton v. Luxe Valet*, Case No. BC588462 (Los Angeles County
- 8 Superior Court) (class-wide settlement in wage and hour independent
- 9 contractor misclassification class action, on behalf of 1,800
- 10 employees, settled for \$2.4 million, final approval granted);
- 11 p. *Shelby v. Two Jinn, Inc.*, Case No. 2:15-cv-03794-AB-GJS (C.D. Cal.)
- 12 (EFTA class action involving no cognizable actual damages, with net
- 13 worth of company of \$25 million, settled for non-reversionary
- 14 common fund of \$457,000, despite liability under 15 U.S. Code §
- 15 1693m(a) likely being only \$250,000; final approval granted, zero
- 16 objections);
- 17 q. *Couser v. Dish One Satellite*, Case No. 5:15-cv-02218-CBM-DTB
- 18 (C.D. Cal.) (TCPA class action, final approval granted);
- 19 r. *Couser v. Dish One Satellite*, Case No. RIC 1603185 (Riverside S.C.)
- 20 (Penal Code 632 class action, final approval granted);
- 21 s. *De La Paz v. Accurate Courier NCA LLC*, Case No. 16CV00555
- 22 (Santa Cruz County Superior Court) (PAGA and Labor Code class
- 23 action, final approval granted);
- 24 t. *Ross v. Zurixx LLC*, Case No. 34-2016-00190874 (Sacramento County
- 25 Superior Court) (UCL, FAL and CLRA class action alleging false
- 26 advertising for real estate educational courses, non-reversionary
- 27 common fund settlement for over \$600 per class member, final
- 28 approval granted);

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- 1 u. *Eubank v. Terminix International, Inc., et al.*, Case No. 3:15-cv-
2 00145-WQH-JMA (S.D. Cal.) (PAGA settlement reached in wage and
3 hour action on behalf of pest control technicians, final approval
4 granted);
- 5 v. *Holland v. Tenet Healthcare Corporation*, Case No. 15CVP0226 (San
6 Luis Obispo County Superior Court) (PAGA settlement reached in
7 wage and hour action on behalf of nurses, final approval granted);
- 8 w. *Jonathan Weisberg v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO
9 (MRWx) (C.D. Cal.) (class-wide settlement in TCPA class action,
10 settled for \$1.225 million, final approval granted);
- 11 x. *Miler v. Pacific Auto Wash Partners*, Case No. 30-2015-00813013-
12 CU-OE-CXC (wage and hour class action, final approval granted);
- 13 y. *Sonia Barrientos v. Law Office of Jeffrey H. Jordan*, Case No. 2:15-
14 cv-06282-JAK-GJS (C.D. Cal.) (FDCPA/RFDCPA letter class action,
15 settled on class wide basis, final approval granted);
- 16 z. *Tahmasian v. Midway Rent A Car*, Case No. 30-2015-00813013-CU-
17 OE-CXC (Los Angeles County Superior Court) (PAGA and Labor
18 Code class action, final approval granted);
- 19 aa. *Craig Cunningham v. Lexington Law Firm*, Case No. 1:17-cv-00087-
20 EJF (N.D. UT) (TCPA class action MDL involving solicitation
21 prerecorded voice calls made by a third party, vicarious liability
22 alleged, final approval granted);
- 23 bb. *Sheena Raffin v. Medicredit, Inc., et al.*, Case No. 2:15-cv-04912-
24 MWF-PJW (C.D. Cal.) (Cal. Penal Code § 632.7 class action certified
25 by Hon. George H. King Ret under Rule 23(b)(2) and (b)(3) by
26 contested motion on behalf of 11,000 class members whose calls were
27 recorded without knowledge or consent, settled for \$5 million, final
28 approval granted);

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- 1 cc. *Fernandez v. Reliance Home Services, Inc.*, Case No. BC607572 (Los
2 Angeles County Superior Court) (wage and hour plus PAGA class
3 action, final approval granted);
- 4 dd. *Anne Wolf v. Hewlett Packard Company*, Case No. 5:15-cv-01221-
5 TJH-GJS (C.D. Cal.) (CLRA class action certified by contested motion
6 on behalf of tens of thousands of class members who purchased printer
7 that was falsely advertised to include Smart Install feature, settled on
8 a wider multi-state, multi-product basis, final approval granted);
- 9 ee. *Jaylinda Girardot, et al. v. Bail Hotline Bail Bonds, Inc.*, Case No.
10 BC700131 (Los Angeles County Superior Court) (wage and hour plus
11 PAGA class action, final approval granted);
- 12 ff. *Ryoo Dental, Inc. v. OCO Biomedical, Inc.*, Case No. 8:16-cv-01626-
13 DOC-KES (C.D. Cal.) (TCPA fax blast class action, settled on class
14 wide basis, final approval granted);
- 15 gg. *Wondra Curtis v. The Anthem Companies, Inc.*, Case No. 8:16-cv-
16 01654-DOC-JCG (C.D. Cal.) (wage and hour class action for off the
17 clock work, settled on class wide basis, final approval granted);
- 18 hh. *Weinberg v. Clariant, Inc.*, Case No. 56-2017-00494914-CU-NP-VTA
19 (Ventura County Superior Court) (Rosenthal Fair Debt Collection
20 Practices Act class action settled on behalf of 1,830 class members for
21 privacy infringements through clear envelope debt collection letters,
22 final approval granted);
- 23 ii. *Aliav v. Sunset Eats, LLC*, Case No. BC655401 (Los Angeles County
24 Superior Court) (false advertising class action on behalf of
25 approximately 10,000 class members, settled on class wide basis; final
26 approval granted);
- 27 jj. *Alfred Zaklit, et al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-
28 02190-CAS-KK (C.D. Cal.) (Cal. Penal Code § 632.7 class action

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1 certified by contested motion under Rule 23(b)(2) and (b)(3) on behalf
2 of over 40,000 class members whose calls were recorded without
3 knowledge or consent, final approval granted);

4 kk. *Mark Silva v. Olson and Co. Steel*, Case No. 17CV001045 (Contra
5 Costa County Superior Court) (wage and hour class action settled on
6 behalf of 563 class members, final approval granted);

7 ll. *Cohen v. Coca-Cola Refreshments, USA, Inc.*, Case No. 2:19-cv-
8 04083-JAK (PLAx) (C.D. Cal.) (wage and hour class action settlement
9 on behalf of trucking employees, preliminary approval pending);

10 mm. *Manopla v. Home Depot USA, Inc.*, Case No. 15-1120 (D. N.J.) (TCPA
11 class action, final approval granted);

12 nn. *Bonilla, et al. v. Windsor Fashion, LLC*, Case No. CIVDS1723088
13 (wage and hour class action settled on behalf of over 5,000 employees,
14 preliminary approval granted);

15 oo. *Cawthorne v. Rush Truck Centers of California, Inc.*, Case No. 5:17-
16 cv-1541-JGB-SP (C.D. Cal.) (wage and hour class action on behalf of
17 560 employees, final approval granted);

18 pp. *Lizama v. Medical Data Systems, Inc.*, Case No. 34-2017-00210986-
19 CU-NP-GDS (Sacramento County Superior Court) (Penal Code 632.7
20 class action alleging illegal call recording, settled for \$2.2 million on
21 behalf of over 30,000 consumers, final approval granted);

22 qq. *Romano v. SCI Direct, Inc., et al.*, Case No. 2:17-cv-03537-ODW-
23 JEM (C.D. Cal.) (wage and hour class action for independent
24 contractor misclassification, settled for \$2.5 million on behalf of 230
25 employees, final approval granted);

26 rr. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-
27 E (C.D. Cal.) (TCPA class action certified on behalf of approximately
28 2,000,000 class members under Rule 23(b)(2) and 23(b)(3),

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- 1 subsequently settled on a Rule 23(b)(2) and 23(b)(3) basis, final
2 approval granted);
- 3 ss. *Audrey Hernandez v. Pegasus Building Services, Inc.*, Case No. 37-
4 2018-00023176-CU-OE-CTL (San Diego County Superior Court)
5 (consolidated wage and hour and PAGA class action on behalf of
6 janitorial workers, final approval granted);
- 7 tt. *Walsh v. Fry's Electronics, Inc.*, Case No. MSC18-01681 (Contra
8 Costa County Superior Court) (Gift Card Act, CLRA, UCL, FAL class
9 action settled for class-wide public injunctive relief, preliminary
10 approval pending);
- 11 uu. *In RE HP Firmware Update Litigation*, Case No. 5:16-cv-05820-EJD
12 (N.D. Cal.) (co-lead class counsel in consolidated Unfair Competition
13 class action alleging HP pushed a firmware update on consumers'
14 printers that blocked their ability to use third party ink cartridges, final
15 approval granted);
- 16 vv. *Nishimoto v. T&S Business Corporation*, Case No. 34-2017-00211426
17 (Sacramento County Superior Court) (wage and hour and PAGA class
18 action on behalf of janitorial workers, final approval granted);
- 19 ww. *Rodriguez v. Experian Information Solutions, Inc., et al.*, Case No.
20 2:15-cv-01224-RAJ (W.D. Wash.) (FCRA class action for improper
21 credit pulls; certified under Rule 23 by contested motion, and settled
22 on class-wide basis, final approval granted);
- 23 xx. *Ahmed v. HSBC Bank USA*, Case No. 5:15-cv-02057-FMO (SPx)
24 (C.D. Cal.) (TCPA class, final approval granted);
- 25 yy. *Garcia, et al. v. HMS Host, Inc.*, Case No. 17-cv-03069-RS (N.D. Cal.)
26 (wage and hour class action, final approval granted);
- 27 zz. *Aiken v. Malcolm Cisneros, A Law Corporation*, Case No. 5:17-cv-
28 02462-JLS-SP (C.D. Cal.) (Fair Debt Collection Practices Act class

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- 1 action, settled on class wide basis, preliminary approval granted);
- 2 aaa. *Marciano, et al. v. Doordash, Inc.*, Case No. CGC 18-567869 (San
- 3 Francisco County Superior Court) (First-filed and co-lead counsel in
- 4 consolidated gig economy misclassification class action on behalf of
- 5 delivery drivers, secured over \$40 million common fund settlement,
- 6 largest gig economy class settlement to date, preliminary approval
- 7 pending);
- 8 bbb. *Medina v. Enhanced Recovery Company, LLC*, Case No. 2:15-cv-
- 9 14342-JEM/MAYNARD (S.D. Fla.) (TCPA class settlement common
- 10 fund of \$1.45M, final approval granted);
- 11 ccc. *Kim v. Tinder, Inc.*, Case No. 2:18-cv-03093-JFW-AS (C.D. Cal.)
- 12 (Unruh Act class settlement on behalf of 240,000 consumers; granted
- 13 final approval, case on appeal);
- 14 ddd. *Griffey v. TA Operating, LLC*, Case No. CIVDS1907259 (San
- 15 Bernardino County Superior Court) (PAGA settlement \$390,000
- 16 settlement approval pending);
- 17 eee. *D'Angelo Santana v. Rady Children's Hospital*, Case No. 37-2014-
- 18 00022411-CU-MT-CTL (San Diego County Superior Court)
- 19 (Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et*
- 20 *seq.* class settlement final approval granted);
- 21 fff. *Chavis v. Three Group, Inc.*, Case No. 18STCV08737 (Los Angeles
- 22 County Superior Court) (wage and hour PAGA settlement on behalf
- 23 of dancers alleging contractor misclassification, approval pending);
- 24 ggg. *Hale v. Mana Pro Products, LLC*, Case No. 2:18-cv-00209-KJM-DB
- 25 (E.D. Cal.) (false advertising class action, preliminary approval
- 26 granted);
- 27 hhh. *El Nasleh v. California Spaghetti Restaurants, Inc.*, Case No.
- 28 CIVDS1812587 (San Bernardino County Superior Court) (wage and

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1 hour class action settlement on behalf of restaurant employees,
2 preliminary approval pending).

3 13. In addition to the present case, my firm also certified the following
4 cases as class actions by contested motion and was appointed class counsel. I wrote
5 the certification briefs for the majority of these cases:

- 6 a. *Anne Wolf v. Hewlett Packard Company*, Case No. 5:15-cv-01221-
7 TJH-GJS (C.D. Cal.) (class action certified by contested motion on
8 behalf of tens of thousands of class members who purchased printer
9 that was falsely advertised to include Smart Install feature);
- 10 b. *Caldera v. American Medical Collection Association*, Case No.
11 2:16-cv-00381-CBM-AJW (C.D. Cal.) (TCPA class action
12 certified by contested motion);
- 13 c. *Alfred Zaklit, et al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-
14 02190-CAS-KK (C.D. Cal.) Cal. Penal Code § 632.7 class action
15 certified under Rule 23(b)(2) and (b)(3) on behalf of class members
16 whose calls were recorded without knowledge or consent);
- 17 d. *D'Angelo Santana v. Rady Children's Hospital*, Case No. 37-2014-
18 00022411-CU-MT-CTL (San Diego County Superior Court)
19 (Confidentiality of Medical Information Act, Cal. Civ. Code § 56,
20 *et seq.*);
- 21 e. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-
22 DDP-E (C.D. Cal.) (TCPA class action certified on behalf of
23 approximately 2,000,000 class members under Rule 23(b)(2) and
24 23(b)(3));
- 25 f. *Rodriguez v. Experian Information Solutions, Inc., et al.*, Case No.
26 2:15-cv-01224-RAJ (W.D. Wash.) (FCRA class action for
27 improper credit pulls; certified under Rule 23);
- 28 g. *Sheena Raffin v. Mediacredit, Inc., et al.*, Case No. 2:15-cv-04912-

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1 MWF-PJW (C.D. Cal.) (Cal. Penal Code § 632.7 class action
2 certified by Hon. George H. King Ret. under Rule 23(b)(2) and
3 (b)(3) on behalf of class members whose calls were recorded
4 without knowledge or consent);

5 h. *Stemple v. QC Financial Services Group of California, Inc.*, Case
6 No. 3:12-cv-01997-CAB-WVG (S.D. Cal.) (certified class
7 achieved by motion, and subsequent class-wide settlement);

8 i. *Abdeljalil v. General Electric Capital Corporation*, Case No. 12-
9 CV-02078-IEG-RBB (S.D. Cal.) (certified class achieved by
10 motion, and subsequent class-wide settlement);

11 j. *Aleksanian, et al. v. Enrich Financial, Inc.*, Case No. BC698829
12 (Los Angeles County Superior Court) (certified class under Credit
13 Repair Organization Act, California Credit Services Act and
14 Federal Credit Repair Organization Act);

15 k. *McCurley v Royal Seas Cruises, Inc.*, Case No. 17-cv-986 BAS
16 (AGS) (one of, if not the first TCPA class actions certified by
17 contested motion on a contested manufactured consent theory,
18 certified on behalf of over 2 million consumers).

19
20 II. Overview of Law Offices of Todd M. Friedman, P.C.’s
Efforts in this Action

21 **A. CONTINGENT NATURE OF ACTION**

22
23 18.Plaintiff filed the initial class action complaint (“Complaint”) on May 29,
24 2019. In the Complaint, Plaintiff alleged causes of action for violations of the
25 TCPA. Plaintiff has filed two amended complaints since that time. Based on
26 those allegations, Plaintiff sought \$1,500 per violation, as well as injunctive
27 relief. Plaintiff’s claims were brought on behalf of a class of individuals who
28 allegedly received automated solicitation phone calls and texts to their mobile

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1 phones from Defendant without prior express consent and/or an established
2 business.

3 19. My office engaged in early discovery with Defendant and obtained records
4 relating to all merits, certification and damages issues that were necessary to
5 evaluate risk and valuation of the claims at issue in my opinion. This
6 included the outbound dial list, documents and information relating to the
7 system used to place calls, financial records, identities of lead vendors and
8 the sources of consent. From this we were able to conduct work product into
9 the defense of consent which bore on certification and merits issues. We also
10 were able to hire an expert firm to assist us with determining the size and
11 scope of the class. Additionally we were able to conduct factual and legal
12 research on the dialing platform used by the defendant in this case to evaluate
13 merits risk to the section b claim. All of this work was completed prior to
14 setting foot into mediation, and all risks were properly evaluated with
15 extensive legal and factual research. Multiple claims administrators were
16 consulted for quotes and experience, in advance of mediation, and during
17 mediation negotiations in order to find the best fit for the Class.

18 20. We then mediated into the late hours with Judge King, with both myself and
19 my partner participating for the Class. We did not reach a deal, but made
20 significant progress. Two additional mediation sessions needed to be
21 conducted with significant further exchanges of information and negotiations
22 between counsel. Ultimately a mediators proposal from Judge King was
23 agreed to by both sides.

24 21. Thereafter, we presented the settlement to the Court for approval. We were
25 faced with an intervention motion by lawyers in a competing class action that
26 had been filed on top of our case, which was ultimately withdrawn after a
27 vigorous defense of the settlement by Class Counsel. The settlement was
28 approved by the Court, and my office has overseen the administration process

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1 since that time, including my personally having fielded well over 100 phone
2 calls with class members answering their questions regarding the settlement.

3 22.Throughout this action, over 1,000 emails have been exchanged between
4 myself, my partner, our staff, defense counsel, class members and the
5 administrator. We have also spend over 1,000 hours working on various
6 matters described herein. Most of that time was spent by myself and Mr.
7 Bacon, because of the importance of the tasks.

8 23.Including our pre-filing investigation, this action, required the Law Offices
9 of Todd M. Friedman, P.C. to spend a year and a half on this litigation that
10 could have been spent on other matters, and we will continue to oversee this
11 litigation for the next year while settlement and approval are finalized, until
12 all funds are distributed to Class Members. At various times during the
13 litigation of this class action, this lawsuit has consumed my time as well as
14 my firm’s resources. Over 1,000 emails have been exchanged during that
15 time between members of my firm, counsel for Defendant, the claims
16 administrator, class members, Plaintiff, our experts, and others. My firm has
17 not been paid anything for our work on this case since it was filed and we
18 have spent over \$30,061.51 in hard costs prosecuting this action on behalf of
19 Plaintiff and the proposed class. I run a relatively small law firm, so an
20 expenditure of this nature, in a hotly contested case, was a big risk that we
21 took for the sake of standing up for the Class. It is my opinion that law firms
22 in such a position expect to receive a multiplier in cases such as these because
23 of the risk taken, the extent to which firms are unable to take on other cases,
24 the delay in getting paid and the costs we have to advance.

25 **B. LAW OFFICES OF TODD M. FRIEDMAN, P.C.’S LODESTAR**

26 24.Law Offices of Todd M. Friedman, P.C. has maintained contemporaneous
27 time records since the commencement of this action. To date, I have incurred
28

1 1,047.7 hours of attorney time for this case,¹ with a total lodestar of
 2 \$706,527.50. My billing rate is \$750 per hour in this case, the billing rate for
 3 Adrian R. Bacon is \$650 per hour, the billing rate for Thomas E. Wheeler is
 4 \$450 per hour, and the billing rate for Nick Polis is \$370 per hour.

5 **C. LAW OFFICES OF TODD M. FRIEDMAN, P.C.'S COSTS**

6 25. My firm has incurred litigation costs in this matter in the amount of
 7 \$30,061.51, for which my firm is seeking reimbursement. These costs are
 8 comprised of costs for filing and serving the complaint, transmitting copies
 9 of ECF filings to the Honorable Court, payment of mediation fees to JAMS,
 10 parking and mileage expenses, mailing expenses, and expert costs. The
 11 breakdown of costs is as follows:

Description	Cost
Courier and service fees	\$471.00
Filing fee	\$400.00
Expert	\$16,906.25
Mediation	\$11,563.42
Shipping	\$21.34
Mileage	\$51.30
Parking	\$45.40
Transcription fees	\$602.80
TOTAL	\$30,061.51

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20 26. Should my firm incur costs through final approval of this action, Plaintiff will
 21 seek reimbursement of such costs, up to a total of \$50,000, as set forth in the
 22 Settlement Agreement. At this time, unless depositions of potential objectors
 23 need to be taken (unlikely since there have been no objectors to date and only
 24 a few weeks left to object), I have no reason to believe that my firm's costs
 25 will exceed \$31,000 by the conclusion of the case. Accordingly, the Class

26 ¹ In calculating these hours, I have excluded time spent by legal clerks and
 27 paralegals. While over 100 hours' worth of time were spent by such individuals on
 28 this case, we have not included those hours in the lodestar calculation. Thus, our
 true lodestar is actually higher than the figures described herein.

1 Members will be receiving approximately \$19,000 more than they were
2 informed in the Class Notice.

3 **D. REASONABLENESS OF HOURLY RATES**

4 27. Law Offices of Todd M. Friedman, P.C.'s hourly rates are reasonable in
5 respect to the ranges charged by comparable law firms in the State of
6 California.² My billing rate is \$750 per hour in this case, the billing rate for
7 Adrian R. Bacon is \$650 per hour, the rate of fourth year associate Thomas
8 R. Wheeler is \$450 per hour, and the rate for second year associate Nick Polis
9 is \$370 per hour.

10 28. Regarding my rate, I have been practicing law since 2001, and am the
11 managing partner of one of the most active consumer protection law firms in
12 California. I have been counsel of record on hundreds of class action
13 lawsuits, dozens of which have resolved on a class-wide basis. In the past
14 three years alone, my firm has been counsel on cases totaling over \$95
15 million in class-wide relief for consumers. Three years ago, I was approved
16 at a rate of \$675 at final approval in the case of *Shelby v Two Jinn, Inc.*, Case
17 No. 2:15-cv-03794-AB-GJS (C.D. Cal.), and my partner Adrian Bacon was
18 approved at a rate of \$575. We have both been approved at those figures
19 roughly ten times during the 2017-2018 time period. Due to general inflation
20 in rates as shown in the Laffey Matrix, we increased our rates to \$725 and
21 \$625 respectively in 2019, and were approved at those rates close to ten times
22 during that calendar year, including by Judge Fitzgerald in the *Raffin* case,
23 Judge Pregerson in *Enagic*, and by Judge Hatter in the *Wolf* case. The *Wolf*
24 case involved a contested fee brief, where the defense contested the
25 reasonableness of our rates. We litigated that case from 2015 to 2020, and
26 were approved at \$725 and \$625 respectively. In 2020, we applied a \$25 per

27 _____
28 ² See Laffey Matrix attached hereto as Exhibit A.

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1 hour increase to these rates based on inflation and additional experience and
2 have been approved at those rates a number of times including in the
3 *Nishimoto* action, the *Romano* actions, and others.

4 29. Based on the Laffey Matrix, our hourly rates fall within the scope of
5 reasonable fees.

6 30. My partner Adrian R Bacon has been licensed to practice since 2011 and has
7 worked as a plaintiffs' side class action litigation attorney for the duration of
8 his career. Prior to receiving his law license, he worked for the Federal Trade
9 Commission, and was involved in several "sweeps" including one dubbed
10 Operation Shortchange, where the FTC shut down a series of scammers who
11 were taking advantage of consumers during the financial downturn and
12 achieved a multi-nine figure judgment against them which made headlines.
13 He also worked on and participated in a federal raid, referred to as an
14 "Immediate Access" and thereafter a receivership against a scam boiler room
15 posing as part of the Obamacare plan by selling fake medical discount cards
16 to vulnerable sick people during the last economic downturn. The company
17 was bilking people out of their last savings by selling them substitutes for
18 medical insurance through bogus discount cards that were not recognized or
19 accepted anywhere that they were advertised. Mr. Bacon was part of the team
20 that shut down their operations in Tempe Arizona along with a team of agents
21 and federal marshals.

22 31. Once he was licensed to practice, he began by working at Strange &
23 Carpenter as an associate on consumer protection class actions, including
24 heading up the document production team on the Toyota Unintended
25 Acceleration Litigation. While there, he drafted and worked on several
26 published opinions, including a Ninth Circuit decision *Corvello v. Wells*
27 *Fargo* and the now heavily-cited opinion *Nguyen v. Barnes & Noble* denying
28 a motion to compel arbitration, which was upheld by the Ninth Circuit.

1 32.Mr. Bacon left the firm and went to work at Marlin & Saltzman in their
2 Orange County office under Louis M. Marlin, a highly decorated retired class
3 action attorney, and now respected mediator. Marlin & Saltzman is a class
4 action litigation firm that specializes in wage and hour class actions. Mr.
5 Bacon worked there for two years and was appointed class counsel on several
6 wage and hour class actions. He was instrumental in favorably settling one
7 such class action against Ikea for more than twice what the company came to
8 mediation willing to pay, which is cited below.

9 33.In 2014 he lateralled over to my firm, where he have served as the head of
10 litigation at my office for nearly six years. He was made a partner in 2018
11 after having certified and settled numerous class actions for clients of our
12 firm and helped revamp our litigation department. Almost every single one
13 of the class actions that our firm has settled, certified or otherwise litigated
14 in earnest on behalf of our clients out of our California office have been cases
15 that he has overseen with me.

16 34.Mr. Bacon has argued multiple cases before the Ninth Circuit in advance of
17 consumer privacy rights, including *Gallion v United States*, 772 Fed.Appx.
18 604 (9th Cir. July 8, 2019), and *Smith v. Loanme*, Case No. S260391.

19 35.In addition to my firm’s experience, Mr. Bacon has separately been approved
20 as class counsel at his prior firm on several wage and hour class action
21 matters, including the following:

- 22 1. *Miller v. Ikea California, LLC*, Case No.: 30-2009 00331682
23 (Orange County Superior Court) (\$5.75M class settlement granted
24 final approval);
- 25 m. *David Paiva, et al v. Denny Corporation et al.*, Case No. 37-2010-
26 00103831-CU-OE-CTL (San Diego County Superior Court)
27 (granted final approval); and
- 28 n. *Juan Martinez, et al v. Valley Pride, Inc. et al.*, Case No. M108688

(Monterey County Superior Court) (granted final approval).

36. Mr. Wheeler is a graduate of U. Penn Law and an associate at my firm. He has worked extensively on consumer protection matters, including class actions, during his several years with my firm. He has also taken individual consumer cases to arbitration and trial and prevailed. His work includes assisting on the *Caldera*, *Romano*, *McCurley* and *Makaron* matters cited above, all of which were certified as class actions. Mr. Wheeler also took the lead in drafting the certification papers and arguing the certification motion at oral argument in the *Aleksanian* case. In light of his experience, an hourly rate of \$450 is warranted, and is further warranted in light of customary rates for mid level associates on the Laffey Matrix.

37. Mr. Polis is a junior associate at my firm, having practiced for the last two years. His rates are lower than those in the Laffey Matrix as well.

38. I anticipate Law Offices of Todd M. Friedman, P.C. will incur an additional 100 hours for preparing for the final approval hearing, appearing at the hearing, and overseeing the settlement administration, including addressing any questions by settlement Class Members (there are zero objectors and 118 opt-out to date), as well as filing status reports after final approval. I believe this is a conservative estimate of our future hours based on my experience in these matters. Our hours will increase considerably in the event of an objection, to the point where we will likely be receiving a negative lodestar. This possibility additionally demonstrates that the fee request is reasonable, because my office will vigorously defend the settlement if such occurs, and will receive no additional compensation under those circumstances than we are already requesting.

39. With regard to a bare bones lodestar amount, our current billing records reflect approximately 1,047.7 hours of time. Based on these rates, and the accompanying time entries for each corresponding individual, the lodestar

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1 estimate for this Case is \$706,527.50.

2 40. Here is a breakdown and summary of the fees incurred by Plaintiff's counsel
3 in connection with this Case:

Name	Number of Hours	Rate/Hr	Total
Todd M. Friedman	427.6	\$750.00	\$320,700.00
Adrian R. Bacon	551.1	\$650.00	\$358,215.00
Thomas E. Wheeler	24.5	\$450.00	\$11,147.50
Nick Polis	44.5	\$370	\$16,465.00
TOTAL	1,047.7		\$706,527.50

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9 41. My firm maintained contemporaneous records of our time, and upon request
10 from the Court, I will be prepared to submit detailed itemized time records
11 of the tasks completed by various members of my firm, and the amount of
12 time for each task and days each task was completed.

13 42. Based on the foregoing, I submit that our request for an award of 20% of the
14 Common Fund is reasonable. This represents a 1.77 multipleir on my office's
15 Lodestar.

16 43. I also would submit that Mr. Fabricant should be awarded an incentive award
17 of \$5,000 for his efforts in assisting with this litigation. Mr. Fabricant was
18 instrumental in bringing this case, having provided my office with the
19 information and documents necessary to successfully litigate this class action
20 for 2.3 million class members, participating in settlement discussions and
21 informal discovery, providing three declarations to the Court in support of
22 approval and communicating promptly with my office in order to see this
23 litigation successfully moved towards a favorable class-wide result. For
24 these reasons, I believe the requested incentive award is reason able and
25 deserved.

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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 August 31, 2020.

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

EXHIBIT A

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LAFFEY MATRIX

History

Case Law

Expert Opinions

See the Matrix

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645

6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.