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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF LOS ANGELES**

20 **CENTRAL CIVIL WEST**

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

23 Plaintiff,

24 v.

25 SUNRUN, INC.,

26 Defendant.

27 Case No. BC498002

28 CLASS ACTION

**PLAINTIFF'S REPLY IN SUPPORT OF  
MOTION FOR APPROVAL OF CLASS  
NOTICE PLAN**

Date: April 29, 2015

Time: 10:00 a.m.

Department: 311

Hon. John Shepard Wiley, Jr.

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**I. INTRODUCTION**

Sunrun provides no real reason for the Court to deny Plaintiff's motion for approval of Class notice – just a litany of flimsy excuses for putting it off. The Court should disregard each.

**II. PLAINTIFF'S MOTION IS NOT PREMATURE.**

**A. The Claims of Class Members Should Not Be Adjudicated Prior to Receiving Notice.**

Notice should be sent to the Class members before any adjudication on the merits, as the Supreme Court explained in *Fireside Bank v. Superior Court*:

A largely settled feature of state and federal procedure is that trial courts in class action proceedings should decide whether a class is proper and, if so, order class notice before ruling on the substantive merits of the action. [Citations.] The virtue of this sequence is that it promotes judicial efficiency, by *postponing merits rulings until such time as all parties may be bound*, and fairness, by ensuring that parties bear equally the benefits and burdens of favorable and unfavorable merits rulings.<sup>1</sup>

As the Court of Appeals recently observed, “The critical reason for notification of members of the class on whose behalf a class action has been brought is that notification makes possible a binding adjudication and an enforceable judgment with respect to the rights of the members of the class. Absent such notification no member of the class need be bound by the result of the litigation.”<sup>2</sup>

**B. Sunrun's Delay in Providing Discovery Responses Does Not Justify Putting Off Notice.**

As stated in more detail in the status conference statement, after the Court certified the Class on October 23, 2014, Plaintiff served discovery on November 5, 2014. Yet Sunrun still has not produced many categories of documents that it has agreed to produce. Sunrun cannot use its own delay to providing discovery responses to justify putting off notice to the Class.

First, Sunrun should be ordered to produce Class members' contracts forthwith, as that production will permit elimination of those with FAA provisions in their contracts. This is not a difficult proposition; it just needs to be done.

Second, it is a simple matter to delete from the list those for whom Sunrun's records indicate that installation began after February 10, 2012.

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<sup>1</sup> 40 Cal.4th 1069, 1074 (2007) (emphasis added).

<sup>2</sup> *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 818 (2014), quoting *Home Sav. & Loan Assn. v. Superior Court*, 42 Cal. App. 3d 1006, 1011 (1974).

1 Third, while the parties agree that transferors are Class members,<sup>3</sup> the Parties disagree as to  
2 whether transferees are Class members. Plaintiff believes that they are as they stand in the shoes of  
3 those who originally contracted with Sunrun. Sunrun disagrees. *See* Oppo. at 5. If the Court  
4 agrees with Plaintiff the list is not over-inclusive in this regard. If the Court agrees with Sunrun,  
5 the parties can readily revise the list based on information already produced by Sunrun.

6 In short, there are simple solutions to each of the issues raised by Sunrun.

7 **C. There Are No Other Procedural Issues to Be Resolved.**

8 On February 18, 2015, Plaintiff provided Sunrun with a draft of his motion for approval of  
9 the Proposed Class Notice Plan. On February 23, 2015, Sunrun informed Plaintiff for the first time  
10 that – *despite the Court granting class certification in the presence of the parties at the October*  
11 *23, 2014, hearing and the docket entry reflecting same* – Sunrun does not believe there is a  
12 certified Class, rendering this motion premature. On March 3, 2015, Plaintiff filed a notice of  
13 ruling regarding class certification, attaching the transcript and the docket entry. Sunrun has not  
14 filed any objection to this notice of ruling. Therefore, Sunrun’s argument that this motion is  
15 premature because the Court has not certified the Class should be rejected.

16 Likewise, Sunrun’s argument that it has had insufficient time to respond to the motion lacks  
17 merit. On April 7, 2015, Plaintiff filed the motion, so that it could be heard on the same day as the  
18 status conference set for April 29, 2015. Plaintiff served the motion via LexisNexis File & Serve,  
19 which is the manner of service the parties have used throughout the litigation to timely serve  
20 documents.<sup>4</sup> Moreover, the motion was short (4 pages), Sunrun received a draft on February 18  
21 (more than six weeks before it was filed),<sup>5</sup> and Sunrun received actual notice sixteen Court days  
22 prior to hearing.

23  
24 <sup>3</sup> More precisely, Sunrun “does not object to a particular customer’s status as a putative class  
25 member solely due to the fact that such customer has transferred his or her agreement.” Joint  
Status Report at p. 4.

26 <sup>4</sup> For example, Sunrun’s opposition to class certification was filed the day due via File & Serve  
27 only, though with Plaintiff having a set date to reply, under Sunrun’s view that opposition should  
have been filed earlier to allow Plaintiff extra time for the electronic service.

28 <sup>5</sup> Sunrun did not provide comments on the draft notice until March 10, 2014. Plaintiff then  
incorporated most of Sunrun’s comments.

1           **III. PLAINTIFF’S PROPOSED CLASS NOTICE PLAN SHOULD BE APPROVED.**

2           **A. The List of Persons to Receive Class Notice Is Appropriate.**

3           As set forth above, preparing the list of persons to receive Class notice is a simple matter.

4           **B. Revisions to the Proposed Class Notice Are Unnecessary.**

5           Sunrun erroneously contends that Plaintiff “has never made any allegation that Sunrun ever  
6 did any ‘installing.’” Oppo. at 6. But Sunrun overlooks the allegations of the Complaint. For  
7 example, in paragraph 2 of the First Amended Complaint, Plaintiff alleges that “Contrary to the  
8 requirements of the California Business and Professions Code, Sunrun has leased and *installed*  
9 solar panels on the roofs of consumers’ homes since 2007, though it did not have a license to do so  
10 until February of 2012.” (Emphasis added). Moreover, that assertion is not argumentative and  
11 prejudicial. *See* Oppo. at 6. Rather, it is the basic allegation of the Complaint. Further, Sunrun  
12 wrongly asserts that the contracts are not for installation. Paragraph 2(a) of the contract submitted  
13 by Sunrun in opposition to the motion for class certification states, “Sunrun will arrange for the  
14 design, permitting, construction, installation and testing of the Solar Facility on the roof or  
15 grounds, as applicable, of the Property in material accordance with a system design that you will  
16 have approved.”<sup>6</sup>.

17           Sunrun also states that the class definition is incomplete but fails to explain how.  
18 Presumably, it is because the definition does not reference the exclusion of those with FAA  
19 provisions in their contract. But such individuals will not be receiving notice in the first place.

20           Finally, Sunrun proposes [www.LicensingLitigationAgainstSunrun.com](http://www.LicensingLitigationAgainstSunrun.com) for the proposed  
21 class website. This is acceptable to Plaintiff.

22           **C. Plaintiff’s Proposed Class Notice Plan Satisfies Due Process and the Rules of Court.**

23           Sunrun does not dispute that Plaintiff’s proposed Class notice plan comports with due  
24 process and the California Rules of Court, as set forth in Plaintiff’s moving papers.

25           Sunrun remarks in the introduction of its opposition that the spreadsheet it produced does  
26 not actually contain the contact information for approximately 92% of Class members because the

27           <sup>6</sup> *See* Ex. A (at p. 2) to *Defendant Sunrun Inc.’s Request for Judicial Notice in Support of*  
28 *Demurrer to First Amended Complaint.*

1 spreadsheet is over-inclusive. Sunrun does not explain how the over-inclusion is likely to affect  
2 the 92% approximation, which was based simply on the absence of contact information for  
3 transferors.

4 More specifically, Plaintiff arrived at the 92% estimation because at the time of filing its  
5 motion for approval Sunrun had not yet produced the email addresses for transferors, who  
6 represent approximately 8% of the Class. Sunrun has since produced their email addresses, where  
7 available, and the notice administrator will also use the National Change of Address System to  
8 learn the new mailing addresses of transferors (Sunrun has the original addresses where the panels  
9 were installed). In short, Sunrun provides no basis for Plaintiff's motion to be denied.

10 **D. Expected Timing for Class Notice**

11 Assuming the Court grants approval of the Class Notice Plan at the status conference on  
12 April 29, 2015, the schedule for notice would be as follows:

| Event   | Time, if Triggering Date is April 29, 2015                     |
|---|--|
| Defendant provides Class counsel with the names, mailing addresses, and e-mail addresses, if available, of any Class members for which it has not already provided such information. <sup>7</sup> | Within 10 days, or by May 11, 2015 (May 9, 2015 is a Saturday) |
| Class counsel provides the Notice Administrator with the names, mailing addresses, and e-mail addresses of Class members and authorizes the creation and operation of the dedicated website.      | Within 20 days, or by May 19, 2015                             |
| Notice Administrator mails and e-mails Class Notice out to Class members and authorizes issuance of the press release.  | Within 30 days, or by May 29, 2015                             |
| Last day for opt-outs.  | Within 75 days, or by July 13, 2015                            |
| List of opt-outs to be filed with the Court   | Within 85 days, or by July 23, 2015                            |


24 **IV. CONCLUSION**

25 For these reasons, Plaintiff requests that the Court approve his proposed Class Notice Plan.

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27 <sup>7</sup> As discussed in the status conference statement, Sunrun has produced the names, mailing  
28 addresses, and email addresses, where available, for all Class members, except that it has not  
provided the names and email addresses for transferees (though Sunrun has them collected).

1 DATED: April 22, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By: 

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16 *Attorneys for Plaintiff and the Class*

1 DECLARATION OF SERVICE

2 I, the undersigned, declare:

3 1. That declarant is and was, at all times herein mentioned, a citizen of the United States  
4 and a resident of the County of Los Angeles, over the age of 18 years, and not a party to or  
5 interested in the within action; that declarant's business address is 301 N. Lake Ave., Suite 203,  
6 Pasadena, California 91101.

7 2. That on April 22, 2015, declarant served the **REPLY ISO MOTION FOR**  
8 **APPROVAL OF CLASS NOTICE PLAN** to the parties as indicated on the attached Service List.

9 3. That there is a regular communication by mail between the place of mailing and the  
10 places so addressed.

11 I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd  
12 day of April, 2015, at Pasadena, California.

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16 Erika Shaw  
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1 **SERVICE LIST**

2 Attorneys for Plaintiff and the Proposed Class  
3 **Served Via LexisNexis File & Serve**

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18 Defendant

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