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*Attorney for Plaintiffs Lynn Slovin,
Samuel Katz, Jeffery Price, and
Justin Birkhofer, on their own
behalf, and on behalf of all others
similarly situated*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LYNN SLOVIN, an individual, on her own
behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

SUNRUN, INC., a California corporation,
CLEAN ENERGY EXPERTS, LLC, a
California limited liability company doing
business as SOLAR AMERICA, and
DOES 1-5, inclusive,

Defendants.

No. 4:15-cv-05340-YGR

**PRESTON DECLARATION
SUPPORTING PLAINTIFFS'
APPLICATION FOR ATTORNEYS'
FEES AND COSTS**

Hon. Yvonne Gonzalez Rogers

Date: July 9, 2019

Time: 2:00 p.m.

Location: Courtroom 1
Ronald V. Dellums Fed. Bldg.
1301 Clay Street
Oakland, California 94612

I, ETHAN PRESTON hereby declares:

1. My name is Ethan Preston. I am an attorney licensed to practice before all the courts of the State of California. I am the sole principal of Preston Law Offices. Preston Law Offices is counsel of record in this proceeding. I have personal knowledge of all the facts set forth in this declaration and could competently testify thereto if called to do so, except where noted otherwise.

Contingency Attorneys' Fees

2. My billing rate is \$515 per hour. I have expended more than 400 hours litigating this case, but seek only 400 hours for purposes of calculating my lodestar. At \$515 per hour, 400

1 hours equals \$206,000 in lodestar. I performed all of this work on a contingency fee basis; I have
2 not been paid for this work and no one has guaranteed that I will be paid for this work.

3 **Hourly Rate**

4 3. I have been practicing law since I graduated from the Georgetown University Law
5 Center in 2001, have been a member of the California bar since 2009, and have successfully
6 litigated numerous complex consumer actions on behalf of plaintiffs. Since 2007, essentially all
7 of my law practice has been devoted to litigating class actions on behalf of consumers.

8 4. My billing rate of \$515 per hour is reasonable. Since 2009, as the principal of
9 Preston Law Offices, I have been appointed lead counsel or co-lead counsel for certified classes
10 in *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *DuFour v. Be, LLC*,
11 No. 09-cv-03770-CRB (N.D. Cal. May 20, 2013), *Holmes v. NCO Financial Services, Inc.*, No.
12 10-2543 (S.D. Cal. June 23, 2014), *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665 (N.D.
13 Cal. Jan. 28, 2016), *Wang v. Bank of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San
14 Francisco Aug. 8, 2014), *Meyer v. PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct.
15 San Diego Jan. 6, 2017), *In re Portfolio Recovery Associates, LLC Telephone Consumer*
16 *Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Jan. 25, 2017), *Addison v. Monarch &*
17 *Associates, Inc.*, No. 14-358 (C.D. Cal. June 23, 2017), and *Cosio v. International Performing*
18 *Arts Academy, LLC*, No. CGC-16-551337 (Sup. Ct. Sept. 11, 2018). A true and correct copy of
19 my firm résumé is attached as Exhibit 1 to this Declaration.

20 5. My billing rate is consistent with the billing rate for attorneys in the relevant legal
21 community who have practiced for 17 years: small class action firms. On January 17, 2017, *In re*
22 *Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, the court
23 approved a fee award based on a fee application using my \$515 per hour billing rate. (*See Order*
24 *Granting in Part Class Counsel's Attorneys Fees, In re Portfolio Recovery Associates, LLC*
25 *Telephone Consumer Protection Act Litigation*, No. 11- md-02295 (S.D. Cal., Jan. 25, 2017),
26 ECF No. 496 (“find[ing] counsel has skillfully advanced this action on the class’s behalf on a
27 contingent-fee basis resulting in a settlement beneficially to the class”); Declaration of Ethan
28 Preston, *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act*

1 *Litigation*, No. 11-md-02295 (S.D. Cal., Oct. 6, 2016), ECF Nos. 425-3.) More recently, the
2 Superior Court of California, County of San Diego approved that billing rate on September 7,
3 2017 on a contested fee application. (Minute Order, *Meyer v. PYOD, LLC*, No. 37-2014-
4 00008110-CU-BT-NC (Sup. Ct. San Diego Sept. 7, 2017.)

5 6. Other cases have approved similar billing rates for attorneys at small class action
6 firms: including \$650 per hour for an attorney who graduated in 1994, and \$525 per hour for an
7 attorney who graduated in 2004. (See *Gallucci v. Boiron, Inc.* (S.D. Cal., July 20, 2012, No.
8 3:11-CV-2039 JAH NLS) ECF No. 93-1 ¶19 (declaration by Ronald A. Marron); *Gallucci v.*
9 *Boiron, Inc.* (S.D. Cal., July 20, 2012, No. 3:11-CV-2039 JAH NLS) ECF No. 93-2 ¶11
10 (declaration by Jack Fitzgerald); *Gallucci v. Boiron, Inc.* (S.D. Cal., July 20, 2012, No. 3:11-CV-
11 2039 JAH NLS) ECF No. 125 (order specifically approving attorneys' fees.) The court in
12 *Hartless v. Clorox Co.*, 273 F.R.D. 630 (S.D. Cal. 2011) approved hourly rates for a partner at a
13 class action firm ranging from \$575 to \$650 per hour and for associate ranging from \$250 to
14 \$500 per hour. (See *Hartless v. Clorox Co.* (S.D. Cal., Nov. 22, 2010, No. 06-CV-2705-CAB)
15 ECF No. 92.)

16 **Time Incurred**

17 7. I began work on the case in March 2017. After receiving an orientation on the
18 record in the case from Class Counsel, I started coordinating efforts on Plaintiffs' discovery and
19 addressing Defendants' discovery, including drafting discovery letters and responses to
20 Defendants' discovery letters, and began work on class certification discovery. Through June 12,
21 2017, I incurred more than 81.4 hours on this case.

22 8. Starting on June 13, 2017, I began working on a motion to compel CallFire, Inc.
23 to comply with Plaintiffs' subpoena, which required significant research and briefing in a
24 miscellaneous proceeding in the Central District of California, and continued work on gathering
25 other class discovery and discovery motion practice before this Court. From June 13 through
26 September 24, I incurred more than 149.2 hours on this case.

27 9. Starting on September 25, 2017, I began work on a motion to amend Plaintiffs'
28 complaint, but continued to manage the miscellaneous proceeding on the CallFire subpoena,

1 meeting and conferring and enforcing the subpoena Plaintiffs served on Twilio, Inc., Microsoft
2 Corp., and Cake, assisted briefing the reply for the motion to amend, and prepared for and took
3 the deposition of Defendants' expert. From September 25 to November 28, 2017, I incurred
4 more than 84.8 hours on this case.

5 10. Starting on November 29, 2017, I continued work on the foregoing items, but also
6 began work on the briefing for Plaintiffs' motion for class certification. From November 29 to
7 December 8, 2017, I incurred more than 45.6 hours on this case.

8 11. Starting on December 11, 2017, I incurred proportionately less time as the need
9 for my involvement dwindled, but I continued work on some of the foregoing items, including
10 discovery from CallFire, Twilio, and Microsoft, and assisted settlement negotiations, including
11 research on proper settlement structures under Ninth Circuit precedent. From December 11, 2017
12 to April 8, 2018, I incurred more than 39 hours on this case.

13 12. I have reviewed my billing records, and reduced or eliminated time where
14 appropriate. I have expended more than 400 hours litigating this case, but seek only 400 hours
15 for purposes of calculating my lodestar. As part of my billing judgment, I made reductions or
16 excluded time incurred on tasks that were largely administrative in nature, and/or on directing
17 and training to other personnel involved in the case.

18 **Costs**

19 13. I have paid a total of \$501.86 for various expenses that were necessary for the
20 litigation of this case, including hotel charges to attend a deposition in Florida (\$207.56) as well
21 as various fees for postage and service of process of various subpoenas (the remaining \$ 294.3). I
22 advanced all these expenses on a contingency fee basis; I have not been reimbursed for these
23 expenses and no one has guaranteed that I will be paid for these expenses (aside from the
24 settlement agreement with Defendants).

25 **Certification**

26 14. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of
27 the United States of America that the foregoing is true and correct.

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Dated: April 4, 2019 By: _____ s/Ethan Preston
Ethan Preston

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EXHIBIT 1

(April 2019)

FIRM RÉSUMÉ

Ethan Preston has represented consumers in class actions since 2007, focusing on consumer privacy and unfair trade practices that relate to consumer technology. Mr. Preston has taken substantial leadership roles in many class actions: he was appointed lead counsel or co-lead counsel for certified classes in *Wang v. Asset Acceptance, LLC*, No. 09-4797 (N.D. Cal. Nov. 17, 2011), *DuFour v. Be, LLC*, No. 09-cv-03770-CRB (N.D. Cal. May 20, 2013), *Holmes v. NCO Financial Services, Inc.*, No. 10-2543 (S.D. Cal. June 23, 2014), *Wang v. Bank of America, N.A.*, No. CGC-12-526452 (Sup. Ct. San Francisco Aug. 8, 2014), *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-05665 (N.D. Cal. Jan. 28, 2016), *Meyer v. PYOD, LLC*, No. 37-2014-00008110-CU-BT-NC (Sup. Ct. San Diego Jan. 6, 2017), *In re Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295 (S.D. Cal., Jan. 25, 2017), *Addison v. Monarch & Associates, Inc.*, No. 14-358 (C.D. Cal. June 23, 2017), and *Cosio v. International Performing Arts Academy, LLC*, No. CGC-16-551337 (Sup. Ct. San Francisco Sept. 11, 2018).

Representative rulings obtained by Preston Law Offices include *Kuns v. Ocwen Loan Servicing, LLC*, 611 F. App'x 398 (9th Cir. 2015) (reversing dismissal, creditor violated Cal. Civ. Code § 1785.25(a) by reporting deficiency on residential mortgage foreclosure without disclosing deficiency could not be collected legally); *Holmes v. NCO Financial Services, Inc.*, 538 F. App'x 765 (9th Cir. 2013) (reversing summary judgment because defendant had constructive access to information about plaintiff's dispute of consumer debt); *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036 (9th Cir. 2012) (affirming preliminary injunction and class certification under Rule 23(b)(2)); *In re Portfolio Recovery Associates LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295, 2017 WL 3575615 (S.D. Cal. Jan. 25, 2017) (enjoining litigation against class counsel arising from counsel's representation of class in any other court under All Writs Act, 28 U.S.C. § 1651); *Addison v. Monarch & Associates, Inc.*, No. 14-358, 2016 WL 11530424 (C.D. Cal. Nov. 10, 2016) (compelling third party to produce computer for forensic examination); *Addison v. Monarch & Associates, Inc.*, No. 14-358, 2017 WL 10562596 (C.D. Cal. May 8, 2017), *adopted* 2017 WL 10651455, (C.D. Cal. June 23, 2017) (class certification where defendant spoliated records identifying class members); *In re Collecto, Inc., Telephone Consumer Protection Act Litigation*, No. 14-02513, 2016 WL 552459 (D. Mass. Feb. 10, 2016) (denying

motion for summary judgment on Telephone Consumer Protection Act); *Lofton v. Verizon Wireless (VAW) LLC*, 308 F.R.D. 276 (N.D. Cal. 2015) (granting motions to compel and sanction defendants); *Wang v. Asset Acceptance LLC*, No. 09-04797, 2010 WL 2985503 (N.D. Cal. July 27, 2010) (denying motion to dismiss Fair Credit Reporting Act claim against furnisher); *DuFour v. Be., LLC*, No. 09-3770, 2009 WL 4730897 (N.D. Cal. Dec. 7, 2009) (granting constructive trust as preliminary injunction); *Lofton v. Bank of Am. Corp.*, No. 07-05892, 2008 WL 2037606 (N.D. Cal. May 12, 2008) (granting discovery motions); and *In re Netflix Antitrust Litigation*, 506 F. Supp. 2d 308 (N.D. Cal. 2007) (ruling consumers have standing to bring *Walker Process* antitrust claims, ordering limited discovery on other elements of antitrust claims).

Mr. Preston received his Bachelor of Arts degree from the Plan II program at the University of Texas at Austin, and his *juris doctor* degree from the Georgetown University Law Center in 2001. Mr. Preston is admitted to practice in California and Texas, and is also admitted to practice before the United States District Court in, e.g., the Northern and Eastern Districts of Texas, all Districts in California, as well as the United States Courts of Appeals for the Seventh and Ninth Circuits.

Mr. Preston has authored the following law review articles: *Cross-Border Collaboration by Class Counsel in the U.S. and Ontario*, 4 Canadian Class Action Rev. 164 (2007), *The Global Rise of a Duty to Disclose Information Security Breaches*, 22 J. Marshall J. Computer & Info. L. 457 (2004) (with Paul Turner), *Computer Security Publications: Information Economics, Shifting Liability and the First Amendment*, 24 Whittier L. Rev. 71 (2002) (with John Lofton), and *The USA PATRIOT Act: New Adventures in American Extraterritoriality*, 10 J. Fin. Crime 104 (2002).