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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,

Plaintiffs,

v.

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

Defendants.

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

Hon. Richard Seeborg

**Declaration of Edward A. Broderick in Support of Motion for Service Awards and Class
Counsel Fees and Costs**

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’ Motion for Service Awards and Class Counsel Fees and Costs 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 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”).

2. 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, settlement negotiations and moving for preliminary approval of the settlement. Based on my experience in prosecuting class actions under the TCPA, I believe this settlement represents an excellent result for the class and that the requested fees and costs are reasonable and should be approved.

1 3. From the outset, Plaintiffs’ counsel pursued their investigation vigorously
2 culminating with the filing of an Amended Complaint (ECF #36) and a Motion for a Temporary
3 Restraining Order seeking to preserve crucial class evidence. *See* ECF #39. This motion was
4 ultimately granted (ECF # 41). An Order granting a similar preliminary injunction was entered on
5 July 29, 2019. ECF #56. Plaintiffs’ counsel thereafter pursued a Motion for Entry of Default against
6 Media Mix, who had failed to appear. ECF #60-63. On September 10, 2019, Plaintiffs’ counsel filed
7 a Motion for a Temporary Restraining Order against Media Mix and its principals, when it became
8 apparent that Media Mix was ceasing operations, and the potential destruction of crucial class
9 evidence was apparent. ECF 64. Class counsel also engaged in litigation to thwart Media Mix’s
10 counsel from withdrawing from the litigation, and to obtain crucial discovery production. *See* ECF
11 70, 71, 72, 74, 75, 76, 77, 78.
12

13 4. The Plaintiffs also served over a dozen third party subpoenas regarding the automated
14 dialing equipment and records of calls made to the putative class. Furthermore, the Plaintiffs issued
15 first party discovery regarding the potential vicarious liability of Sunrun that resulted in the
16 production of thousands of pages of documents.
17

18 5. Only after they had a sufficient understanding of the strengths and weaknesses of
19 their case did Plaintiffs’ counsel enter into settlement negotiations, proceeding to mediate initially
20 with the Honorable Wayne Andersen (Ret.), and then a second full day mediation session with
21 Honorable Morton Denlow (Ret.). Both Judge Anderson and Judge Denlow are nationally-
22 recognized mediators with particular expertise in resolving TCPA class actions. The negotiations
23 were conducted at arms-length and were non-collusive. The Agreement was reached following the
24 second mediation session.
25

26 6. Plaintiffs believe they have a strong case for liability. However, as is set forth in
27 Plaintiff’s Motion for Preliminary Approval, the case faced significant legal hurdles on both whether
28

1 the system used by Defendant to make the calls qualified as an “automatic telephone dialing system”
2 (“ATDS”)—an issue presently before the United States Supreme Court--and whether California
3 Penal Code § 632.7 (“CIPA”) applied to Defendant’s recording of calls.

4 7. Defendant has always denied liability and continues to do so. Defendant maintains
5 that it has substantial factual and legal defenses to all claims and class allegations in the Litigation.
6 Defendant specifically denies that an automated dialer was used to call Plaintiffs or class members
7 without their prior express written consent; that they violated the TCPA; that they recorded calls
8 without disclosure in violation of CIPA and that Plaintiff and class members are entitled to any
9 relief. Defendant further contends that the allegations contained in the First Amended Complaint are
10 not amenable to class certification. Sunrun’s counsel Kelley Drye & Warren, LLP is a nationally
11 recognized civil defense firm with particular expertise in defending consumer and TCPA class
12 actions.
13

14 8. Class Counsel recognize that continued litigation would greatly lengthen these
15 proceedings, both at trial and through appeals, and expose the Settlement Class to significant legal
16 risk of recovering nothing. A settlement ensures recovery by the Settlement Class. In light of the
17 significant risks faced by Plaintiffs’ they together with Class Counsel determined that settlement was
18 the prudent course and in the best interest of the Settlement Class.
19

20 9. The proposed settlement class matches the operative complaint. The Class
21 Representatives assert violations of both §227(b) and §227(c) of the TCPA as well as violations of
22 CIPA. The Class Representatives claims match the claims being released via the Settlement Class.
23

24 10. The Court has approved Plaintiffs retention of KCC as the Settlement Administrator.
25 Plaintiffs’ counsel and KCC estimate that each participating Settlement Class Member will receive
26 approximately \$57. The final amount could be higher or lower depending on the number of claims.
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- 2 ii. *Hurley v. Federated Department Stores, Inc., et al*, USDC D. Mass. Civil Action No.
- 3 97-11479-NG (nationwide class action challenged bankruptcy reaffirmation practices
- 4 of Federated Department Stores and others; \$8,000,000 recovery for class.)
- 5
- 6 iii. *Valerie Ciardi v. F. Hoffman LaRoche, et al*, Middlesex Superior Court Civil Action
- 7 No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act,
- 8 M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing
- 9 conspiracy by manufactures of vitamins; settled for \$19,600,000.)
- 10
- 11 iv. *Shelah Feiss v. Mediaone Group, Inc, et al*, USDC N. District Georgia, Civil Action
- 12 No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class
- 13 recovery of \$15,000,000--\$20,000,000.)
- 14
- 15 v. *Mey v. Herbalife International, Inc.*, Ohio County Circuit Court (West Virginia),
- 16 Civil Action No. 01-cv-263. \$7,000,000 TCPA class action settlement granted final
- 17 approval on February 5, 2008 following the grant of a contested class certification
- 18 motion.
- 19
- 20 vi. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior Court
- 21 (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of
- 22 \$475,000 following the grant of a contested class certification motion, granted final
- 23 approval by the Court on July 25, 2007.
- 24
- 25 vii. *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, Suffolk Superior Court
- 26 (Massachusetts), Civil Action No. 02-5827-BLS. After the grant of a contested class
- 27 certification motion, a companion case went to the Massachusetts Supreme Judicial
- 28 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.
- 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,

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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.
- xiii. *Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of \$1,575,000 granted final approval in March of 2012.
- xiv. *Collins, et al v. ACS, Inc. et al*, USDC, D. Mass., Civil Action No. 10-CV-11912, TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
- xv. *Desai and Charvat v. ADT Security Services, Inc.*, USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval on June 21, 2013.
- xvi. *Benzion v. Vivint*, 0:12cv61826, USDC S.D.Fla., settlement of \$6,000,000 granted final approval in February of 2015.
- xvii. *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000 granted final approval on February 12, 2015.
- xviii. *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
- xix. *Charvat v. AEP Energy, Inc.*, USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.
- xx. *Mey v. Interstate National Dealer Services, Inc.*, USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8, 2016.
- xxi. *Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company*, USDC, WD. WI., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted final approval on August 4, 2016.
- xxii. *Bull v. US Coachways, Inc.*, USDC, ND. Ill., 1:14-cv-05789, TCPA class settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 and an assignment of rights against defendant's insurance carrier.
- 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

- 1 against two remaining defendants of \$3,300,000 granted final approval on September
2 25, 2018.
- 3 xxiv. *Smith v. State Farm Mut. Auto. Ins. Co. , et. al.*, USDC, ND. Ill., 1:13-cv-02018,
4 TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- 5 xxv. *Mey v. Frontier Communications Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a
6 TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.
- 7 xxvi. *Biringer v. First Family Insurance, Inc.*, USDC, ND. Fla., a TCPA class settlement of
8 \$2,900,000 granted final approval on April 24, 2017.
- 9 xxvii. *Abramson v. Alpha Gas and Electric, LLC*, USDC, SD. NY., 7:15-cv-05299-KMK, a
10 TCPA class settlement of \$1,100,000 granted final approval on May 3, 2017.
- 11 xxviii. *Heidarpour v. Central Payment Co.*, USDC, MD. Ga., 16-cv-01215, a TCPA class
12 settlement of \$6,500,000 granted final approval on May 4, 2017.
- 13 xxix. *Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company*, USDC, SD.
14 NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted final
15 approval on February 27, 2018.
- 16 xxx. *Abramson v. CWS Apartment Home, LLC*, USDC, WD. Tex., 16-cv-01215, a TCPA
17 class settlement of \$368,000.00 granted final approval on May 19, 2017.
- 18 xxxi. *Charvat v. Elizabeth Valente, et al*, USDC, NDIL, 1:12-cv-05746, \$12,500,000
19 TCPA settlement granted final approval on November 4, 2019, appeal pending.
- 20 xxxii. *Thomas Krakauer v. Dish Network, L.L.C.*, USDC MDNC, Civil Action No. 1:14-
21 CV-333 on September 9, 2015. Following a contested class certification motion, this
22 case went to trial in January of 2017 returning a verdict of \$20,446,400. On May 22,
23 2017, this amount was trebled by the Court after finding that Dish Network’s
24 violations were “willful or knowing”, for a revised damages award of \$61,339,200.
25 (Dkt. No. 338). Affirmed on appeal, *Krakauer v. Dish Network, LLC*, 925 F.3d 643
26 (4th Cir. May 20, 2019), *cert. denied. Dish Network, L.L.C. v. Krakauer*, 140 S.Ct.
27 676 (December 16, 2019).
- 28 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.
- 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.
- 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.

- 1 xxxvi. *Fulton Dental, LLC v. Bisco, Inc.*, USDC, NDIL, 1:15-cv-11038. TCPA class
2 settlement for \$262,500 granted final approval on March 7, 2018
- 3 xxxvii. *Mey v. Venture Data, LLC and Public Opinion Strategies*, USDC, NDWV, 5:14-cv-
4 123. Final approval of TCPA settlement granted on September 8, 2018.
- 5 xxxviii. *In Re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*,
6 USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement of \$28,000,000
7 granted final approval on June 12, 2018.
- 8 xxxix. *Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc.*, USDC, NDCA 4:15-cv-
9 06314-YGR. TCPA class settlement of \$28,000,000 granted final approval on
10 August 15, 2019.
- 11 xl. *Abante Rooter and Plumbing, Inc. v. Allstate Insurance Company, et al*, USDC, NDIL
12 1:15-cv-00925. TCPA class settlement of \$10,500,000 granted final approval on
13 August 15, 2019.
- 14 xli. *Kaiser v. CVS Pharmacy, Inc., et al*, USDC NDIL, 1:14-cv-03687, TCPA class
15 settlement of \$15,000,000 approved on January 30, 2020.

16 **Time and Expenses Incurred**

17 18. I spent a total of 138.8 hours on this case. Billed at my current hourly rate of \$800,
18 my hours yield a lodestar of \$111,040. I am familiar with the billing rates for attorneys with similar
19 experience, particularly with expertise in matters arising under the Telephone Consumer Protection
20 Act, 47 U.S.C. § 227, *et seq.* and rate is reasonable and is consistent with the rates of attorneys of
21 similar experience and qualification. My firm additionally expended \$10,319.53 in reasonable and
22 necessary expenses in the litigation, including mediator fees, filing fees, copying charges and travel
23 expenses. Included in my firm's expenses is an estimated \$1,000 for anticipated travel for the final
24 approval hearing on May 6, 2021. The amount applied for at the final approval hearing will be
25 reconciled with the amount spent on travel. In the event the final approval hearing is held via video
26 link, that additional travel request will be removed from the final amount requested. As is reflected
27 in the declarations submitted by my co-counsel, collectively Plaintiffs' Counsel expended 847.7
28 hours, yielding a combined lodestar of \$589,387, and collectively incurred \$28,622.28 in litigation
expenses.

1 19. The foregoing estimate of time does not include what Class Counsel estimate will be
2 another 40 hours of time responding to class member inquiries, overseeing administration of notice
3 and moving for final approval.
4

5
6 PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY
7 OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT
8 EXECUTED THIS THIS 8th DAY OF DECEMBER, 2020 IN THE COMMONWEALTH OF
9 MASSACHUSETTS.
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/s/ Edward A. Broderick
Edward A. Broderick