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 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF LOS ANGELES — CENTRAL DISTRICT

14 SHAWN REED, individually and on behalf of all
 others similarly situated,

15 Plaintiff,

16 v.

17 SUNRUN INC.,

18 Defendant.

Case No. BC498002

**DEFENDANT SUNRUN INC.'S
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR APPROVAL OF CLASS
 NOTICE PLAN**

Judge: Hon. John Shepard Wiley, Jr.
 Date: April 29, 2015
 Time: 10:00 a.m.
 Courtroom: Dept. 311

Complaint Filed: January 4, 2013

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INTRODUCTION

Plaintiff’s Motion for Approval of Class Notice Plan (“Motion”) is premature and any ruling on it should be deferred until this Court has ruled on Sunrun’s motion for summary adjudication, filed on March 13, 2015 and set to be heard on June 4, 2015. Resolution of that motion could have a dramatic effect on the scope of the class who should receive notice. Delaying giving notice briefly would, therefore, save transactions costs and reduce confusion among class members who might get notice in the next month only to get notice a month later that their claims have been adjudicated against them. To facilitate this practical and sensible outcome, Sunrun is prepared to waive its notice rights under *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069 (2007) to obtain a ruling on its motion for summary adjudication prior to notice. For the reasons set forth herein, Sunrun respectfully submits that the Court should deny Plaintiff’s Motion, or defer ruling on it until after Sunrun’s motion for summary adjudication is heard on June 4, 2015.

PROCEDURAL HISTORY

Plaintiff filed this action on January 4, 2013 on behalf of himself and a putative class. At a formal mediation in October 2013, Plaintiff disagreed with Sunrun’s view of the applicable statute of limitations for Plaintiff’s contractor licensing claim under Business & Professions Code section 7031. The parties agreed that Sunrun would file a motion to decide a question of law before this Court to resolve the issue of the statute of limitations. On February 6, 2014, the Court granted Sunrun’s motion to decide a question of law and held that Sunrun was correct that the one-year statute of limitations under Civil Code section 340(a) applies to Plaintiff’s claim under section 7031. (February 6, 2014 Minute Order Granting Sunrun’s Motion to Decide a Question of Law regarding Applicable Statute of Limitations for Claims under Business and Professions Code Section 7031.) In Plaintiff’s opposition to that motion to decide a question of law, Plaintiff attempted for the first time to avoid the one-year statute of limitations under section 7031 by arguing the discovery rule, the continuous accrual rule, and/or the four-year statute of limitations under California’s Unfair Competition Law should apply to such claims. The Court did not reach these arguments because they were not at issue in the motion. Plaintiff’s attempts to avoid the one-year statute of limitations are thus still unresolved.

1 On May 12, 2014, Plaintiff filed his motion for class certification. Plaintiff's motion for class
2 certification only sought certification of: (i) First Cause of Action for alleged violation of the
3 Contractors' State License Law ("CSLL"), California Business & Professions Code section 7000
4 *et seq.*, and (ii) Second Cause of Action for alleged violation of California's Unfair Competition Law
5 ("UCL"), California Business & Professions Code section 17200 *et seq.*, but based "solely on
6 Sunrun's allegedly unlawful violation of the CSLL." (Plaintiff's Motion for Class Certification at
7 1:14-18.) At the hearing on October 23, 2014, the Court indicated it was inclined to grant Plaintiff's
8 motion for class certification.

9 Thereafter, the parties engaged in discovery, and on February 9, 2015, Sunrun produced an
10 extensive spreadsheet containing information available to Sunrun regarding the installation of the
11 solar systems of the putative class members, including the location of the solar system, the sales
12 partner, the installation partner, the date of customer signoff, the date of Sunrun's receipt of proof of
13 equipment delivery at the homeowner's property from the installation partner, and the date of
14 Sunrun's receive of proof of completed installation from the installation partner, where available.
15 Contrary to Plaintiff's statement in his Motion, the spreadsheet produced by Sunrun does *not*
16 constitute a list of the "mailing addresses of approximately 92% of Class members." (Plaintiff's
17 Motion for Approval of Class Notice Plan ("Mot.") at 1:15-16.) Rather, as Plaintiff is aware, the list
18 produced by Sunrun¹ is extremely overinclusive in a number of respects, as well as underinclusive in
19 one respect. For example, as Plaintiff is aware, the spreadsheet contains information regarding all
20 customers who *signed* Sunrun contracts prior to February 10, 2012 even though Plaintiff's putative
21 class definition expressly excludes those for whom installation began on or after February 10, 2012.
22 The reason information was produced about these non-putative class members was because Sunrun
23 does not have information regarding the actual dates of installation for any of its customers (other
24 than those whose systems were installed by REC Solar), and therefore Sunrun is not able to filter out
25 those excluded from the class due to the timing of the installation of their solar systems based on

26 ¹ Sunrun designated the spreadsheet as "confidential" pursuant to the terms of the Stipulated
27 Protective Order entered on October 29, 2014 to protect its customers' information, particularly in
28 light of the fact it was necessary to produce information regarding customers who are not a part of the
putative class.

1 Sunrun's records. Similarly, the spreadsheet contains information for customers whose agreements
2 contain arbitration clauses, and are therefore also expressly excluded from Plaintiff's class definition.
3 Sunrun is collecting, and will produce as soon as possible, the contracts that may contain arbitration
4 clauses. The spreadsheet also contains the mailing addresses of those who purchased a house that
5 already had a solar system on it and did not sign a power service agreement, but rather merely signed
6 an assumption of an existing agreement. Sunrun believes these persons are not part of the class.

7 The way in which the spreadsheet is potentially the most overinclusive is with respect to those
8 persons who do not have timely claims under the one-year statute of limitations for contractor
9 licensing claims. On March 13, 2015, Sunrun filed a motion for summary adjudication that will
10 resolve issues relating to whether those persons should be part of the putative class. That motion is
11 set to be heard on June 4, 2015.

12 ARGUMENT

13 I. PLAINTIFF'S MOTION FOR APPROVAL OF CLASS NOTICE IS PREMATURE.

14 A. Sunrun's Motion for Summary Adjudication Should Be Decided Before Notice 15 Is Issued Because the Motion Will Resolve Crucial Issues Regarding Scope of the Putative Class.

16 Sunrun respectfully submits that Plaintiff's Motion is premature and that the Court should
17 deny or defer ruling on such motion because issuing notice at this juncture to the list proposed by
18 Plaintiff could be extremely unnecessary, costly, and time-consuming because the list Plaintiff
19 proposes to use is overinclusive. Sunrun has filed a motion for summary adjudication that seeks to
20 resolve crucial and threshold issues relating to who should be in the putative class. A favorable
21 outcome for Sunrun on this motion would dramatically reduce the scope of the class. Giving notice
22 now to the much larger group of individuals and then potentially having to tell most of them that their
23 claims were adjudicated against them serves no good purpose. It will result in the expenditure of
24 monies on notice unnecessarily and confuse customers of Sunrun.

25 Sunrun understands, and accepts the risk, that proceeding as it proposes would deny it
26 *res judicata* effect for claims asserted by these class members. Put more expressly, Sunrun is
27 prepared to waive its notice rights under *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069 (2007) to
28 allow the motion to be heard prior to notice and closure of the opt-out period. For these reasons,

1 Sunrun respectfully submits that the Court should deny Plaintiff's Motion, or defer ruling on it until
2 after Sunrun's motion for summary adjudication is heard on June 4, 2015.

3 **B. Plaintiff's Motion Is Premature Because There Are Other Issues that Must Be**
4 **Resolved Relating to Who Should Receive Notice.**

5 In addition to the issues regarding scope that will be resolved by Sunrun's motion for
6 summary adjudication, the list that Plaintiff proposes to use for class notice is otherwise overinclusive
7 in a number of respects. The confidential spreadsheet Sunrun produced to Plaintiff was produced in
8 connection with discovery efforts regarding the installation of the solar systems, and was never
9 intended to be a complete or exclusive list of putative class members. Indeed, the list contains the
10 addresses of customers who even *Plaintiff* concedes are not members of the putative class.

11 First, the customers who signed contracts containing arbitration clauses must be removed
12 from the list. Sunrun is currently collecting the contracts of customers that may contain arbitration
13 clauses, and will produce them as quickly as possible. Once those contracts are produced, the parties
14 will need to review those contracts to determine the customers who are not part of the putative class
15 by virtue of their agreement to arbitrate. Plaintiff's proposed notice schedule does not acknowledge
16 that this process must occur before any notice is issued, much less account for the time that this
17 process will take.

18 Second, customers for whom installation on their solar systems began on or after February 10,
19 2012 must be removed from the list. Sunrun has produced the information available to it regarding
20 the timing of installation to assist in this process. Plaintiff's proposed notice schedule, however,
21 similarly fails to acknowledge that the parties must determine which persons should be excluded
22 based on the information available to the parties, and does not account for the time such process will
23 take.

24 Third, the list produced by Sunrun contains the addresses where certain solar systems are
25 located, which is not coextensive with the list of addresses of putative class members. While the
26 addresses of the solar systems for customers who have not moved are contained within the
27 spreadsheet, the spreadsheet *also* contains the addresses of customers who moved into a home that
28 already had a solar panel system in place at the time they purchased such house. Sunrun submits that

1 these customers are not part of the putative class because they never entered into a solar power
2 service agreement with Sunrun (rather, they signed an assumption of such agreement) and never had
3 any allegedly “unlicensed” contracting work done for them. On February 9, 2015, Sunrun also
4 produced a spreadsheet that contained information sufficient to identify which solar systems had been
5 transferred. Thus, the parties have the information necessary to exclude these persons from the notice
6 plan. Plaintiff, however, disagrees that these persons should be excluded from the notice list.
7 The parties must resolve this disagreement before any notice can be issued.

8 Accordingly, Plaintiff’s proposed notice plan and schedule are premature and fail to account
9 for the issues that must be resolved before any such notice plan can be executed.

10 **C. Procedural Issues Should Be Resolved Before Class Notice Is Issued.**

11 Finally, there are two additional procedural issues with Plaintiff’s Motion. First, Plaintiff
12 failed to timely serve the Motion to be heard on the noticed date. The deadline for Plaintiff to serve
13 the Motion to be heard on April 29, 2015 was April 3, 2015—i.e., sixteen Court days before the
14 hearing plus two Court days for electronic service via File&Serve. Cal. R. Civ. Proc. 1005(b),
15 1010.6(d). Plaintiff, however, did not serve the Motion until April 7, 2015 via File&Serve. To
16 excuse this lapse, Plaintiff is now taking the position that the parties’ consent to electronic service
17 through File&Serve gives rise to an agreement that *electronic* service constitutes *personal* service for
18 the purposes of notice under California Code of Civil Procedure section 1005(b). Plaintiff cites no
19 support for this novel reading of the rules. Nor can he, as there is no support for his position in the
20 Court’s March 18, 2013 Order Re Electronic Service, the California Code of Civil Procedure, or
21 elsewhere. As such, Plaintiff’s Motion is not ripe to be heard on April 29, 2015.

22 Second, while the Court stated during the hearing on October 23, 2014 that it was inclined to
23 grant Plaintiff’s motion for class certification, the Court has not issued an order certifying a class
24 pursuant to California Rule of Court 3.765. On March 3, 2015, Plaintiff filed a “Notice of Entry of
25 Ruling,” attaching a copy of the online case docket and a copy of the transcript from the October 23,
26 2014 hearing. The parties are not in agreement, however, as to whether the Court intended either of
27 those documents to constitute the necessary order certifying a class pursuant to Rule 3.765. Sunrun
28 respectfully submits that an order certifying and defining the class should be issued before any class

1 notice is issued to avoid any confusion and disagreement going forward. As set forth above, Sunrun
2 believes that the issuance of such an order should be deferred until after Sunrun's motion for
3 summary adjudication is heard because such motion seeks to narrow the class to be certified.

4 **II. PLAINTIFF'S REQUEST FOR APPROVAL OF PROPOSED CLASS NOTICE PLAN**
5 **SHOULD BE DENIED AND/OR THE PROPOSED NOTICE SHOULD BE REVISED.**

6 **A. The List of Persons Plaintiff Proposes to Use for Class Notice Is Overinclusive.**

7 As set forth above, the list the Plaintiff proposes to use for class notice is extremely
8 overinclusive. Sunrun respectfully submits that the list of persons (or categories of persons) to
9 receive direct notice should be agreed upon by the parties, or approved by the Court, before any
10 notice plan is approved.

11 **B. Revisions Are Necessary to the Proposed Class Notice.**

12 Though Sunrun contends would be premature to execute any notice plan at this juncture,
13 Sunrun notes that there are some revisions that should be made to the proposed notice itself.²

14 First, in Section 2, the notice states:

15 This is a class action lawsuit alleging that defendant Sunrun violated the
16 Contractors' State License Law, CAL. BUS. & PROF. CODE § 7000, *et seq.*,
17 and the Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.*,
by installing solar panels on the roofs of homes since 2007, even though it
did not have a license to do so until February 10, 2012.

18 Plaintiff, however, has never made any allegation that Sunrun ever did any "installing."
19 Rather, Plaintiff bases his claims on the contention that Sunrun was required to hold a license due to
20 the "arranging" Sunrun purportedly performed. Though Sunrun disputes this contention, the notice
21 must accurately describe Plaintiff's allegations in this case. The sentence is also drafted in an
22 argumentative and prejudicial manner with respect to the use of the phrase "even though it did not
23 have a license to do so." Sunrun respectfully submits that the sentence should be revised as follows:

24 This is a class action lawsuit alleging that defendant Sunrun violated the
25 Contractors' State License Law, CAL. BUS. & PROF. CODE § 7000, *et seq.*,
26 and the Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.*,
by installing allegedly arranging for the installation of solar panels on the
roofs of homes since from 2007 until February 9, 2012 without, even

27 ² Additional revisions may be necessary once the Court rules on Sunrun's motion for
28 summary adjudication.

1 ~~though it did not have a contractor's license to do so until February 10,~~
2 2012.

3 Similarly, the introductory paragraph of the notice incorrectly describes the customers'
4 contracts as one "for the installation of a solar energy system" when Sunrun's agreements are in
5 reality for the purchase of electricity. Given that the parties cannot reach an agreement regarding the
6 nature of the contract, the notice should be revised to state "your contract with Sunrun Inc." without
7 any description thereafter.

8 Second, the putative class definition in Section 1 of the proposed notice is incomplete (even
9 using the definition of the putative class from Plaintiff's motion for class certification) and therefore
10 should either be corrected or removed from that section.

11 Third, Plaintiff proposes the following URL as the proposed class website:
12 www.SunrunLicensingLitigation.com. Sunrun respectfully requests that the URL not start with the
13 word "Sunrun" as it would be unnecessarily confusing to consumers looking for Sunrun's own
14 website ("www.sunrun.com"). Sunrun suggests the following possible URLs:
15 "www.ContractorLicensingClassAction.com," "www.LicensingLitigation.com,"
16 "www.LicensingLitigationAgainstSunrun.com," or
17 "www.ContractorLicensingClassActionAgainstSunrun.com."

18 **CONCLUSION**

19 For the reasons stated above, the Court should deny Plaintiff's Motion for Approval of Class
20 Notice Plan, or, in the alternative, defer ruling on such motion until after the Court hears Sunrun's
21 Motion for Summary Adjudication on June 4, 2015.

22 Dated: April 16, 2014

23 DAVID F. MCDOWELL
24 MARGARET MAYO
25 MORRISON & FOERSTER LLP

26 By: _____

27 Margaret Mayo

28 Attorneys for Defendant SUNRUN INC.

1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I
4 am over the age of eighteen years.

5 I further declare that on April 16, 2015, I served a copy of the following documents:

6 **DEFENDANT SUNRUN INC.'S OPPOSITION TO PLAINTIFF'S MOTION
7 FOR APPROVAL OF CLASS NOTICE PLAN**

8 I caused the documents to be **E-Served** through **File & ServeXpress** by electronically
9 mailing a true and correct copy through **File & ServeXpress** pursuant to Court Order
10 through the electronic mail system to the email address(es) set forth below per Court
11 Order. The file transmission was reported as completed and a copy of the **File &**
12 **ServeXpress** Transaction Receipt page will be maintained with the document(s) in our
13 office.

<p>14 Steve W. Berman 15 Craig R. Spiegel 16 HAGENS BERMAN SOBOL SHAPIRO LLP 17 1918 8th Avenue, Suite 3300 18 Seattle, Washington 98101 19 Telephone: 206.623.7292 20 Facsimile: 206.623.0594 21 Email: steve@hbsslaw.com 22 Email: craig@hbsslaw.com</p> <p><i>Counsel for Plaintiff and the Proposed Class</i></p>	<p>Elaine T. Byszewski HAGENS BERMAN SOBOL SHAPIRO LLP 301 North Lake Avenue, Suite 203 Pasadena, CA 91101 Telephone: 213.330.7150 Facsimile: 213.330.7152 Email: elaine@hbsslaw.com</p> <p><i>Counsel for Plaintiff and the Proposed Class</i></p>
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23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct.

25 Executed at San Francisco, California, this 16th day of April, 2015.

<p>26 27 28</p> <p>Lisa Flores _____ (typed)</p>	<p><i>Lisa Flores</i> _____ (signature)</p>
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