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Attorneys for Plaintiffs TAQUELIA WASHINGTON TOLAND AND GEORGIA TOLAND  
Individually and on Behalf of All Others Similarly Situated

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TAQUELIA WASHINGTON TOLAND  
and GEORGIA TOLAND, individually  
and on behalf of All Others Similarly  
Situated,

Plaintiffs,

vs.

NATIONSTAR MORTGAGE LLC, a  
Delaware limited liability company;  
VERIPRO SOLUTIONS INC., a Delaware  
corporation, and DOES 1 through 20,

Defendants.

**Case No. 3:17-cv-02575-JD**

CLASS ACTION

**DECLARATION OF ARTHUR D.  
LEVY IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED CLASS  
ACTION SETTLEMENT**

**Date: April 15, 2021**

**Time: 10:00 a.m.**

**Courtroom 11, 19<sup>th</sup> Floor**

**Hon. James Donato**

Complaint Filed: March 24, 2017

I, Arthur D. Levy, say:

1. I am a member in good standing of the State Bar of California and have been  
counsel of record for Plaintiffs from the filing of the state court case in March 2017 to date.

1           2.       I was admitted to the California Bar in 1980 after graduating from UC Berkeley  
2 School of Law. I was an editor of the California Law Review for two years during law school  
3 and became a member of the Order of the Coif.

4           3.       I have 40 years of litigation experience. From late 1980 until 1983, I worked as a  
5 litigation associate in Morrison & Foerster's San Francisco office, working primarily on antitrust  
6 cases. From 1983 until 1985, I worked as a litigation associate at Collette & Erickson, working  
7 primarily on real estate cases. From 1985 until 1988, I had a solo litigation practice in San  
8 Francisco, handling a variety of business litigation matters. From 1988 until 1997, I was a  
9 partner in the law firm of Ewell & Levy in San Francisco, where I continued a business litigation  
10 practice. In 1997, I co-founded Levy, Ram & Olson and was a partner through May 2009,  
11 primarily handling consumer class action cases.

12           4.       Levy, Ram & Olson was founded in March 1997 by Michael Ram (a Lief, &  
13 Cabraser, Heimann & Bernstein partner), Karl Olson (a Cooper, White & Cooper partner), and  
14 myself. All three of us had once been associates at Morrison & Foerster. Erica L. Craven later  
15 joined us as a partner in the firm. From its inception, the firm specialized in consumer class  
16 action and consumer litigation under the California Unfair Competition Law (Bus. & Prof. Code  
17 §§ 17200 *et seq.*). Approximately 70% of our work over the last five years of the firm was in the  
18 consumer class action/17200 practice area.

19           5.       In June 2009, Levy, Ram & Olson disbanded so the partners could pursue  
20 different directions in class action practice. Since then, I have been a sole practitioner and have  
21 continued my class practice in co-counseling arrangements with other law firms. I am currently  
22 Director of Litigation for Housing and Economic Rights Advocates, a not-for-profit legal service  
23 and advocacy organization located in Oakland that provides assistance and representation to low-  
24 income consumers in the areas of affordable credit, credit reporting, mortgage, student, and  
25 medical lending, and debt collection defense.

26           6.       I have personally served as lead counsel in consumer class action cases, including  
27 the following: *Doskocz v. ALS Lien Services*, Contra Costa County Superior Court Case No.  
28 MSC17-01486 (class certified); *Banks v. JPMorgan Chase Bank, N.A.*, Alameda Superior Court

1 Case No. RG12614875 (settlement class certified); *Velline v. JPMorgan Chase Bank, N.A.*,  
2 Alameda Superior Court Case No. RG14714754 (settlement class certified); *De La Torre v.*  
3 *CashCall, Inc.*, San Mateo Superior Court Case No. 19-CIV-01235 (class certified); *O'Donovan*  
4 *v. CashCall, Inc.*, U.S. District Court for the Northern District of California, Case No. C 08-  
5 03174 TSH (class certified); *Perez v. Barclay's Capital Real Estate, Inc.*, San Francisco Superior  
6 Court Case No. CGC-10-496374 (settlement class certified); *Carias v. Lenox Financial*  
7 *Mortgage Corp.*, Contra Costa Superior Court Case No. CIV MSC 06-02409 (class certified);  
8 *Munn v. Eastwood Insurance Services, Inc.*, Orange County Superior Court Complex Litigation  
9 Case No. 06CC00110 (class certified on July 9, 2007); *Porter v. Auto Insurance Specialists*,  
10 JAMS Arbitration No. 1100048278 (class certified October 23, 2007 by Judges James Warren,  
11 Edward Infante, and Richard Neal); *Lesser v. IKON*, San Francisco Superior Court Case No.  
12 992793 (settlement class certified); *Gluck v. Bank of America Corporation*, San Francisco  
13 Superior Court Case No. 308496 (settlement class certified); *Beach v. Bank of America*, Alameda  
14 County Superior Court Case No. 2002-054356 (class certified); and *Lesser v. Pacific Bell*  
15 *Directory*, Alameda County Superior Court Case No. 2002-066344 (settlement class certified).

16 7. I was also lead trial counsel in two non-class action section 17200 trials, *Krumme*  
17 *v. Mercury Insurance Company*, San Francisco Superior Court Case No. 313367 (tried to  
18 plaintiff's judgment in July 2002 and affirmed on appeal in October 2004), and *Wilson v. Brawn*  
19 *of California*, San Francisco Superior Court Case No. CGC-02-404454 (tried to plaintiff's  
20 judgment in April 2003 and reversed on appeal in September 2005).

21 8. I also served as lead trial counsel in the California Department of Insurance's  
22 administrative Non-Compliance Case Against Mercury Insurance Company, *In the Matter of*  
23 *Mercury Insurance Company*, Office of Administrative Hearings Case No. N2006040185. This  
24 two-week trial resulted in the State recovering \$27.6 million in penalties. Mercury challenged  
25 this ruling in an administrative mandamus action in the Orange County Superior Court. The  
26 Fourth District Court of Appeal, Division 3, affirmed the penalty award in full in *Mercury*  
27 *Insurance Co. v. Lara* (2019) 35 Cal. App. 5th 82 (rev. denied 8/14/19).

28 9. Veripro's collections from Class Members resulted from a systematic error in

1 Veripro’s “lien scrub” procedure (*e.g.*, Plaintiffs’ Opposition to Defendants’ Renewed Motion  
2 for Summary Judgment (Dkt. No. 100) at 6:21-7:6) that affected a comparatively low number of  
3 borrowers in comparison with the scale of Nationstar’s and Veripro’s overall collections. In  
4 response to Plaintiffs’ data requests, Veripro produced a spreadsheet (Toland NSM 004459  
5 CONFIDENTIAL) listing the loan accounts where a borrower was sent at least one of the two  
6 form collection letters on which the Collection Letter Subclass definition is based. This  
7 spreadsheet listed 2,295 accounts. Using Excel filters, Plaintiffs’ counsel were able to identify  
8 677 of these accounts where there potentially was a purchase money loan and a letter sent after a  
9 foreclosure of short sale. *See* Declaration of Natalie Lyons in Support of Motion for Class  
10 Certification (Dkt. No. 72-2) ¶ 12. Because of the shortcomings of the data produced, Plaintiffs’  
11 Counsel were unable to determine the accounts of Class Members conclusively from the data.  
12 *Id.* ¶¶ 5-9. Thus, at most, approximately 30% of the letters (677) were sent to borrowers who  
13 had purchase money loans after a foreclosure or short sale. The other 70% of the collection  
14 letters (1,618) were sent to borrowers whom the data affirmatively showed did not have purchase  
15 money loans and/or did not have a foreclosure or short sale, and therefore are not Class  
16 Members. The percentage of loan accounts of Class Members is likely significantly lower than  
17 30% because some of the 677 will not qualify based on the more refined Collection Letter  
18 Subclass identification defendants have agreed to perform under the settlement. (SAR ¶ 2.2.)  
19 Therefore, it is likely that the actual percentage of loan accounts where there was a collection  
20 violation is in the 200-400 range, indicating a relatively low frequency in the context of  
21 Nationstar’s and Veripro’s overall collections.

22 10. Statutory damages are limited to “the lesser of \$500,000 or 1 per centum of the  
23 net worth of the debt collector.” 15 U.S.C. § 1692k(a)(2)(B). Defendants reported in discovery  
24 that Veripro has low net worth that would cap the Collection Letter Subclass recovery under 15  
25 U.S.C. § at around \$50-100 per Class Member. By contrast, Nationstar is a publicly traded  
26 corporation with a publicly reported net worth such that the statutory net worth limitation would  
27 not reduce the Subclass recovery. I researched whether Nationstar’s net worth could be used to  
28 set statutory damages in a case like this, where Nationstar’s liability is derivative of Veripro’s,

1 which was acting as a collection agent for Nationstar. There is only one reported case law  
2 squarely establishing a principal's net worth can be considered when the violation is committed  
3 by an agent. *Green v. Monarch Recovery Mgmt.*, 997 F. Supp. 2d 932, 937 (S.D. Ind. 2014). In  
4 the absence of authority from a Court of Appeal, the judges in this District, or a clear trend of  
5 District Courts nationally, this appears to be an open issue that presents an additional risk factor  
6 for the Class in this case.

7 11. The credit reporting relief provided by the settlement is the most significant and  
8 enduring benefit to the Class. (SAR ¶ 4.3.) While per capita payments of statutory damages  
9 provide a measure of relief for Class members, improving their credit reports by reporting the  
10 outstanding loan amount as zero, instead of a significant deficiency balance, and no amount past  
11 due (as provided by the settlement) is a significant step toward mitigating the harm of reporting  
12 deficiency balances on Class Member purchase money mortgages, and could assist Credit  
13 Reporting Subclass Members in obtaining needed credit and/or at a significantly lower cost in  
14 the future.

15 12. It is not economically feasible to prosecute the claims in this case except on a  
16 class basis. On the debt collection claims, an individual is limited to \$1,000 in statutory damages  
17 if they were to pursue that remedy individually. 15 U.S.C. § 1692k(2)(A). Likewise, individual  
18 statutory or "punitive damages" under the CCRAA are limited to \$5,000. Cal. Civ. Code §  
19 1785.31(a). These amounts are too small to pursue on an individual basis, given the time, legal  
20 expense, risks, and complexity involved. Few if any attorneys would be willing to take on cases  
21 with such small stakes on a contingency basis because of the high risk they will be unable to  
22 recover compensation for their time spent in obtaining such small awards. While there is a  
23 prospect for individuals to recover restitution or damages for payments made in response to the  
24 debt collection letters, in discovery Defendants' have indicated that few Collection Letter  
25 Subclass Members made payments in response to Veripro's letters and that the amounts of the  
26 payments were low, mostly below \$10,000.

27 13. I was one of the Class Counsel in *Banks v. JPMorgan Chase Bank, N.A.*, Alameda  
28 County Superior Court Case No. RG12614875, which was a class action against Chase Bank for

1 violating state fair debt collection and credit reporting laws by collecting and reporting  
2 deficiencies on California purchase money mortgages after foreclosure and short sales. The  
3 claims in that case were similar to this one. The case was settled using a claim form  
4 substantially identical to the one proposed in this case for identifying class members. According  
5 to a declaration filed with the Court by the settlement administrator, Rust Consulting, on August  
6 12, 2016, the settlement administrator mailed out 17,728 claim forms, and 2,786 were returned.  
7 This yielded a response rate on the claim forms of 15.7%.

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct. Executed this 28<sup>th</sup> day of January 2021 at Oakland, California.

10 /s/ Arthur D. Levy  
11 ARTHUR D. LEVY

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**LOCAL RULE 5-1 ATTESTATION**

I, Kristin Kemnitzer, am the ECF user whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that Arthur D. Levy has concurred in the filing of this document with his electronic signature.

Dated: January 28, 2020

/s/ Kristin Kemnitzer  
KRISTIN KEMNITZER