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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

WILLIAM LOFTUS, SIDNEY NAIMAN, and
LOUIS NAIMAN, individually and on behalf of
all others similarly situated,

Case No. 3:19-cv-01608-RS

Hon. Richard Seeborg

Plaintiffs,

v.

SUNRUN INC., and MEDIA MIX 365, LLC, and
DOES 1-10,

Defendants.

**Declaration of Edward A. Broderick in Support of Motion for
Preliminary Approval of Class Action Settlement**

I, Edward A. Broderick, declare under penalty of perjury:

1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I make this declaration in support of Plaintiffs' Unopposed Motion for Preliminary of Class Action. In this declaration I will describe the work that I and my co-counsel have done in identifying and investigating potential claims in the action and to set forth my qualifications to serve as class counsel, and describe my experience in representing plaintiff classes in class actions, and cases brought under the 47 U.S.C. § 227, the Telephone Consumer Protection Act. ("TCPA").

4. I was involved in every stage of representing Plaintiffs in this case, from pre-trial investigation, analysis of Plaintiffs' potential claims, and review of documents and discovery responses and settlement negotiations. Based on my experience in prosecuting class actions under the TCPA, I believe this settlement represents an excellent result for the class and merits preliminary approval by the Court.

5. Plaintiffs participated in a mediation session before the Honorable Wayne Andersen (Ret.) and then a second full day mediation session with Honorable Morton Denlow (Ret.) both of

1 whom are nationally-recognized mediators with particular expertise in resolving TCPA class actions.
2 This Agreement was reached following the second mediation session.

3 6. Plaintiffs believe they have a strong case for liability. However, as is set forth in
4 Plaintiff's Motion for Preliminary Approval, the case faced significant legal hurdles on both whether
5 the system used by Defendant to make the calls qualified as an "automatic telephone dialing system"
6 ("ATDS") and whether California Penal Code § 632.7 ("CIPA") applied to Defendant's recording of
7 calls.
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9 7. Defendant has always denied liability and continues to do so. Defendant maintains
10 that it has substantial factual and legal defenses to all claims and class allegations in the Litigation.
11 Defendant specifically denies that an automated dialer was used to call Plaintiffs or class members
12 without their prior express written consent; that they violated the TCPA; that they recorded calls
13 without disclosure in violation of CIPA and that Plaintiff and class members are entitled to any
14 relief. Defendant further contends that the allegations contained in the First Amended Complaint are
15 not amenable to class certification.
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17 8. The Plaintiffs have retained KCC as the Settlement Administrator, subject to Court
18 approval. SA § 1.42. KCC extensive experience administering class action settlements, particularly
19 under the TCPA. KCC estimates that the administration will not exceed \$165,000, although that
20 estimate is dependent on the number of claims received. Plaintiffs' counsel and KCC estimate that
21 each participating Settlement Class Member will receive approximately \$60. The final amount could
22 be higher or lower depending on the number of claims.
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24 9. Plaintiffs Terry Fabricant and James Schaffer devoted significant time to this action,
25 assisting their counsel in developing the facts underlying the Complaint and Amended Complaint, as
26 well as making their initial disclosures, responding to request for documents (and producing those
27 documents) as well as answering interrogatories. Plaintiffs additionally communicated with counsel
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1 regarding negotiations and the ultimate settlement. Without Plaintiffs' efforts both in documenting
2 the source of the telemarketing in this action and their willingness to file suit, no recovery would
3 have been possible

4 10. I am a 1993 graduate of Harvard Law School. Following graduation from law school,
5 I served as a law clerk to the Honorable Martin L.C. Feldman, United States District Judge in the
6 Eastern District of Louisiana.

7 11. Following my clerkship, from 1994 to December 1996, I was an associate in the
8 litigation department of Ropes & Gray in Boston, where I gained class action experience in the
9 defense of a securities class action, *Schaeffer v. Timberland*, in the United States District Court in
10 New Hampshire, and participated in many types of complex litigation.

11 12. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a three-
12 lawyer Boston firm focused on the representation of consumers in class actions.

13 13. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing my
14 practice on complex litigation and the representation of consumers.

15 14. In 2003, I started my own law firm focusing exclusively on the litigation consumer
16 class actions.

17 15. A sampling of other class actions in which I have represented classes of consumers
18 and been appointed class counsel follows:

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22 i. *In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation Agreements*
23 *Litigation*, (MDL Docket No. 1192) (N.D. Ill) (nationwide class action challenging
24 reaffirmation practices of General Electric Capital Corporation, settlement worth
25 estimated \$60,000,000.)
26 ii. *Hurley v. Federated Department Stores, Inc., et al*, USDC D. Mass. Civil Action No.
27 97-11479-NG (nationwide class action challenged bankruptcy reaffirmation practices
28 of Federated Department Stores and others; \$8,000,000 recovery for class.)
iii. *Valerie Ciardi v. F. Hoffman LaRoche, et al*, Middlesex Superior Court Civil Action
No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act,

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M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing conspiracy by manufactures of vitamins; settled for \$19,600,000.)

- iv. *Shelah Feiss v. Mediaone Group, Inc, et al*, USDC N. District Georgia, Civil Action No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class recovery of \$15,000,000--\$20,000,000.)
- v. *Mey v. Herbalife International, Inc.*, Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. \$7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the grant of a contested class certification motion.
- vi. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of \$475,000 following the grant of a contested class certification motion, granted final approval by the Court on July 25, 2007.
- vii. *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the grant of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See Terra Nova Insurance v. Fray-Witzer et al.*, 449 Mass. 206 (2007). There was then a TCPA class settlement of \$1,800,000 which was granted final approval.
- viii. *Shonk Land Company, LLC v. SG Sales Company*, Circuit Court of Kanswaha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for \$2,450,000, final approval granted in September of 2009.
- ix. *Mann & Company, P.C. v. C-Tech Industries, Inc.*, USDC, D. Mass., Civil Action No. 1:08-CV-11312-RGS, TCPA class settlement of \$1,000,000, final approval granted in January of 2010.
- x. *Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.*, Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement \$1,300,000 granted final approval on February 3, 2011.
- xi. *Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC*, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of \$1,800,000, final approval granted August 17, 2011.
- xii. *Collins v. Locks & Keys of Woburn, Inc.*, Suffolk Superior Court (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of \$2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.

- 1 xiii. *Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for Montgomery
2 County (Maryland), Civil Action No. 349410-V, TCPA class settlement of
3 \$1,575,000 granted final approval in March of 2012.
- 4 xiv. *Collins, et al v. ACS, Inc. et al*, USDC, D. Mass., Civil Action No. 10-CV-11912,
5 TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- 6 xv. *Desai and Charvat v. ADT Security Services, Inc.*, USDC, ND. Ill., Civil Action No.
7 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval on June
8 21, 2013.
- 9 xvi. *Benzion v. Vivint*, 0:12cv61826, USDC S.D.Fla., settlement of \$6,000,000 granted final
10 approval in February of 2015.
- 11 xvii. *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, USDC, D.
12 MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000 granted
13 final approval on February 12, 2015.
- 14 xviii. *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, USDC, D. MD., Civil
15 Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval
16 on April 15, 2015.
- 17 xix. *Charvat v. AEP Energy, Inc.*, USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement
18 of \$6,000,000 granted final approval on September 28, 2015.
- 19 xx. *Mey v. Interstate National Dealer Services, Inc.*, USDC, ND. Ga., 1:14-cv-01846-
20 ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8, 2016.
- 21 xxi. *Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company*,
22 USDC, WD. WI., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted final
23 approval on August 4, 2016.
- 24 xxii. *Bull v. US Coachways, Inc.*, USDC, ND. Ill., 1:14-cv-05789, TCPA class settlement
25 finally approved on November 11, 2016 with an agreement for judgment in the
26 amount of \$49,932,375 and an assignment of rights against defendant's insurance
27 carrier.
- 28 xxiii. *Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al.*, USDC,
 ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was granted final
 approval on December 1, 2016 with one of three defendants, and an assignment of
 rights against defendant's insurance carrier. Second settlement on behalf of class
 against two remaining defendants of \$3,300,000 granted final approval on September
 25, 2018.
- xxiv. *Smith v. State Farm Mut. Auto. Ins. Co. , et. al.*, USDC, ND. Ill., 1:13-cv-02018,
 TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- xxv. *Mey v. Frontier Communications Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a

1 TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.

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xxvi. *Biringer v. First Family Insurance, Inc.*, USDC, ND. Fla., a TCPA class settlement of \$2,900,000 granted final approval on April 24, 2017.

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xxvii. *Abramson v. Alpha Gas and Electric, LLC*, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3, 2017.

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xxviii. *Heidarpour v. Central Payment Co.*, USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of \$6,500,000 granted final approval on May 4, 2017.

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xxix. *Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company*, USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted final approval on February 27, 2018.

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xxx. *Abramson v. CWS Apartment Home, LLC*, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of \$368,000.00 granted final approval on May 19, 2017.

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xxxi. *Charvat v. Elizabeth Valente, et al*, USDC, NDIL, 1:12-cv-05746, \$12,500,000 TCPA settlement granted final approval on November 4, 2019, appeal pending.

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xxxii. *Thomas Krakauer v. Dish Network, L.L.C.*, USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of \$20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of \$61,339,200. (Dkt. No. 338). Affirmed on appeal, *Krakauer v. Dish Network, LLC*, 925 F.3d 643 (4th Cir. May 20, 2019), *cert. denied. Dish Network, L.L.C. v. Krakauer*, 140 S.Ct. 676 (December 16, 2019).

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xxxiii. *Mey v. Got Warranty, Inc., et. al.*, USDC, NDWV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted final approval on July 26, 2017.

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xxxiv. *Mey v. Patriot Payment Group, LLC*, USDC, NDWV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.

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xxxv. *Charvat and Wheeler v. Plymouth Rock Energy, LLC*, et al, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675,000 granted final approval on July 31, 2018.

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xxxvi. *Fulton Dental, LLC v. Bisco, Inc.*, USDC, NDIL, 1:15-cv-11038. TCPA class settlement for \$262,500 granted final approval on March 7, 2018

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xxxvii. *Mey v. Venture Data, LLC and Public Opinion Strategies*, USDC, NDWV, 5:14-cv-123. Final approval of TCPA settlement granted on September 8, 2018.

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xxxviii. *In Re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*,

1 USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement of \$28,000,000
2 granted final approval on June 12, 2018.

3 xxxix. *Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc.*, USDC, NDCA 4:15-cv-
4 06314-YGR. TCPA class settlement of \$28,000,000 granted final approval on
5 August 15, 2019.

6 xl. *Abante Rooter and Plumbing, Inc. v. Allstate Insurance Company, et al*, USDC, NDIL
7 1:15-cv-00925. TCPA class settlement of \$10,500,000 granted final approval on
8 August 15, 2019.

9 xli. *Kaiser v. CVS Pharmacy, Inc., et al*, USDC NDIL, 1:14-cv-03687, TCPA class
10 settlement of \$15,000,000 approved on January 30, 2020.

11 PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY
12 OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT
13 EXECUTED THIS THIS 5th DAY OF AUGUST, 2020 IN THE COMMONWEALTH OF
14 MASSACHUSETTS.
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/s/ Edward A. Broderick
Edward A. Broderick