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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 Matthew P. McCue in Support of Motion for  
Plaintiffs’ Motion for Service Awards and Class Counsel Fee and Costs**

I, Matthew P. McCue, 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. 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”).

1. 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, mediation and settlement negotiations.

2. This action was filed in March of 2019. *See* ECF #1.

3. From the outset, Plaintiffs’ counsel pursued their investigation vigorously culminating with the filing of an Amended Complaint (ECF #36) and a Motion for a Temporary Restraining Order seeking to to preserve crucial class evidence. *See* ECF #39. This motion was

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

10 4. Plaintiffs believe they have a strong case for liability. However, as is set forth in  
11 Plaintiffs’ Motion for Preliminary Approval, the case faced significant legal hurdles on both whether  
12 the system used by Defendant to make the calls qualified as an “automatic telephone dialing system”  
13 (“ATDS”) and whether California Penal Code § 632.7 (“CIPA”) applied to Defendant’s recording of  
14 calls. Further, SunRun did not make the illegal calls at issue. Rather, the calls were made by  
15 SunRun’s telemarketing vendors. For Plaintiff to hold SunRun to account for calls made by third  
16 parties, they would have to prove that SunRun was vicariously liable for the actions of its agents. *See*  
17 *In re DISH Network, LLC*, 28 FCC Rcd. 6574, 6588 ¶ 37 (2013) (footnotes and alteration marks  
18 omitted).  
19

20 5. Defendant has always denied liability and continues to do so. Defendant maintains  
21 that it has substantial factual and legal defenses to all claims and class allegations in the Litigation.  
22 Defendant specifically denies that an automated dialer was used to call Plaintiffs or class members  
23 without their prior express written consent; that they violated the TCPA; that they recorded calls  
24 without disclosure in violation of CIPA and that Plaintiff and class members are entitled to any  
25 relief. Defendant further contends that the allegations contained in the First Amended Complaint are  
26 not amenable to class certification.  
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1 and accident victims.

2 12. In November of 2004, I started my own law firm focusing exclusively on the litigation  
3 of consumer class actions and serious personal injury cases.

4 13. I am in good standing in every court to which I am admitted to practice.

5 14. A sampling of other class actions in which I have represented classes of consumers  
6 follows:  
7

- 8 i. Mey v. Herbalife International, Inc., USDC, D. W. Va., Civil Action  
9 No. 01-C-263M. Co-lead counsel with Attorney Broderick and additional co-  
10 counsel, prosecuting consumer class action pursuant to TCPA on behalf of  
11 nationwide class of junk fax and prerecorded telephone solicitation recipients.  
12 \$7,000,000 class action settlement preliminarily approved on July 6, 2007 and  
13 granted final approval on February 5, 2008.
- 14 ii. Mulhern v. MacLeod d/b/a ABC Mortgage Company, Norfolk  
15 Superior Court, 2005-01619 (Donovan, J.). Representing class of  
16 Massachusetts consumers who received unsolicited facsimile advertisements in  
17 violation of the TCPA and G.L. c. 93A. Case certified as a class action, and I  
18 was appointed co-lead counsel with Attorney Edward Broderick by the Court  
19 on February 17, 2006, settlement for  
20 \$475,000 granted final approval by the Court on July 25, 2007.
- 21 iii. Evan Fray-Witzer, v. Metropolitan Antiques, LLC, NO. 02-5827 Business  
22 Session, (Van Gestel, J.). In this case, the defendant filed two Motions to  
23 Dismiss challenging the Plaintiffs' right to pursue a private right of action and  
24 challenging the statute at issue as violative of the telemarketer's First  
25 Amendment rights. Both Motions to Dismiss were denied. Class certification  
26 was then granted and I was appointed co-lead class counsel. Companion to this  
27 litigation, my co-counsel and I successfully litigated the issue of whether  
28 commercial general liability insurance provided coverage for the alleged illegal  
telemarketing at issue. We ultimately appealed this issue to the Massachusetts  
Supreme Judicial Court which issued a decision reversing the contrary decision  
of the trial court and finding coverage. See Terra Nova Insurance v. Fray-Witzer  
et al., 449 Mass. 206 (2007). This case resolved for \$1,800,000.
- iv. Shonk Land Company, LLC v. SG Sales Company, Circuit Court of Kanawha  
County, West Virginia, Civil Action No. 07-C-1800 (multi-state class action on  
behalf of recipients of faxes in violation of TCPA, settlement for \$2,450,000,  
final approval granted in September of 2009.
- v. Mann & Company, P.C. v. C-Tech Industries, Inc., USDC, D. Mass., C.A.  
1:08CV11312-RGS, class action on behalf of recipients of faxes in violation of

- 1 TCPA, settlement for \$1,000,000, final approval granted in January of 2010.
- 2 vi. Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.,  
3 Massachusetts Superior Court, Civil Action No. 08-04165 (February  
4 3, 2011) (final approval granted for TCPA class settlement). This  
5 matter settled for \$1,300,000.
- 6 vii. Milford & Ford Associates, Inc. and D. Michael Collins vs.  
7 Cell-Tek, LLC, USDC, D. Mass. C. A. 1:09-cv- 11261-DPW,  
8 class action on behalf of recipients of faxes in violation of TCPA,  
9 settlement for \$1,800,000, final approval granted August 17, 2011  
10 (Woodlock, J.).
- 11 viii. Collins v. Locks & Keys of Woburn Inc., Massachusetts Superior  
12 Court, Civil Action No. 07-4207-BLS2 (December 14, 2011) (final  
13 approval granted for TCPA class settlement). This matter settled for  
14 \$2,000,000.
- 15 ix. Brey Corp t/a Hobby Works v. Life Time Pavers, Inc., Circuit Court for  
16 Montgomery County, Maryland, Civil Action No. 349410-V. This matter  
17 settled for \$1,575,000.
- 18 x. Collins, et al v. ACS, Inc. et al, USDC, District of Massachusetts, Civil Action  
19 No. 10-CV-11912 a TCPA case for illegal fax advertising, which settled for  
20 \$1,875,000.
- 21 xi. Desai and Charvat v. ADT Security Services, Inc., USDC, Northern  
22 District of Illinois, Civil Action No. 11-CV-1925, settlement of  
23 \$15,000,000, approved, awarding fees of one third of common fund.
- 24 xii. Benzion v. Vivint, 0:12cv61826, USDC S.D.Fla., settlement of  
25 \$6,000,000 granted final approval in February of 2015.
- 26 xiii. Kensington Physical Therapy v. Jackson Physical Therapy Partners, USDC,  
27 District of Maryland, 8:11cv02467, settlement of \$4,500,000 granted final  
28 approval in February of 2015.
- xiv. Jay Clogg Realty v. Burger King Corp., USDC, District of Maryland,  
8:13cv00662, settlement of \$8.5 million granted final approval in May of 2015.
- xv. Charvat v. AEP Energy, 1:14cv03121 ND Ill, class settlement of \$6 million  
granted final approval on September 28, 2015.
- xvi. 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.
- xvii. 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.
- xviii. Thomas Krakauer v. Dish Network, L.L.C., USDC, MDNC, Civil Action No.

1 1:14-CV-333 on September 9, 2015. I was co-trial counsel in the case which  
 2 resulted in a jury verdict in favor of plaintiff and the class of \$20,446,400 on  
 3 January 19, 2017. (Dkt. 292). On May 22, 2017, this amount was trebled by  
 4 the Court after finding that Dish Network's violations were "willful or  
 5 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 (4<sup>th</sup> Cir.  
 May 20, 2019), *cert. denied. Dish Network, L.L.C. v. Krakauer*, 140 S.Ct. 676  
 (December 16, 2019).

- 6 xix. Dr. Charles Shulruff, D.D.S. v. Inter-med, Inc., 1:16-cv-00999, ND Ill, class  
 7 settlement of \$400,000 granted final approval on November 22, 2016.
- 8 xx. Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, 13-cv-  
 9 00042, in which a TCPA class settlement was granted final approval on  
 10 December 1, 2016 with TCPA settlement in the amount of \$2,150,00 with one  
 11 of three defendants an assignment of rights against defendant's insurance  
 12 carrier. Second settlement of \$3,300,000 granted final approval on September  
 13 25, 2018.
- 14 xxi. Bull v. US Coachways, Inc., 1:14-cv-05789, settlement distributing \$3,250,000  
 15 approved on May 18, 2019.
- 16 xxii. Smith v. State Farm Mut. Auto. Ins. Co. , et. al., USDC, ND. Ill., 1:13-cv-  
 17 02018, TCPA class settlement of \$7,000,000.00 granted final approval on  
 18 December 8, 2016.
- 19 xxiii. Mey v. Frontier Communications Corporation, USDC, D. Ct., 3:13-cv-1191-  
 20 MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2,  
 21 2017.
- 22 xxiv. Biringer v. First Family Insurance, Inc., USDC, ND. Fla., a TCPA class  
 23 settlement of \$2,900,000 granted final approval on April 24, 2017.
- 24 xxv. Abramson v. Alpha Gas and Electric, LLC, USDC, SD. NY., 7:15-cv-05299-  
 25 KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3,  
 26 2017.
- 27 xxvi. Heidarpour v. Central Payment Co., USDC, MD. Ga., 16-cv-01215, a TCPA  
 28 class settlement of \$6,500,000 granted final approval on May 4, 2017.
- xxvii. 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.
- xxviii. 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.
- xxix. 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.
- xxx. Mey v. Got Warranty, Inc., et. al., USDC, NDWV., 5:15-cv-00101-JPB-JES, a

1 TCPA class settlement of \$650,000 granted final approval on July 26, 2017.

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

4 xxxii. Charvat and Wheeler v. Plymouth Rock Energy, LLC, et al, USDC, EDNY,  
5 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675,000 granted final  
6 approval on July 31, 2018.

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

9 xxxiv. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC,  
10 NDGA, 1:15-cv-03262-AT. TCPA class settlement of \$12,000,000 granted final  
11 approval on December 14, 2017.

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

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

17 xxxvii. In Re Monitronics International, Inc. Telephone Consumer Protection Act  
18 Litigation, USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement  
19 of \$28,000,000 granted final approval on June 12, 2018.

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

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

25 15. In this action, I spent a total of 135 hours on this case, billed at my current rate of \$800,  
26 which yields a total lodestar of \$108,000. I am familiar with the billing rates for attorneys with  
27 similar experience, particularly with expertise in matters arising under the Telephone Consumer  
28 Protection Act, 47 U.S.C. § 227, *et seq.* and bill my rates are consistent with those rates and are  
reasonable. My firm additionally expended \$3,170 in reasonable and necessary expenses in the  
litigation, including filing fees, copying charges and travel expenses.

1 16. Based on my experience in prosecuting class actions under the TCPA, I believe this  
2 settlement represents an excellent result for the class and that the requested fee and costs are  
3 reasonable and should be awarded.

4 PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY  
5 OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT  
6 EXECUTED THIS THIS EIGHTH DAY OF DECEMBER 2020 IN THE COMMONWEALTH OF  
7 MASSACHUSETTS.

8 /s/ Matthew P. McCue  
9 Matthew P. McCue  
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