

**UNITED STATES DISTRICT COURT  
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

**JUDGMENT AND ORDER  
GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

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**FINAL APPROVAL ORDER AND JUDGMENT**

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2 1. Plaintiffs William Loftus, Sidney Naiman, and Louis Naiman (collectively  
3 “Plaintiffs” or “Representative Plaintiffs”), Sunrun Inc. (“Sunrun” or “Defendant”), and the  
4 Settlement Class (collectively, the “Parties”) reached a settlement. The Parties have submitted a  
5 detailed written Stipulation and Agreement of Settlement (the “Settlement” or “Settlement  
6 Agreement”) together with numerous exhibits and proposed orders. To the extent not otherwise  
7 defined herein, all capitalized terms shall have the meanings attributed to them in the Settlement  
8 Agreement. The Court gave its preliminary approval of the Settlement on September 25, 2020,  
9 (the “Preliminary Approval Order”). The Court directed the Parties to provide Class Notice of the  
10 proposed Settlement by Direct Mail Notice, Long Form Notice on the Settlement Website, and  
11 Publication Notice, and scheduled a further hearing to determine whether the proposed Settlement  
12 is fair, reasonable, and adequate.

13 2. On May 6, 2021, this Court held a hearing to determine whether the proposed  
14 Settlement Agreement executed by Plaintiffs and Defendant should be approved as Final by this  
15 Court. Counsel for the Plaintiffs and the Settlement Class and counsel for Defendant appeared at  
16 the hearing.

17 3. After reviewing the pleadings and evidence filed in support of the request for final  
18 approval of the Settlement and conducting the hearing, the Court finds, and

19 **IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

20 4. This Final Approval Order and Judgment incorporates the Settlement Agreement  
21 and all exhibits thereto.

22 5. The Court has personal jurisdiction over all Settlement Class Members and  
23 Defendant, and the Court has subject matter jurisdiction to approve the Settlement Agreement and  
24 all exhibits thereto.

25 6. Based upon the record before the Court, including all submissions in support of the  
26 Settlement Agreement, objections and responses thereto, as well as the Settlement Agreement  
27 itself, the Court hereby certifies the following nationwide class (the “Settlement Class”) for  
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1 settlement purposes only:

2 “Settlement Class” means all persons in the United States who, from September  
3 1, 2018 to the date of preliminary approval (September 25, 2020), received from  
4 Sunrun, and/or from or on behalf of Media Mix 365 LLC (“MM”), Resource  
5 Marketing Corporation (“RMC”) and/or D&M Marketing, Inc. d/b/a Americor  
6 (“Americor”) in an effort to generate a lead or customer for Sunrun: (a) one or  
7 more calls (including text messages) on their cellphones placed via a dialing  
8 platform; and/or (b) or at least two telemarketing calls (including text messages)  
9 during any 12-month period where their phone numbers appeared on the  
10 National Do Not Call Registry for at least 31 days before the calls/texts.

7 The class definition excludes the following: (1) any trial judge and other  
8 judicial officers that may preside over this case; (2) the Mediators; (3) Sunrun,  
9 as well as any parent, subsidiary, affiliate or control person of Sunrun, and the  
10 officers, directors, agents, servants or employees of Sunrun; (4) any of the  
11 Released Parties; (5) any Settlement Class Member who has timely submitted a  
12 Request for Exclusion by the Opt-Out Deadline; (6) any person who has  
13 previously given a valid release of the claims asserted in the Action; (7)  
14 Plaintiffs’ Counsel; and (8) persons for whom Sunrun has a record  
15 demonstrating “prior express written consent” as defined by the TCPA.

12 The Court finds that the prerequisites of Fed. R. Civ. P. 23(a) and (b)(3) have been  
13 satisfied for certification of the nationwide Settlement Class for settlement purposes because:  
14 Settlement Class Members are so numerous that joinder of all members is impracticable; there  
15 are questions of law and fact common to the Settlement Class; the claims and defenses of the  
16 Representative Plaintiffs are typical of the claims and defenses of the Settlement Class Members  
17 they represent; the Representative Plaintiffs have fairly and adequately protected the interests of  
18 the Settlement Class with regard to the claims of the Settlement Class they represent; the  
19 common questions of law and fact predominate over questions affecting only individual  
20 Settlement Class Members, rendering the Settlement Class sufficiently cohesive to warrant a  
21 nationwide class settlement; and the certification of the Settlement Class is superior to individual  
22 litigation and/or settlement as a method for the fair and efficient resolution of this matter. In  
23 making all of the foregoing findings, the Court has exercised its discretion in certifying the  
24 Settlement Class, based, *inter alia*, upon the Court’s familiarity with the claims and Parties in  
25 this case, and the mediation and negotiation process overseen by the Honorable Morton Denlow  
26 (Ret.) the Honorable Wayne Andersen (Ret.).

27 7. The Settlement Agreement was reached after arm’s-length negotiations between  
28 the Representative Plaintiffs, Defendant, and their respective counsel. The Settlement Agreement

1 is fair, reasonable, and adequate; consistent with and in compliance with all applicable  
2 requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States  
3 Constitution (including the Due Process Clause), and any other applicable law; and in the best  
4 interests of Plaintiffs, Defendant, and the Settlement Class Members.

5 8. The Settlement is fair, reasonable, adequate and satisfies the requirements under  
6 Fed. R. Civ. P. 23. Therefore, each Settlement Class Member will be bound by the Settlement  
7 Agreement, including the Release and the covenant not to sue set forth in Section 8 of the  
8 Settlement Agreement.

9 9. The Court finds that in negotiating, entering into, and implementing the Settlement,  
10 the Representative Plaintiffs and the Class Counsel have fairly and adequately represented and  
11 protected the interests of all of the Settlement Class Members.

12 10. The Class Notice and the notice methodology implemented pursuant to the  
13 Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was  
14 concise, clear and in plain, easily understood language and was reasonably calculated, under the  
15 circumstances, to apprise Settlement Class Members of the pendency of the Action, the claims,  
16 issues and defenses of the Settlement Class, the definition of the Settlement Class certified, their  
17 right to be excluded from the Settlement Class, their right to object to the proposed Settlement,  
18 their right to appear at the Final Approval Hearing, through counsel if desired, and the binding  
19 effect of a judgment on Settlement Class Members; (iii) were reasonable and constituted due,  
20 adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable  
21 requirements of the Federal Rules of Civil Procedure, the United States Code, the United States  
22 Constitution (including the Due Process Clause), and any other applicable law.

23 11. The terms of the Settlement Agreement and this Final Approval Order and  
24 Judgment are binding on the Representative Plaintiffs and all other Settlement Class Members, as  
25 well as their heirs, executors and administrators, successors and assigns.

26 12. The terms of the Settlement Agreement and this Final Approval Order and  
27 Judgment shall have *res judicata*, collateral estoppel and all other preclusive effect in any and all  
28 claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of

1 liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs,  
2 interests, or expenses which are based on or in any way related to any and all claims for relief,  
3 causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages,  
4 debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses  
5 which were asserted in the Action.

6 13. The Representative Plaintiffs, Defendant, and their respective counsel are ordered  
7 to implement and to consummate the Settlement Agreement according to its terms and provisions.

8 14. All claims against Defendant asserted in this Action are hereby dismissed on the  
9 merits and with prejudice, without fees or costs to any party except as provided in the Settlement  
10 Agreement.

11 15. The releases set forth in Section 8 of the Settlement Agreement are incorporated by  
12 reference and provides, *inter alia*, that for and in consideration of the Cash Benefits, the Released  
13 Claims, and the mutual promises contained in the Settlement Agreement: The Releasing Parties  
14 do hereby release and fully, finally, and forever discharge the Released Parties from all claims,  
15 debts, controversies, losses, liabilities, liens, demands, causes of action, suits, damages (including,  
16 but not limited to, actual, statutory, trebled, exemplary, or punitive), fees (including, but not limited  
17 to, attorneys' fees), expenses, and obligations of any kind or nature whatsoever, whether in law or  
18 in equity, whether known or unknown, fixed or contingent, claimed or unclaimed, direct or  
19 indirect, individual or representative, arising out of or relating to any telephone calls or text  
20 messages, telemarketing, solicitation, or other marketing or dissemination that was made by, from,  
21 or on behalf of Sunrun, and/or made to generate a lead that could be offered to and/or sold by  
22 Sunrun. This release includes, but is not limited to, claims involving the actual or alleged use of  
23 an automatic telephone dialing system or an artificial or prerecorded voice, or otherwise arising  
24 under the TCPA or similar telephone or telemarketing-related federal, state or local laws,  
25 regulations or ordinances governing such matters, and any rule or regulation thereunder, or  
26 otherwise arising under CIPA or similar federal or state laws governing such matters, and any rule  
27 or regulation thereunder, including without limitation, the claims alleged in the FAC or that could  
28 have been alleged in the FAC at any time up and through the date of Preliminary Approval. This

1 release specifically extends to calls/texts allegedly or actually placed to telephone numbers on the  
2 National Do Not Call Registry (NDNCR), and to telephone calls and/or text messages allegedly  
3 or actually initiated by third parties. The Parties agree that the Release in this Settlement  
4 Agreement shall not apply to telemarketing calls placed by third parties where such third parties  
5 were not acting on behalf of a Released Party, but instead were acting on behalf of a person or  
6 entity other than a Released Party.

7 16. The Court hereby grants Class Counsel's request for an Incentive Award for the  
8 Representative Plaintiffs in the amount of \$5,000 each. The Court has considered Class Counsel's  
9 Motion for an Award of Attorney's Fees and Costs and additionally grants as reasonable and  
10 justified Class Counsel's request for Attorney's Fees of \$1,482,713.30 and out of pocket costs  
11 incurred of \$27,622.28. The attorney fee award represents 30% of the \$5,500,000 Settlement Fund  
12 after deducting the administrative costs of \$515,000, incentive awards of \$15,000 and attorney out of  
13 pocket costs of \$27,622.28.

14 17. The Court further approves the establishment of the Settlement Fund as set forth in  
15 the Settlement Agreement submitted by the Parties.

16 18. This Settlement Fund will constitute Sunrun's exclusive payment obligation under  
17 the Settlement Agreement and will be used to pay: (a) Cash Benefits paid to Settlement Class  
18 Members, as prescribed by the Settlement Agreement; (b) Attorneys' Fees and Costs, as awarded  
19 by the Court; (c) any Incentive Award awarded to Representative Plaintiffs; (d) Settlement  
20 Administration Costs, including costs of notice (including CAFA Notice); and (e) any *cy pres*  
21 payment to the National Consumer Law Center. No portion of the Settlement Fund will be returned  
22 to Sunrun, except as provided in Section 11 of the Settlement Agreement, Termination of the  
23 Agreement.

24 19. Any distribution of the Settlement Fund to the Settlement Class or any other person,  
25 other than the Settlement Administrator pursuant to the terms hereof, shall commence only after  
26 the Effective Date. The Aggregate Fees, Costs, and Expenses shall be paid from the Settlement  
27 Fund prior to any distribution of Cash Benefits to the Settlement Class. The remainder of the  
28 Settlement Fund shall be used to pay Cash Benefits in accordance with the rules set forth herein.

1           20.     If any amounts remain in the Settlement Fund because Settlement Members fail to  
2 negotiate their respective Benefit Checks, such unclaimed monies shall be distributed as follows:  
3 (a) to the Settlement Class Members who cashed their initial Benefits Checks, to the extent such a  
4 distribution is administratively and economically feasible; and if not so feasible, (b) to the National  
5 Consumer Law Center, the *cy pres* designated recipient as appointed by the Court. No portion of  
6 the Settlement Fund will be returned to Sunrun, except as provided in Section 11 of the Settlement  
7 Agreement, Termination of the Agreement.

8           21.     The Court further approves the establishment of the Settlement Fund as set forth in  
9 the Agreement.

10          22.     Nothing in this Final Approval Order and Judgment, the Settlement Agreement, or  
11 any documents or statements related thereto, is or shall be deemed or construed to be an admission  
12 or evidence of any violation of any statute or law, or of any liability or wrongdoing by Defendant.

13          23.     In the event that the Settlement Agreement does not become effective according to  
14 its terms, this Final Approval Order and Judgment shall be rendered null and void as provided by  
15 the Settlement Agreement, shall be vacated and, all orders entered and released delivered in  
16 connection herewith shall be null and void to the extent provided by and in accordance with the  
17 Settlement Agreement.

18          24.     No Settlement Class Member, either directly, representatively, or in any other  
19 capacity (other than a Settlement Class Member who validly and timely submitted a Request for  
20 Exclusion), shall commence, continue, or prosecute any action or proceeding against Defendant  
21 or any or all Released Parties in any court or tribunal asserting any of the Released Claims defined  
22 in the Settlement Agreement, and are hereby permanently enjoined from so proceeding.

23          25.     Without affecting the finality of the Final Approval Order and Judgment, the Court  
24 shall retain continuing jurisdiction over the Action, the Parties, and the administration and  
25 enforcement of the Settlement Agreement. Any disputes or controversies arising with respect to  
26 the interpretation, administration, implementation, effectuation, and enforcement of the Settlement  
27 Agreement shall be presented by motion to the Court, provided, however, that nothing in this  
28 paragraph shall restrict the ability of the Parties to exercise their rights, as set forth above.

1           26.     There being no just reason to delay, the Clerk is directed to enter this Final Approval  
2 Order and Judgment forthwith.

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4 DATED: May 11, 2021

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Richard Seeborg  
Chief United States District  
Judge

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