

1
2
3
4
5
6
7
8
9

**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

10
11

**Declaration of Jon Fougner in Support of Plaintiffs' Motion for Service Awards
and Class Counsel Fees and Costs**

12 I, Jon Fougner, declare under penalty of perjury under the laws of the United States that the
13 following is true and correct:

14 1. I am an attorney licensed to practice law in California and New York.

15 2. I respectfully submit this declaration to set forth my qualifications and to describe my
16 work while representing plaintiffs William Loftus, Sidney Naiman, and Louis Naiman in this action.
17 I have personal knowledge of the facts set forth in this declaration and could testify competently to
18 them if called upon to do so.

19
20

Experience and Qualifications

21 3. I graduated summa cum laude, Phi Beta Kappa from Yale in 2005.

22 4. After that, I completed a Fulbright Scholarship.

23 5. After that, I worked at Goldman Sachs and then Facebook.

24 6. I received my J.D. from Yale in 2014. At that time, Yale was the #1 ranked law
school in the country, according to *U.S. News & World Report*.

25 7. During law school, I worked as a summer associate at Wachtell, Lipton, Rosen, &
26 Katz and Munger, Tolles & Olson LLP.

27 8. I was selected as an editor of *The Yale Law Journal*.
28

1 9. I am the author of *Antitrust Enforcement in Private Equity: Target, Bidder, and Club*
2 *Sizes Should Matter*, 31 Yale J. on Reg. Online 25 (2013).

3 10. During law school, I was awarded the Judge Ralph K. Winter Prize in economics and
4 the William K.S. Wang Prize in business organizations.

5 11. I passed the July 2014 New York Bar Examination on the first try and was admitted
6 to practice in March 2015.

7 12. I passed the July 2016 California Bar Examination on the first try and was admitted to
8 practice in January 2017.

9 13. I am admitted to practice in the United States Court of Appeals for the Ninth Circuit
10 and every United States District Court in California.

11 14. I have experience in the prosecution of class actions on behalf of consumers,
12 particularly claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

13 15. I had exclusive or significant responsibility for the briefing leading up to the
14 following opinions and orders:

- 15 a) Fabricant v. Goldwater Bank, N.A., No. 19-80099, 2019 U.S. App. LEXIS 31929 (9th Cir.
16 Oct. 24, 2019) (in TCPA case, granting Rule 23(f) petition challenging Central District of
17 California’s 90-day class certification deadline, soon after which, the Central District
18 repealed the deadline)
- 19 b) Schick v. Caliber Home Loans, Inc., No. 20-cv-00617-VC, 2020 U.S. Dist. LEXIS 125639
20 (N.D. Cal. July 16, 2020) (in TCPA case, denying motion to dismiss and motion to stay)
- 21 c) Loftus v. Sunrun Inc., No. 19-cv-01608-RS (KAW), 2019 U.S. Dist. LEXIS 179352 (N.D.
22 Cal. Oct. 16, 2019) (almost entirely granting motion to compel responses to dozens of RFPs
23 and interrogatories)
- 24 d) Berman v. Freedom Fin. Network, LLC, 400 F. Supp. 3d 964 (N.D. Cal. 2019) (in TCPA
25 case, denying in significant part *Daubert* motion attacking plaintiff’s expert on online lead
26 generation, granting leave to renew motion for class certification, and rejecting all five
27 grounds of defendants’ motion for summary judgment: good faith, constitutional standing,
28 standing to oppose affirmative defenses, treble damages, and injunctive relief)

- 1 e) Loftus v. Sunrun Inc., No. 19-cv-01608-RS (N.D. Cal. July 29, 2019), ECF No. 56 (granting
2 preliminary injunction to preserve evidence, including class lists)
- 3 f) Loftus v. Sunrun Inc., No. 19-cv-01608-YGR (N.D. Cal. July 2, 2019), ECF No. 41 (issuing
4 order to show cause why a TRO should not be entered compelling defendant to preserve
5 evidence)
- 6 g) Naiman v. Total Merchant Servs., Inc., No. 4:17-cv-03806-CW (N.D. Cal. Apr. 16, 2019),
7 ECF No. 114 (granting final approval of \$7.5 million TCPA class action settlement with 9%
8 claim rate and payout of approximately \$1,186 per claimant, approving my hourly rate of
9 \$500, and approving 3.0x multiplier crosscheck on class counsel's attorney's fees)
- 10 h) Fabricant v. Goldwater Bank, N.A., No. 2:19-cv-00164-DSF-JC (C.D. Cal. Mar. 25, 2019),
11 ECF No. 25 (denying motion to dismiss)
- 12 i) Jeffrey Katz Chiropractic, Inc. v. Tivity Health Support, LLC, No. 18-cv-05400-RS (N.D.
13 Cal. Mar. 11, 2019), ECF No. 37 (in TCPA junk-fax case, denying motion to dismiss)
- 14 j) Berman v. Freedom Fin. Network, LLC, No. 18-cv-01060-YGR, 2019 U.S. Dist. LEXIS
15 25382 (N.D. Cal. Feb. 15, 2019) (in TCPA case, denying motion to dismiss, strike class
16 claims, or deny class certification)
- 17 k) Heidarpour v. Empire Capital Funding Grp. Inc., Case 4:18-cv-00250-YGR (N.D. Cal. Jan.
18 30, 2019), ECF No. 32 (awarding treble damages in TCPA case)
- 19 l) Berman v. Freedom Fin. Network, LLC, No. 18-cv-01060-DMR, 2018 U.S. Dist. LEXIS
20 98165 (N.D. Cal. June 11, 2018) (in TCPA case, denying motion to compel arbitration)

21 **Time and Hourly Rate**

22 16. I was involved in multiple stages of representing the plaintiffs in this case, including
23 pre-trial investigation, drafting complaints, legal research, offensive and defensive written discovery,
24 emergency motion practice to preserve evidence, deposition preparation, and mediation.

25 17. It is my practice to record time contemporaneously and in minimum units of one tenth
26 of an hour.

27 18. I spent 211.8 hours working on this case, excluding the time spent working on this
28 declaration.

1 19. The billing rate that I have applied to my work on this matter is \$500 per hour. I base
2 that rate on a variety of factors, including the Laffey Matrix, rates published by legal journals, my
3 understanding of rates charged by my law school classmates, rates approved in orders and opinions
4 of the United States District Court for the Northern District of California in TCPA class actions, and
5 the rate of mine approved in a prior TCPA class action in the Northern District.

6 20. My lodestar in this case is \$105,900.

7 21. I expended \$1,454.90 in out-of-pocket costs in the litigation, which costs I believe to
8 be reasonable and customary.

9 22. I have not been paid those fees or reimbursed those costs.

10
11 I, Jon Fougner, declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct.

13 Dated: December 8, 2020

14 /s/ Jon Fougner
15 Jon B. Fougner
16
17
18
19
20
21
22
23
24
25
26
27
28