SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

In re SUNRUN INC. SHAREHOLDER LITIGATION, _____/	Master File No. CIV 538215 (Consolidated with CIV538419, 538311, 538304, 538303, 538593, 539064) CLASS ACTION
This Document Relates To: ALL ACTIONS _____/	Assigned for All Purposes to Hon. Marie S. Weiner, Dept. 2

ORDER GRANTING CLASS CERTIFICATION

On October 19, 2017, hearing on Plaintiffs' Motion for Class Certification was held in Department 2 of this Court before the Honorable Marie S. Weiner. Mark Molumphy and Tamarah Prevost of Cotchett Pitre & McCarthy and James Jaconette and Rachel Jensen of Robbins Geller Rudman & Dowd LLP appeared on behalf of Plaintiffs and the putative class; Anna Erickson White and Derek Foran or Morrison & Foerster LLP appeared on behalf of Defendant Sunrun Inc., the Individual Defendants, and the Foundation Capital Defendants; and Jonah Ross of Shearman & Sterling LLP appeared on behalf of the Underwriter Defendants.

Upon due consideration of the briefs and evidence presented, and the oral argument of counsel for the parties, and having taken the matter under submission,

IT IS HEREBY ORDERED as follows:

1. Plaintiffs' Motion for Class Certification is GRANTED IN PART AND DENIED IN PART. The Class to be certified is more narrow than originally noticed and requested. In response to Defendants' Opposition, Plaintiffs basically conceded that the Class Period should end February 1, 2016, to resolve ascertainability problems identified by the Defendants. Further, the Court finds it appropriate to have the Section 12 claims be segregated as a Subclass, given that it is known that Class members with Section 11 claims will not all have standing to sue under Section 12.

2. Accordingly, a Class is certified defined as follows:

> All persons and entities who purchased or otherwise acquired common stock before February 1, 2016 pursuant to or traceable to the Registration Statement issued in connection with Sunrun Inc.'s August 5, 2015 initial public offering. Excluded from the Class are defendants and members of their immediate families, the officers and directors of Sunrun Inc. and members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which defendants have a controlling interest.

3. A Subclass is certified defined as follows:

> All persons and entities who purchased common stock of Sunrun Inc. directly in the August 5, 2015 initial public offering. Excluded from the Subclass are defendants and members of their immediate families, the officers and directors of Sunrun Inc. and members of their immediate

families, and their legal representatives, heirs, successors or assigns, and any entity in which defendants have a controlling interest.

4. The Underwriter Defendants' Joinder in the Opposition is GRANTED.

5. Plaintiffs Jeffrey Pytel and Jacki Nunez are appointed as Class Representatives of the Class and Subclass.

6. Robbins Geller Rudman & Dowd LLP and Cotchett Pitre & McCarthy LLP are appointed as Plaintiffs' Class Counsel.

7. Counsel for the parties shall meet and confer regarding Class Notice, Class List, and Notice Administrator. Before the January 19, 2018 CMC, Plaintiffs shall submit to the Court a proposed Class Notice and Order setting forth the procedures for dissemination of the Notice to the Class, including selection of an Administrator.

8. Defendants shall prepare and provide a Class List (for mailing of the Class Notice) to Plaintiffs' Class Counsel or their selected Administrator before January 19, 2018, if not previously provided.

9. Defendants' Evidentiary Objections to the Jaconette Declaration are SUSTAINED as to Paragraph 2 and Exhibit 2 and as to Paragraph 3 and Exhibit 3, and are otherwise OVERRULED. Defendants' Evidentiary Objections to the Nunez Declaration and the Pytel Declaration are OVERRULED.

10. Defendants' Requests for Judicial Notice are GRANTED as to Exhibits A and L is GRANTED as to Exhibit D but NOT for the truth of the matters contained therein, and are DENIED as to Exhibits B, E and M which are incomplete, not certified copies, and not filed endorsed.

THE COURT FINDS as follows:

Standards for Class Certification

California courts have readily accepted and utilized the class action procedure to resolve multiparty controversies. See Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 469. Under Code of Civil Procedure Section 382, the California class action statute, there are two basic prerequisites to certification: (1) the existence of an ascertainable class, and (2) a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. Occidental Land, Inc. v. Superior Court (1976) 18 Cal.3d 355, 360; Daar v. Yellow Cab Company (1967) 67 Cal.2d 695, 704.

Because Section 382 does not establish a procedural framework for class actions, the California Supreme Court has directed trial courts to utilize the procedures prescribed by the Consumers Legal Remedies Act (Civil Code §§1750, et seq.) in all class actions. Civil Service Employees Insurance Company v. Superior Court (1978) 22 Cal.3d 362, 376; Vasquez v. Superior Court (1971) 4 Cal.3d 800, 820. California trial courts have also been directed to look to Rule 23 of the Federal Rules of Civil Procedure and the cases thereunder for guidance. Id., at p. 821, La Sala v. American S&L Assn. (1971) 5 Cal.3d 864, 872; Howard Gunty Profit Sharing Plan v. Superior Court (2001) 88 Cal.App.4th 572, 580 fn. 8.

Civil Code Section 1781(b) provides:

> The court shall permit the suit to be maintained on behalf of all members of the representative class if all of the following conditions exist:
>
> (1) It is impracticable to bring all members of the class before the court.
>
> (2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.

(3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.

(4) The representative plaintiff will fairly and adequately protect the interests of the class.

The merits of plaintiffs' class claims are irrelevant for purposes of class certification. See, Green v. Obledo (1981) 29 Cal.3d 126, 146; Anthony v. General Motors Corp. (1973) 33 Cal.App.3d 699, 707. "The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.' [Citation.]" Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326.

It is clear under California law that the "ascertainable class" requirement does *not* require plaintiff to establish the existence and identity of the individual class members. Daar, 67 Cal.2d at p. 706; Reyes v. Board of Supervisors (1987) 196 Cal.App.3d 1263, 1274; Stephens v. Montgomery Ward (1987) 193 Cal.App.3d 411, 419. "Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." Reyes, at p. 1271.

The second requirement of Civil Code Section 1781(b) is that: "[t]he questions of law or fact common to the class [be] substantially similar and predominate over questions affecting the individual members." Section 1781(b) codified the common law requirement that plaintiff show a well-defined "community of interest" in the questions of law and fact involved. E.g., Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 136.

For purposes of satisfying the "community of interest" prerequisite under C.C.P. Section 382, the plaintiff need only demonstrate that "there are predominate questions of law or fact common to the class as a whole." Reyes v. Board of Supervisors (1987) 196

Cal.App.3d 1263, 1277. The existence of any individual issues does not preclude class certification. "[T]he necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." Id., at p. 1278. Although common issues must predominate for certification of a class, it is *not* required that all of the issues be common.

For purposes of demonstrating "typicality", as set forth in Section 1781(b)(3), California law requires only that the named plaintiff in the class action and his/her claims are similarly situated to that of the other class members. See, Richmond, 29 Cal.3d at p. 475; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. "Typical" does not mean "identical". Classen, at p. 46. A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.

To maintain a class action, a representative plaintiff must adequately protect the interests of the class. Civil Code §1781(b)(4). Adequacy of representation has two requirements: First, the named representative must be represented by counsel competent and experienced in the kind of litigation to be undertaken. Second, there must be no disabling conflicts of interest between the class representative and the class. McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450.

Although Rule 23(b)(3) of the Federal Rules of Civil Procedure requires "that a class action [be] superior to other available methods for the fair and efficient adjudication of the controversy", while C.C.P. §382 and Civil Code §1781(b) do not mention such a requirement, California courts sometimes impose upon plaintiffs seeking class certification a showing "that substantial benefits both to the litigants and to the court will result." City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 460.

As the First Appellate District stated in Capitol People First v. State Dept. of Developmental Services (2007) 155 Cal.App.4th 676, 689:

> As well, in assessing the appropriateness of certification trial courts are charged with carefully weighing the respective benefits and burdens of class litigation to the end that maintenance of the class action will only be permitted where substantial benefits accrue to the litigants and the court. [Citation.] . . . Further, the substantial benefits analysis raises the question whether a class action is superior to individual lawsuits and other alternative procedures for resolving the controversy. [Citations.]

See also, Soderstedt v. CBIZ Southern California LLC (2011) 197 Cal.App.4th 133, 156-157. This was more recently referenced by the California Supreme Court in Brinker rRstaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021, that class certification includes consideration of whether "substantial benefits from certification that render proceeding as a class superior to the alternatives."

In this motion for class certification, Defendants have *not* contested numerosity, typicality, and superiority. Thus, in dispute are ascertainability, predominance of common issues of law and fact, and adequacy.

Ascertainability of Class Members

The concerns raised by Defendants in their Opposition as to ascertainability are resolved by Plaintiffs' concession, and this Court's ruling, narrowing the Class period to an end date of February 1, 2016. Including Shareholders who purchased stock after the lock-out date expired on February 1, 2016 would make tracing to the IPO those shares purchased after that date difficulty if not impossible.

Class is readily identified by reference to corporate records of Onyx.

Commonality and Predominance of Claims

The Court finds that the various common issues of law and fact, as set forth in the operative complaint, predominate over any individual issues. The Plaintiffs' claims are subject to common proof, common facts regarding the IPO, the Registration Statement, what was known by the Defendants at the time of the Registration Statement, and whether the Registration Statement contained material misrepresentations and omissions. It would be a superior procedural method of adjudicating the claims of the members of the Class by class action rather than individual lawsuit.

The California Supreme Court has explained that

> "[t]he "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." [Citations.] The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible.

Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021-22. The necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate; individual issues do not render class

certification inappropriate so long as such issues may effectively be managed. Sav-on Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 334.

Defendants are correct that the Court must contemplate affirmative defenses on class certification. "In determining whether common issues 'predominate,' courts consider both plaintiff's legal theories and defendant's affirmative defenses." Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, Jun. 2017 Update) ¶ 14:15. "Defendant's affirmative defenses must also be considered because certification may be denied where individual issues presented by the affirmative defenses predominate over common issues." Id. at ¶ 14:99; see also, Walsh v. IKON Office Solutions, Inc. (2007) 148 Cal.App.4th 1440, 1450.

First, Defendants argue that they have no liability to and/or shareholders have no damages if they purchased after Sunrun issued its corrective disclosure that it was pulling out of Nevada on January 7, 2016. This is a disputed issue of fact. If anything it supports class certification as the issue Defendants can have it be adjudicated as to all such persons. Further, this does not foreclose the class claims, some of which are based upon material omissions and misrepresentations pertaining to other problems at Sunrun.

Second, Defendants argue that they have no liability to and/or shareholders have no damages if they sold their IPO stock prior to the corrective disclosure. Again, this is a disputed issue of law and/or would come into play in regard to calculation of damages if liability was proven. Again, handling the issue on a classwide basis is a superior approach. To the extent that this is an argument that Defendants have a "loss causation" affirmative defense[1], Defendants have failed to demonstrate that adjudication of this

[1] See In re Charles Schwab Corp. Securities Litigation (NDCal. 2009) 257 FRD 534; In re Countrywide Financial Corp. Securities Litigation (CDCal. 2008) 588 F.Supp.2d 1132.

affirmative defense will "predominate" over the common issues of law and fact in adjudication of the Plaintiffs' claims. Indeed, if it is an issue that class members *in a particular time frame* are not entitled to recovery, this is a group issue – not a one-on-one factual issue.

Third, Defendants argue that individual knowledge of a plaintiff or class member is an affirmative defense, and thus individual issues will predominate. The Court is not convinced of this. Rather it appears that adjudication of the affirmative defense of knowledge is an *objective* standard suitable for adjudication on a classwide basis.

Although Defendant is correct that affirmative defenses are considered on class certification, the standard pursuant to Section 11 and Section 12 is a reasonable investor standard, and not individual's actual knowledge:

> To prevail in [a Section 11] action, a plaintiff must prove (1) that the registration statement contained an omission or misrepresentation, and (2) that the omission or misrepresentation was material, that is, it would have *misled a reasonable investor* about the nature of his or her investment.

In re Ubiquiti Networks, Inc. Securities Litigation (9th Cir. 2016) 669 Fed.Appx. 878 (district court erred in dismissing Section 11 claim because as pled, "the registration statement misrepresented the true extent of counterfeiting and the misrepresentation would have misled a reasonable investor") (emphasis added).

Section 12 similarly involves the reasonable investor standard. "Moreover, the materiality inquiry concerns whether a 'reasonable investor' would consider a particular misstatement important." (Id. at p. 1101.) "The 'misstatement or omission' requirement under Section 12(a)(2) *is materially identical* to that under Section 11." In re Velti PLC

Securities Litigation (N.D. Cal., Oct. 1, 2015, No. 13-CV-03889-WHO) 2015 WL 5736589, at *31 (emphasis added.)

> [T]o prevail under Section 12(a)(2), a plaintiff must demonstrate (1) an offer or sale of a security, (2) by the use of a means or instrumentality of interstate commerce, (3) by means of a prospectus or oral communication, (4) that includes an untrue statement of material fact or omits to state a material fact that is necessary to make the statements not misleading" by "any person.

Miller v. Thane Intern., Inc. (9th Cir. 2010) 615 F.3d 1095, 1099.

Accordingly, the reasonable investor standard articulated in both Section 11 and 12 claims would support certifying the class as individual issues do not appear to predominate.

Unlike the wage-and-hour case of Duran v. U.S. Bank Nat. Assn. (2014) 59 Cal.4th 1, 28–29, relied upon by Defendants, this securities class action does not involve problem of statistical proof of liability from a small sample of people. Indeed, Section 11 is akin to a strict liability statute. To the extent that Defendants pursue the affirmative defense of knowledge, and even if individual issues are later shown to be significant, even if the class is certified it can be decertified upon a subsequent showing that individual issues predominate. Duran, 59 Cal.4th at p. 29.

The only evidence by Defendants indicating that individual issues may predominate, thus far presented is Mr. Pytel's alleged knowledge the alleged material omission regarding Nevada's proposed regulations on net metering. However, unlike a wage and hour claim, a Section 11 claim is based on whether the material omission would have misled *a reasonable investor*. Defendants can present their defense, on a

classwide basis, that no material omission occurred because a reasonable investor would have known based on news reports, etc.

At the hearing, Defendant focused on In re Initial Public Offerings Securities Litigation (2d Cir. 2006) 471 F.3d 24 ("In re IPO"). Specifically, in its opposition, Defendant cites to In re IPO for the proposition, "Fatal to any Securities Act claim is a plaintiffs knowledge of the alleged misrepresentations." (Opp., at p. 12:24 – 13:3.) However, that case appears factually distinguishable:

> The Plaintiffs must show lack of knowledge to recover on their section 11 claims as well. The Plaintiffs' allegations, evidence, and discovery responses demonstrate that the predominance requirement is defeated because common questions of knowledge do not predominate over individual questions. The claim that lack of knowledge is common to the class is thoroughly undermined by the Plaintiffs' own allegations as to how widespread was knowledge of the alleged scheme. Obviously, the initial IPO allocants, who were required to purchase in the aftermarket, were fully aware of the obligation that is alleged to have artificially inflated share prices. Those receiving or seeking allocations number in the thousands. With respect to one IPO alone (Engage Technologies, Inc.), 540 institutions and 1,850 others received allocations. And there were more than 900 IPOs allegedly manipulated by aftermarket purchase requirements. Equally obviously, that, in response more than 11,000 induced to enter the requirements would have been known not just to the entities receiving allocations, but also to many thousands of people employed by the institutional investors. In addition, two cable television

> networks, MSNBC and CNBC, reported on the aftermarket purchase requirements in 1999, and in 2000 the practice was the subject of an SEC Staff Legal Bulletin and a report in *Barron's* discussing the bulletin. The Plaintiffs themselves refer to the "industry-wide understanding" that those who agreed to purchase in the aftermarket received allocations.

In re IPO, supra, 471 F.3d at p. 43–44 (internal citations, footnotes omitted). Here, neither the allegations nor Defendant's sole citation to Mr. Pytel's deposition testimony show individual questions dominate. There is no evidence of "widespread" public knowledge of all of the facts upon which Plaintiffs make their claims of material omissions and misrepresentations in the Registration Statement. Further, the ability of Defendants to present evidence of any "widespread" knowledge would be more efficiently adjudicated on a classwide basis.

Again, "[i]n order to defeat predominance on this basis, defendants must provide evidence that certain class members had differing levels of knowledge regarding the misleading nature of the statements or omissions when they invested sufficient to outweigh common issues." In re IndyMac Mortgage-Backed Securities Litigation (S.D.N.Y. 2012) 286 F.R.D. 226, 238. Defendants do not appear to have done so in their opposition to the instant motion.

Adequacy and Representativeness

The Court finds that Plaintiff Pytel and Plaintiff Nunez have claims typical of those of the putative class members, and have demonstrated their willingness to represent the Class and diligently proceed with prosecution of these claims.

Defendants have not contested the substantive adequacy of the proposed Class Counsel, and Plaintiffs have demonstrated that the Robbins Geller and the Cotchett Pitre

& McCarthy law firms can adequately and professionally represent the interests of the Class. Defendants' argument that the Cotchett firm is not "adequate" because they are not the direct counsel for these specific Plaintiffs – as the Cotchett firm filed lawsuits on behalf of other named plaintiffs who are now not offered as class representatives – is not the test of adequacy of counsel and the Class Representatives. "To resolve the adequacy question the court will evaluate the seriousness and extent of conflicts involved compared to the importance of issues uniting the class, the alternatives to class representation available, the procedures available to limit and prevent unfairness, and any other facts bearing on the fairness with which the absent class member is represent." Martinez v. Joe's Crab Shack Holdings (2014) 231 Cal.App.4th 362, 375.

The two Class Representative Plaintiffs do not have interests antagonistic to the absent class members. To the extent that Defendants claims that there is evidence that Pytel had knowledge regarding the Nevada net metering regulatory matters, that would be an issue for proof of liability, not a debilitating bar to Pytel acting as a class representative.

The moving party must establish a "[t]he claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class." Civ. Code, § 1781(b)(3). The California Supreme Court has explained:

> [E]vidence that a representative is subject to unique defenses is one factor to be considered in deciding the propriety of certification. [Citations.] The specific danger a unique defense presents is that the class "representative might devote time and effort to the defense at the expense of issues that are common and controlling for the class." [Citations.] ... [H]owever, a defendant's raising of unique defenses against a proposed class

> representative does not automatically render the proposed representative atypical. ... The risk posed by such defenses is the possibility they may distract the class representative from common issues; hence, the relevant inquiry is whether, and to what extent, the proffered defenses are "likely to become a major focus of the litigation." [Citations.]

Fireside Bank v. Superior Court (2007) 40 Cal.4th 1069, 1091.

The core issues presented by Plaintiffs and the class' claims are the same. Pytel and the Class claims arise from the same course of events and Pytel's interests are aligned with the Class.

Defendants also argue that Nunez and Pytel are not sufficiently knowledgeable about the specific facts and evidence supporting the claims alleged in the complaint and that they are not active in the daily prosecution of the lawsuit. This is not the standard and not required. The preeminent treatise on class actions explains, as follows:

> Defendants in both derivative and shareholder class suits have often argued that the plaintiff's personal qualifications are important to the issue of representative capacity. While it is clear that the class representative must be committed and honest, defendants' arguments suggest that to qualify as a class representative a person must be sufficiently knowledgeable about securities law. This requirement would prevent most stockholders from being representative plaintiffs in securities suits, and, accordingly, courts have rejected it. In such complex cases, the focus should be on the qualifications of class counsel.

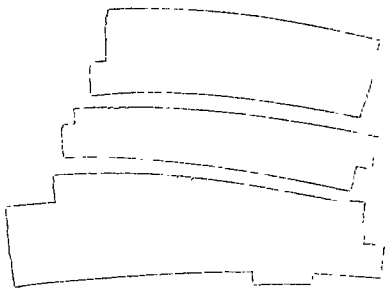
Newberg on Class Actions § 22:44 (4th ed.); *see also* In re Live Concert Antitrust Litigation (C.D. Cal. 2007) 247 F.R.D. 98, 121 (a plaintiff may adequately represent the class if he or she has a "basic understanding" of the claims).

Defendants have not shown that this is a situation where the class representative is simply a disinterested puppet – rather evidence is presented by Plaintiffs that they are willing and able to be involved. It is natural that the attorneys – who are highly experienced – are deferred to in regard to the handling of the lawsuit itself.

DATED: December 29, 2017

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SERVICE LIST
In re Sunrun, Master File CIV 538215
as of October 1, 2017



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