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Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mark Smilovits, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. First Solar, Inc., Michael J. Ahearn, Robert J. Gillette, Mark R. Widmar, Jens Meyerhoff, James Zhu, Bruce Sohn and David Eagleshem, Defendants.	No. 2:12-cv-00555-DGC CLASS ACTION **DECLARATION OF DANIEL S. DROSMAN IN SUPPORT OF: (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION, AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, DANIEL S. DROSMAN, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California, and have been admitted *pro hac vice* in this action. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), and counsel for Mineworkers' Pension Scheme and British Coal Staff Superannuation Scheme (the "Schemes" or "Lead Plaintiffs"). I have been actively involved in the prosecution and settlement of this action since 2012 and am closely familiar with its proceedings (the "Litigation"). I have personal knowledge of the majority of the matters set forth herein based upon my active participation in and supervision of all material aspects of this Litigation. As to the remaining matters, I have reviewed our litigation files and consulted with other attorneys and support staff who worked on this case. I could and would testify completely to the matters set forth herein if called upon to do so.

2. I submit this declaration in support of Lead Plaintiffs' motion for approval of: (a) the $350,000,000 settlement in cash on behalf of the Class (the "Settlement"); (b) the proposed Plan of Allocation (the "Plan"); (c) Lead Counsel's application for an award of attorneys' fees and expenses; and (d) awards to Lead Plaintiffs in accordance with 15 U.S.C. §78u-4(a)(4).

I. PRELIMINARY STATEMENT

3. This declaration does not seek to detail – nor could it detail – each and every event that occurred since the Litigation commenced in 2012. Rather, it provides the Court with key highlights of the Litigation, the extensive fact and expert discovery, the events leading up to the Settlement, Lead Counsel's unwavering preparation for trial, and the bases upon which Lead Counsel and Lead Plaintiffs recommend the Settlement's approval.

4. The $350,000,000 proposed Settlement is the culmination of more than seven years of tireless, hard-fought litigation. As detailed below, Lead Plaintiffs zealously prosecuted their claims at every stage of the Litigation, successfully defending their claims against Defendants' repeated dismissal attempts before this Court and others. The

Settlement, which represents more than a third of the estimated maximum recoverable damages, is an excellent result for the Class.

5. As further detailed herein, proceeding to a jury trial presented substantial risks. In agreeing to settle the action just days before trial, Lead Plaintiffs and Lead Counsel were fully informed about the various strengths of their case, as well as the substantial risks they faced at trial. In opting to settle, Lead Plaintiffs and Lead Counsel concluded that settlement on the terms they obtained was in the Class' best interest. Representatives of Lead Plaintiffs – who supervised Lead Counsel and remained well informed throughout the settlement negotiations – ultimately approved the settlement. *See* Declaration of Paul McCormick in Support of Settlement ("McCormick Decl.").

6. As detailed below, Lead Plaintiffs achieved the proposed Settlement after more than seven years of litigation, during which time Lead Plaintiffs, *inter alia*:

- successfully moved for appointment as Lead Plaintiffs, and appointment of Robbins Geller as Lead Counsel, in July 2012;
- conducted an extensive investigation of publicly-available information and information from confidential witnesses, culminating in the filing of the comprehensive First Amended Complaint for Violation of the Federal Securities Laws ("Complaint") in August 2012;
- defeated Defendants' motion to dismiss the Complaint in December 2012;
- prepared for and defended, or participated in, multiple depositions during class certification discovery, including depositions of the Schemes' representative, one of the Schemes' outside investment advisors, and Defendants' market efficiency expert;
- achieved certification in October 2013 of a class of all persons who purchased or otherwise acquired the publicly-traded securities of First Solar between April 30, 2008 and February 28, 2012 (the "Class");
- conducted extensive party and third-party document discovery, involving the exchange of 515,000 documents;
- prepared for and took over twenty fact witness depositions, including those of all seven of the individual Defendants, various current and former First Solar employees, and First Solar's outside auditing firm (PricewaterhouseCoopers, LLP or "PwC");
- responded to Defendants' various discovery requests and interrogatories;

- engaged in multiple lengthy and contentious discovery-related discovery disputes concerning the scope of fact discovery, Defendants' privilege logs and assertions of privilege over various materials, Defendants' contention interrogatories, and several other issues discussed below;

- briefed, argued and defeated Defendants': (1) motion for summary judgment; (2) appeal from the Court's order denying summary judgment; and (3) petition for *certiorari* to the United States Supreme Court;

- conducted complex expert discovery in 2018 and 2019, serving and responding to 16 expert reports and preparing for and taking (or defending) 11 expert depositions;

- briefed and received rulings on nine motions to exclude expert opinions and 38 motions *in limine*;

- prepared for a four-week jury trial, including by analyzing and selecting more than 1,300 trial exhibits, reviewing and designating deposition testimony, identifying and serving Lead Plaintiffs' trial witnesses, formulating challenges to Defendants' exhibit lists and designations of deposition testimony, researching, drafting and negotiating jury instructions and verdict forms, compiling various witness files and exhibits, creating detailed trial examination outlines, submitting a final pretrial order, and appearing before this Court for a final pretrial conference.

7. The substantial fact and expert discovery, motion practice, appellate practice, and trial preparation outlined herein consistently informed Lead Counsel of both their case's many strengths and its potential weaknesses. Lead Counsel consistently considered this information in determining the best course of action for the Class.

8. The proposed Settlement of $350,000,000 is the direct product of Lead Plaintiffs' and Lead Counsel's relentless efforts over the past nearly eight years, including those described in this Declaration. The Settlement is also the product of the parties' serious, extensive arm's-length negotiations and in-person mediation sessions, facilitated by the Honorable Layn R. Phillips (Ret.), one of the nation's foremost mediators. These negotiations were conducted by experienced counsel with an intimate understanding of the case.

9. Lead Plaintiffs also seek approval of the proposed Plan, which Lead Counsel submits is fair and reasonable. Lead Counsel drafted the Plan with the assistance of Lead

Plaintiffs' damages and loss causation expert, Professor Steven P. Feinstein, Ph.D, CFA. As further described below and in the Notice, the Plan provides formulas for calculating the recognized claim of each Class Member, based on such information as when the person purchased and sold its First Solar common stock on the open market. Each Authorized Claimant, including the Lead Plaintiffs, will receive a *pro rata* distribution pursuant to the Plan, and Lead Plaintiffs will be subject to the same formula for distribution of the Net Settlement Fund. Importantly, the Plan does not treat the Lead Plaintiffs or any other Class Member preferentially.

10. Lead Counsel prosecuted the Litigation on a wholly contingent basis, advancing and incurring substantial litigation expenses, charges and costs over the years. Lead Counsel shouldered substantial risk in doing so, and, to this date, has not received any compensation for its efforts. Accordingly, in consideration of Lead Counsel's extensive efforts on behalf of the Class, Lead Counsel is applying for an award of attorneys' fees in the amount of 18.83% of the Settlement Amount, plus interest accrued thereon. The fee request is consistent with the agreement negotiated between Lead Plaintiffs and Lead Counsel at the outset of the Litigation. Under its agreement with Lead Plaintiffs, Robbins Geller was charged with advancing all fees and expenses necessary to prosecute the case, and in return is entitled to seek a fee pursuant to a tiered fee structure now that a successful outcome has been achieved. The agreed-upon fee structure provides for Lead Counsel's fee to be calculated as follows:

Recovery Amount	**Fee**	**Incremental Fee ($) on $350,000,000 Settlement**
$0-10 million	0%	$0
Over $10 million and under 25 million	16%	$2,400,000
$25 million and under 100 million	18%	$13,500,000
$100 million and over	20%	$50,000,000
TOTAL	**18.83%**	**$65,900,000**

The tiered fee agreement was designed to align the interests of counsel with those of Class Members by incentivizing Lead Counsel to recover as much as possible for the Class.

11. The agreement achieved the desired effect. As set forth in the accompanying Memorandum of Points and Authorities in Support of an Award of Attorneys' Fees, Expenses, and Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), the requested fee is within the range of fees awarded in large PSLRA securities class action settlements, and is fully justified in light of the substantial benefits conferred on the Class, the substantial risks undertaken, the quality of representation, and the nature and extent of the legal service Lead Counsel performed in this complex litigation. To date, only one class member has objected, and that submission contained no basis for the objection. Lead Counsel submits that the fee application is fair to the Class, under all applicable standards, and warrants the Court's approval.

12. Lead Plaintiffs' Counsel also seek an award in the amount of $5,263,516.69 (plus interest accrued thereon) for expenses, costs, and charges reasonably and necessarily committed to the prosecution of the Litigation over the last nearly eight years. These expenses include: (i) the substantial fees and expenses of experts and consultants whose services were required for the successful prosecution and resolution of this case; (ii) the costs of conducting and defending dozens of fact and expert witness depositions over the years, which included court reporter and videographer fees and travel expenses; (iii) photocopying, imaging, shipping, and managing a database of over half a million documents; (iv) online factual and legal research; and (v) mediation expenses.

13. Finally, Lead Plaintiffs seek an award of $42,591.42, plus interest, pursuant to 15 U.S.C. §78u-4(a)(4), for reasonable costs and expenses directly relating to Lead Plaintiffs' representation of the Class. Lead Plaintiffs actively monitored Lead Counsel's progress and the events in this case. Lead Plaintiffs also dedicated time and resources to participating in discovery, which included gathering documents and information responsive to Defendants' discovery requests, as well as designating one of its representatives to prepare for and sit for deposition as part of class certification (*see infra* ¶¶21-22). Finally, Lead Plaintiffs participated in each of the mediations, and approved the ultimate settlement.

14. The following summarizes the principal events during the Litigation and the legal services Lead Counsel provided to Lead Plaintiffs and the Class.

II. HISTORY OF THE ACTION

A. The Schemes Are Appointed Lead Plaintiffs and Defeat Defendants' Motion to Dismiss

15. Following the initial filing of this action on March 15, 2012 (ECF 1), the Court appointed the Schemes as Lead Plaintiffs and Robbins Geller as Lead Counsel. ECF 89 (July 23, 2012 Order).

16. Lead Counsel conducted an extensive factual investigation prior to filing the Complaint, analyzing years of First Solar's public filings with the Securities and Exchange Commission, media reports, analyst reports, and trading data. As part of its investigation, Lead Counsel also located and spoke with several witnesses with first-hand knowledge of the alleged fraud, including various confidential witnesses whose allegations were detailed in the Complaint. Following their investigation, Lead Plaintiffs filed the Complaint on August 17, 2012. ECF 93.

17. The 134-page Complaint alleges violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired First Solar's publicly traded securities between April 30, 2008 and February 28, 2012, inclusive. *Id.* at 1. The Complaint alleges that the Defendants violated the securities laws by making materially false and misleading statements and omissions pertaining to First Solar. The Complaint further alleges that when the true facts regarding the alleged misstatements were revealed thorough a series of partial disclosures in 2010-2012, artificial inflation escaped First Solar's share price, causing the Class to suffer damages.

18. Defendants moved to dismiss the Complaint on September 14, 2012, raising various challenges under Federal Rule of Civil Procedure 9(a) and the Private Securities Litigation Reform Act ("PSLRA"). ECF 102. Among other things, Defendants vehemently challenged whether the Complaint adequately alleged materiality, falsity, scienter and loss

causation. ECF 102, 113. Plaintiffs opposed Defendants' motion on October 1, 2012 (ECF 109), and Defendants replied on October 12, 2012. ECF 113. Two months later, the Court denied Defendants' motion to dismiss in its entirety, paving the way for the Litigation to proceed. ECF 114 (December 17, 2012 order).

B. Lead Plaintiffs Obtain Certification of the Class

19. Shortly after the Court upheld the Complaint, the parties filed a joint case management report on January 23, 2013. ECF 120. Defendants answered the Complaint days later on January 29, 2013, substantially denying Lead Plaintiffs' allegations while raising twenty affirmative defenses. ECF 123. The parties appeared before this Court on February 26, 2013 for a Rule 26(f) conference, and on March 4, 2013, the Court issued a case management order setting forth deadlines for class certification discovery and briefing. ECF 131.

20. Shortly thereafter, Lead Counsel drafted and propounded on Defendants document requests, interrogatories, and requests for admissions bearing on issues concerning class certification. Defendants responded in kind, serving their own discovery requests on Lead Plaintiffs.

21. In responding to Defendants' requests, Lead Counsel worked closely with Lead Plaintiffs in identifying, reviewing and producing to Defendants documents and information responsive to Defendants' requests, as well as a short privilege log listing information withheld on attorney-client privilege or work product grounds. Lead Counsel also formulated responses and objections to Defendants' requests, and engaged in written and telephonic conferrals with Defendants over various class certification discovery issues.

22. The parties conducted multiple depositions in connection with class certification. For instance, in May 2013, Lead Counsel prepared for and defended the deposition of the Scheme's representative (Paul McCormick), and also participated in Defendants' deposition of one of the Scheme's outside investment advisors (Baillie Gifford).

23. The parties exchanged expert reports as part of class certification as well. For their part, Lead Plaintiffs retained and worked closely with Bjorn Steinholt, CFA. Mr.

Steinholt prepared and submitted a report on May 3, 2013, in which he opined the market for First Solar stock was efficient during the Class Period. Meanwhile, on May 24, 2013, Defendants disclosed the expert report of their own market efficiency expert, Paul A. Gompers, Ph.D.

24. In his 156-page report, Dr. Gompers offered extensive statistical and financial analyses in support of his rebuttal of Mr. Steinholt's conclusion that First Solar shares traded in an efficient market throughout the Class Period. Lead Counsel prepared extensively for the deposition of Dr. Gompers, dissecting his 156-page report, unpacking his analyses, scrutinizing his evidence and conclusions, and working closely with Mr. Steinholt on the various matters covered in the two experts' reports. Following extensive preparation, Lead Counsel deposed Dr. Gompers on June 11, 2013.

25. Following the close of class certification discovery, Lead Plaintiffs drafted and filed a motion to certify the Class on June 21, 2013. ECF 156. Lead Plaintiffs detailed in their motion why all five of the *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989) factors – which courts routinely consider in addressing class certification – were met, and why Dr. Gompers' conclusions on market efficiency were erroneous. Defendants opposed the motion on July 12, 2013, relying extensively on Dr. Gompers' report and opinions in arguing against certification of the Class. ECF 161. Plaintiffs filed a reply brief 10 days later, which addressed and disputed each of Defendants' arguments against class certification. ECF 164. The parties argued the merits before this Court on September 20, 2013. Less than one month later, on October 8, 2013, the Court certified the Class, appointed Lead Plaintiffs as Class Representatives, and appointed Robbins Geller as Class Counsel. ECF 171.

26. Following certification, Lead Counsel distributed notice of the pendency of the Litigation to potential members of the Class. ECF 178 (December 3, 2013 order approving a stipulated plan for class notice procedures). Class Counsel received 231 timely requests to opt-out of the Litigation. ECF 193.

C. Lead Plaintiffs Pursue Evidence of the Fraud Through Fact Discovery

27. Fact discovery in this Litigation was complex, voluminous, replete with technical and accounting-related subject matters, and always zealously litigated.

28. Once the Class was certified, the parties filed a joint case management report, and on November 22, 2013, held a second case management conference with the Court. *See* ECF 173 (November 15, 2013 Joint Proposed Schedule). On November 25, 2013, the Court issued its second case management order, which set forth deadlines for fact discovery, expert discovery, and briefing on dispositive motions. ECF 177 (Case Management Order No. 2).

29. Fact discovery did not effectively begin until after the Court certified the Class on October 8, 2013. Thus, while Lead Plaintiffs propounded their first set of document requests on Defendants on March 11, 2013, Defendants were not obligated to respond to those requests until December 20, 2013. *See* ECF 177 at 2.

30. Document discovery corresponding to the four-year Class Period was incredibly voluminous. Lead Plaintiffs propounded three sets of document requests (totaling 63 requests) on Defendants, collectively seeking various categories of documents necessary for proving the alleged fraud and its impact on First Solar's share price. The parties conferred extensively over each set of requests, negotiating over such matters as Defendants' objections to the requests, the temporal and subject matter scope of document discovery with respect to each of the requests, production custodians and search terms, and Defendants' assertions of privilege and work product.

31. In addition to requests for production to Defendants, Lead Plaintiffs prepared and propounded document requests on 30 non-parties, in order to obtain additional documentary evidence of the alleged fraud and its impact on the market for First Solar shares. These non-parties included PwC, various current and former employees of First Solar, members of First Solar's Board of Directors, First Solar's customers, and assorted securities and market analysts who followed and reported on First Solar during the Class Period. For each of these non-parties, Lead Counsel was tasked with identifying those non-

parties most likely to possess relevant information, crafting document requests, and locating and serving the non-parties. Lead Counsel was then tasked with negotiating the scope of document productions with each non-party, and reviewing the voluminous information the non-parties produced.

32. In all, approximately 515,000 documents (totaling more than 3.7 million pages) were produced in this Litigation. To effectively prosecute this complex case, Lead Counsel organized and executed a meticulous review of these documents by a team of skilled attorneys. The fact these documents featured highly-technical, scientific, and accounting-related subject matters only amplified the challenges Lead Counsel faced in efficiently and intelligently analyzing and synthesizing the documents. Moreover, many of the documents contained German-language text, requiring Lead Counsel to translate those documents into English in order to comprehend their meaning.

33. This universe of documentary evidence proved critical in Lead Counsel's preparation for the 23 fact witness depositions Lead Counsel took between November 2014 and March 2015. The deponents in this matter included all seven of the individual Defendants, various current and former First Solar employees, and PwC. Some of these depositions were conducted pursuant to Fed. R. Civ. P. 30(b)(6), requiring Lead Counsel to negotiate in advance the scope of the deposition topics. That many of these deponents were Defendants themselves, were represented by defendants' counsel, and/or took the time to execute declarations in support of Defendants' motion for summary judgment illustrates the challenges Lead Counsel faced in obtaining testimony from these witnesses that supported Lead Plaintiffs' case.

34. Needless to say, each of these depositions required extensive preparation on Lead Counsel's part, which included spending weeks or months searching for, identifying, and analyzing documentary evidence that could be used during depositions or otherwise utilized in preparing for them.

35. Lead Counsel faced additional challenges due to repeated and substantial delays in Defendants' document productions. Indeed, at times, Defendants made document

productions after Court-imposed deadlines for producing documents had passed. For example, on September 18, 2014, the parties appeared before this Court to address several discovery disputes. One of those disputes concerned the fact that Defendants had produced over 18,000 documents to Lead Plaintiffs on August 23 and 29, 2014 – months after the Court-imposed document production deadline had passed. September 18, 2014 Tr. at 3:16-4:8. Notwithstanding such production delays, Lead Counsel capably and efficiently reviewed large volumes of documents in compressed time-frames, while preparing to take a host of fact witness depositions on a variety of complex topics.

36. Fact discovery also included interrogatories served by both sides. As mentioned above, Lead Plaintiffs received and responded to various interrogatories as part of class certification discovery. Lead Plaintiffs received additional interrogatories during fact discovery, including a set of contention interrogatories in January 2014. These interrogatories sought a wide breadth of information regarding the false statements alleged in the Complaint, including all information supporting Lead Plaintiffs' allegations of falsity, scienter, and loss causation. After substantial conferral on these interrogatories, as well as appearances before this Court on the matter, Lead Counsel crafted detailed responses to the interrogatories in March 2014 and March 2015.

37. There can be no question that the $350,000,000 Settlement was in large part achieved because Lead Counsel was capable of amassing voluminous and damning evidence, and was prepared to present that evidence at trial.

D. Lead Plaintiffs Pursue Relevant Documents, Sparring with Defendants over Several Discovery Disputes

38. Numerous fact discovery disputes arose between the parties, requiring extensive written correspondence, countless telephonic conferrals, and hours upon hours of negotiations between the parties. Set forth below are examples of some of the significant disputes that arose during fact discovery.

1. Disputes over Defendants' Assertions of Attorney-Client Privilege and Work Product

39. Several discovery disputes concerned Defendants' assertions of attorney-client privilege and work product over thousands of documents Defendants withheld or redacted. These included disputes over whether Defendants' assertions of privilege and work product were timely, whether Defendants' assertions of privilege or work product were sufficiently demonstrated under the relevant legal standards, and whether Defendants had waived their assertions of privilege or work product over withheld information.

40. Defendants produced the first of their many privilege logs in August 2014, listing the documents Defendants had withheld to date on privilege and work product grounds. These two primary logs collectively spanned nearly 500 pages, and listed nearly 6,000 entries. Defendants produced revised versions of these two primary logs in December 2014. In addition to these two primary logs, between December 2014 and February 2015, Defendants produced a variety of additional privilege logs that corresponded to additional productions Defendants made during the course of fact discovery.

41. Each time Lead Counsel received a privilege log from Defendants, Lead Counsel was tasked with closely scrutinizing each of the logs' entries to assess the propriety of Defendants' asserted claims of privilege and work product. With respect to documents Defendants redacted, Lead Counsel analyzed each of the documents' redactions to determine whether they were justified. Overall, Lead Counsel specifically identified to Defendants approximately 3,000 documents Lead Counsel believed had been inappropriately withheld or redacted, as well as the reasons for Lead Counsel's position with respect to each document.

42. Lead Counsel's efforts paid off: of the approximately 3,000 documents Lead Plaintiffs challenged as improperly withheld or redacted, Defendants eventually determined about a third had been improperly withheld or redacted and produced those documents. Defendants stood on their assertions of privilege or work product with respect to the remainder, prompting the parties to appear before this Court on multiple occasions on these issues.

43. For example, the parties appeared before this Court on September 18, 2014, regarding whether Defendants' initial privilege logs from August 2014 were untimely in light of the fact they were provided months after Defendants' deadline for producing documents had passed. *See* September 18, 2014 Tr. at 41:3-12. The parties appeared before this Court again on December 9, 2014, over their ongoing dispute regarding the thousands of documents Lead Plaintiffs had challenged as improperly withheld or redacted. *See* December 9, 2014 Tr. at 5:15-6:4.

44. The parties also submitted for *in camera* review examples of documents Defendants had withheld on the basis of privilege or work product, as part of their ongoing disputes over those issues. For instance, pursuant to a Court order dated January 27, 2015 (ECF 281), Lead Plaintiffs identified and submitted for *in camera* review 20 documents Defendants had withheld from production. *See* No. 284 (Lead Plaintiffs' January 28, 2015 list of documents requested for *in camera* review); ECF 285 (Defendants' February 2, 2015 response to Lead Plaintiffs' January 28, 2015 submission); ECF 299 (Court's February 18, 2015 ruling on the issue).

2. Disputes over Defendants' Document Custodians

45. The parties appeared before the Court on a dispute regarding Lead Plaintiffs' request that Defendants add additional persons to their list of custodians from whom they would search for documents. To provide some context, Defendants had produced over 18,000 documents to Lead Plaintiffs in August 2014, around two months after the Court-imposed document production deadline of June 24, 2014. Based on specific information Lead Counsel unearthed within this large, belated production, Lead Plaintiffs requested that First Solar add 14 additional persons to First Solar's list of document custodians. Defendants refused Lead Plaintiffs' request and, unable to resolve their dispute, the parties appeared before this Court on September 18, 2014. *See* September 18, 2014 Tr. at 3:17-4:4, 13:23-15:16.

46. The parties presented their positions on the matter, and the Court ordered the parties to provide a matrix reflecting each sides' position with respect to each of the 14

proposed additional custodians. On October 3, 2014, the parties provided the Court with a matrix pursuant to the Court's instruction. ECF 226. The Court issued an order on this matter on October 15, 2014, ordering Defendants to add several of the proposed individuals as additional document custodians. ECF 230.

3. Disputes over Documents Concerning First Solar's Internal Review of LPM

47. The parties sought the Court's guidance on a dispute arising from Lead Plaintiffs' request for documents related to an internal investigation of LPM, which First Solar's internal audit department had performed in the first half of 2012. By way of background, in responding to Lead Plaintiffs' first set of document requests, Defendants had refused to produce documents created after March 31, 2012 on relevance grounds. In mid-December 2014, just before the fact discovery cutoff, Lead Plaintiffs discovered a document showing that First Solar's Board of Directors had requested in February 2012 that First Solar's internal audit department undertake a review of the LPM defect.

48. Upon discovering this document, Lead Plaintiffs promptly requested that Defendants produce documents related to this LPM internal review, noting the documents were responsive to Lead Plaintiffs' first set of document requests. Defendants refused Lead Plaintiffs' request, prompting Lead Plaintiffs to bring the issue before the Court. Following oral argument on this matter on January 6, 2015, the parties submitted on January 13, 2015, a matrix reflecting the parties' respective positions. *See* ECF 268-1 (January 13, 2015 submission attaching the parties' matrix). Thereafter, the Court issued a ruling on January 27, 2015, ordering Defendants to produce to Lead Plaintiffs the LPM internal review documents by the end of the month. ECF 278.

49. On March 26, 2015, the parties again appeared before this Court on the matter. As Lead Plaintiffs explained during the March 26 hearing, Lead Plaintiffs had learned that Defendants had failed to search the files of certain members of First Solar's internal audit team for documents related to the LPM internal review, and failed to produce – or even

disclose in a privilege log – specific notes taken by lawyers at First Solar in connection with the LPM internal review. *See generally* March 26, 2015 Tr. at 6:16-8:18.

50. That same day, following the March 26 hearing, the Court ruled that Defendants "should have searched the files of the five members of the audit team whose files were not searched, and should also have searched for all documents relating to audit interviews, no matter who created them." ECF 307 at 1. The Court also ruled that Defendants had failed to assert work product over the notes taken by lawyers at First Solar in connection with the LPM internal review. *Id*. at 1-2. The Court ordered Defendants to produce by April 10, 2015, "(a) all documents related to the internal LPM audit from the files of the five audit team members discussed during the conference call, and (b) all attorney notes of interviews conducted in connection with the internal LPM audit." *Id*. at 2.

51. Defendants moved for reconsideration of the Court's March 26 order within weeks, claiming the Court's March 26 decision ordering production of the attorney notes was manifest error. ECF 351. Lead Plaintiffs promptly drafted and filed an opposition to Defendants' motion on May 6, 2015 (ECF 376), explaining why the Court's March 26 ruling was appropriate and Defendants' motion was meritless. The Court denied Defendants' motion for reconsideration on May 15, 2015. ECF 377.

4. Disputes over Lead Plaintiffs' Responses to Contention Interrogatories

52. The parties sought the Court's guidance with respect to a set of contention interrogatories Defendants served prematurely on Lead Plaintiffs in January 2014. As mentioned above, the interrogatories effectively sought all information supporting Lead Plaintiffs' allegations of falsity, scienter, and loss causation. In responding to these interrogatories in March 2014, Lead Plaintiffs objected that the contention interrogatories were premature and that Lead Plaintiffs were not obligated to provide complete responses to the contention interrogatories until after the close of fact discovery. The parties conferred extensively, and appeared before this Court on December 9, 2014, after Lead Plaintiffs

refused to amend their responses until after the close of fact discovery. *See generally* December 9, 2014 Tr. at 22:17-30:11.

53. On December 9, 2014, following the hearing, the Court issued an order noting "Plaintiffs served their responses to the contention interrogatories in March, and Defendants have not challenged the responses until today, on the eve of the most intensive discovery period in the case, when virtually all witnesses are to be deposed." ECF 252 (December 9, 2014 order). The Court ordered Lead Plaintiffs to provide amended responses to the contention interrogatories on March 6, 2015, after the close of discovery, two weeks before the deadline for filing motions for summary judgment. ECF 252.

5. Disputes over Other Discovery-Related Issues

54. The parties met and conferred extensively over various other discovery-related disputes, some of which required the Court's intervention.

55. In 2014, for instance, the parties conferred extensively over a dispute regarding Defendants' use of computer-assisted technology – without prior notice to Lead Plaintiffs – in identifying documents potentially responsive to Lead Plaintiffs' document requests. Defendants' protocol had resulted in a large volume of documents not being processed for Defendants' review, causing considerable delays in Defendants' document production as those documents were eventually reviewed for responsiveness and produced to Lead Plaintiffs. This matter was discussed during a September 18, 2014 conference with the Court. *See generally* September 18, 2014 Tr. at 18:11-19:4.

56. The parties appeared again before this Court on October 22, 2014, to address several discovery disputes, including: (1) whether Lead Plaintiffs' third set of document requests to Defendants were timely served; (2) the number of fact depositions that Lead Plaintiffs could take during discovery; (3) over discovery requests Lead Plaintiffs had propounded on current and former members of First Solar's Board of Directors; and (4) the sufficiency of Lead Plaintiffs' Rule 26 Initial Disclosures. The Court made several rulings on these issues, assisted in part by a matrix the parties jointly submitted to the Court. *See generally* October 22, 2014 Tr.; ECF 236 (October 22, 2014 Minute Order); ECF 244-1

(matrix submitted by the parties setting forth their positions on Lead Plaintiffs' third set of document requests); ECF 248 (this Court's ruling on the matters raised during the October 22, 2014 conference).

57. The parties also appeared before the Court in connection with disputes over the scope and duration of Rule 30(b)(6) depositions Lead Plaintiffs had noticed. For instance, the parties appeared before the Court on January 6, 2015, on a dispute regarding the scope and time limits of Rule 30(b)(6) depositions. *See* January 6, 2015 Tr. at 17:8-24. On January 8, 2015, the Court issued an Order containing scope and time limit rulings on Rule 30(b)(6) depositions. ECF 264.

E. Lead Plaintiffs Prevail at Summary Judgment and Successfully Defend Their Claims During Four Years of Appellate Proceedings

58. Summary judgment was intensely fought. On March 27, 2015, a few weeks after the last fact deposition, Defendants moved for summary judgment on all of Lead Plaintiffs' claims. ECF 311. To buttress their bid for wholesale dismissal, Defendants submitted ninety exhibits and over a dozen declarations, including declarations from all seven individual Defendants, PwC, and various employees of First Solar. ECF 313-340. Lead Plaintiffs, meanwhile, moved for summary judgment on eighteen of Defendants' affirmative defenses. ECF 309, 310.

59. Lead Plaintiffs opposed Defendants' motion on April 27, 2015, supporting their 70-page opposition brief with over 360 exhibits, as well as the declaration of Bjorn Steinholt regarding the issue of loss causation and the declaration of Paul Regan on the issue of accounting. ECF 358 (opposition brief); ECF 361 (Steinholt declaration); ECF 360 (Regan declaration). Lead Plaintiffs' opposition brief was laden with evidence regarding Defendants' concealment and misrepresentations of the LPM and heat degradation defects, the individual Defendants' massive insider trading, Defendants' accounting violations, and the alleged defects' substantial impact on First Solar's business and stock price.

60. Defendants filed a reply in further support of their motion on May 22, 2015, offering nearly 20 additional exhibits, three additional declarations from First Solar employees, and a second declaration from PwC. ECF 379-386.

61. The parties appeared before this Court on July 22, 2015 to argue the merits of their motions. Less than one month later, on August 11, 2015, the Court issued a 49-page order: (1) striking twelve of Defendants' affirmative defenses; and (2) substantially denying Defendants' motion for summary judgment. ECF 401 at 48-49. The Court's August 11, 2015 order left Lead Plaintiffs' claims substantially intact, denying the motion for summary judgment on Lead Plaintiffs' claims based on the LPM and heat degradation defects, and all but one of the alleged corrective disclosure dates.

62. In denying summary judgment, the Court certified for immediate appeal pursuant to 28 U.S.C. §1292(b) the issue of what test for loss causation was the correct test in the Ninth Circuit. ECF 401 at 48-49. Less than 10 days later, Defendants sought interlocutory appellate review of the loss causation issue. *See Mineworkers' Pension Scheme et al. v. First Solar Inc., et al*, ECF 1-1, No. 15-80155 (9th Cir.). Lead Plaintiffs fiercely defended their claims at every step of the nearly four-year appellate process that followed.

63. On March 14, 2017, after interim briefing before the Ninth Circuit, Lead Plaintiffs filed their answering brief with the Ninth Circuit. Case No. 15-17282 ("Appeal"), ECF 28. Following full briefing and oral argument before the Ninth Circuit on October 18, 2017, on January 31, 2018, the Ninth Circuit upheld the Court's summary judgment order issued 14 months earlier (Appeal, ECF 60-1), issuing its formal mandate on June 26, 2018. Appeal, ECF 77.

64. Five months later, on March 16, 2018, Defendants petitioned the Ninth Circuit for panel rehearing and rehearing *en banc*. Appeal, ECF 65. The Ninth Circuit denied both of these petitions on May 7, 2018. Appeal, ECF 70. Three months later, on August 6, 2018, Defendants petitioned the U.S. Supreme Court for a writ of certiorari, which Lead Plaintiffs

opposed on September 5, 2018. *First Solar, Inc., et al. v. Mineworkers' Pension Scheme and British Coal Staff Superannuation Scheme*, No. 18-164.

65. On October 9, 2018, the Supreme Court issued an order calling for the views of the Solicitor General on the matters Defendants had raised in their petition. Lead Counsel traveled to Washington D.C. twice for in-person meetings with the SEC and the Solicitor Counsel in an effort to persuade those entities that a writ of certiorari was not justified. The Solicitor General recommended that the Supreme Court deny the Defendants' petition on May 15, 2019, and on June 24, 2019, the Supreme Court denied Defendants' petition.

F. The Parties Engage in Extensive Expert Discovery

66. In late 2018 and early 2019, while Defendants' petition to the Supreme Court was pending, the parties conducted expert discovery covering a wide range of areas including loss causation, damages, accounting, insider trading, SEC disclosure rules and regulations, securities market analysis, solar technology, the solar industry, and government subsidies for solar energy.

67. Expert discovery began in September 2018 when Lead Plaintiffs disclosed four opening expert reports to Defendants. Defendants, correspondingly, disclosed seven reports to Lead Plaintiffs in late October 2018, and Lead Plaintiffs disclosed five rebuttal reports in December 2018. Between December 2018 and February 2019, Lead Plaintiffs deposed six of Defendants' experts, and defended the depositions of Lead Plaintiffs' five experts. Lead Counsel also exchanged and analyzed thousands of documents the experts cited in their reports or relied upon in forming their opinions.

68. Lead Counsel's undertaking during expert discovery was notable considering the sheer breadth of Defendants' experts' opinions. Defendants' seven expert reports spanned nearly 1,800 pages (including exhibits), and overflowed with wide-ranging opinions on the issues listed above in ¶66. Lead Counsel was tasked with understanding and undermining in deposition each of the experts' opinions.

69. Certain of Defendants' experts' reports were of considerable length. Defense expert William W. Holder's 534-page report, for instance, contained nearly 1,100 footnotes

citing a tremendous volume of information in support of his opinions on financial reporting and accounting rules and regulations. Defense expert Allan W. Kleidon, Ph.D., meanwhile, paired his extensive report with a 150-page list of materials he considered in forming his opinions on damages and loss causation.

70. The examples above merely illustrate the breath of materials Lead Counsel waded through in their overall efforts to dissect the experts' reports, unpack their conclusions, and prepare to effectively depose them. These examples also demonstrate the sheer volume of expert opinions and testimony with which Defendants intended to overwhelm jurors during the four-week trial.

G. Lead Counsel Prepares for a Four-Week Trial

71. Shortly after the Supreme Court denied certiorari in June 2019, the Court issued an order setting forth various pre-trial deadlines and a trial date of January 7, 2020. ECF 462 (Amended Scheduling Order). Lead Counsel prepared exhaustively and meticulously for the four-week jury trial, up to the eleventh hour when the parties reached an agreement to settle the Litigation.

72. In anticipation of trial, the parties briefed a total of 38 motions *in limine* and nine motions to exclude expert opinions and testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702. For their part, Defendants filed 18 motion *in limine* and moved to exclude each of Lead Plaintiffs' experts. The 47 motions required extensive efforts on Lead Counsel's behalf, from formulating a list of potential motions *in limine* and exclusion, to researching and drafting various memoranda of law in support of Lead Plaintiffs' motions (and in opposition to Defendants'), and finally, to preparing extensively for oral argument on the motions. The Court ruled on the motions in a series of orders issued prior to trial. ECF 547, 548, 661, 674, 685.

73. Lead Plaintiffs also dedicated considerable time and effort to building their preliminary and final trial exhibit lists, as well as formulating objections to Defendants' exhibit lists. Lead Counsel scrutinized thousands of documents in arriving at its final list of

more than 1,300 trial exhibits, as well as in analyzing and formulating objections to the 1,800-plus documents Defendants included on their trial exhibit lists.

74. Lead Counsel pored over dozens of deposition transcripts in preparing for trial. With regard to trial witnesses who were not expected to appear live at trial, Lead Counsel was tasked with designating portions of deposition transcripts that Lead Counsel planned to play for the jury, in lieu of the witnesses' live testimony. In addition, Lead Counsel was responsible for formulating objections to those portions of deposition transcripts that Defendants had designated to play at trial. Meanwhile, with regard to those trial witnesses who were expected to appear live at trial, Lead Counsel scrutinized those witnesses' deposition transcripts in order to prepare to examine, and if necessary, impeach those witnesses at trial.

75. Lead Counsel also dedicated considerable time to drafting, and conferring with Defendants over, the various sections of the parties' Proposed Final Pretrial Order (which included the parties' proposed jury instructions, verdict forms, statement of uncontested facts and law, disputed and undisputed facts, and contested issues of fact). The parties jointly filed their 507-page Proposed Final Pretrial Order on December 16, 2019 (ECF 667), just days before the parties' final pretrial conference on December 18, 2019.

76. Lead Plaintiffs' trial preparation efforts included various other tasks not listed above, including: (1) identifying, prioritizing, and serving Lead Plaintiffs' trial witnesses; (2) briefing Lead Plaintiffs' motion for permission to serve a trial subpoena through alternative means on a non-party (*see* ECF 662, 666, 670, 676); (3) compiling various witness files and exhibits; (4) drafting detailed trial examination outlines for the various fact and expert witnesses that were expected to testify live; (5) preparing extensive expert demonstratives; (6) examining approximately 200 completed juror questionnaires and preparing for *voir dire*; and (7) thoroughly preparing for the final pretrial conference held on December 18, 2019.

77. In short, Lead Counsel prepared intensely at each and every step, all with the goal of achieving a jury verdict in Lead Plaintiffs' favor.

III. THE SETTLEMENT

78. The Settlement of $350,000,000 was the result of extensive arm's-length negotiations between the parties over a period of five years. The Settlement unmistakably provides the Class with a substantial benefit and eliminates the significant risks of a jury trial. Lead Counsel believes that the Settlement is fair, reasonable, and an excellent result for Class Members, considering the risk of recovering much less, or even nothing, after a jury trial and any appeals.

A. Reaching the Settlement

79. The parties engaged the Honorable Layn R. Phillips (Ret.) in direct settlement discussions during the course of the Litigation. Lead Counsel met in person with Judge Phillips and counsel for Defendants on three separate occasions and convened various teleconferences with Judge Phillips in between.

80. The parties attended the first of three in-person meditation sessions on August 26, 2014. In advance of that session, Lead Counsel drafted and provided to Defendants and Judge Phillips a comprehensive mediation statement outlining the alleged fraud, citing various documents Defendants had produced in discovery which supported Lead Plaintiffs' claims. Defendants, meanwhile, submitted their own mediation statement, emphasizing what they perceived to be the strengths of their case and the weaknesses in Lead Plaintiffs' case. The August 26 mediation session was unsuccessful, and fact discovery continued.

81. The parties' next in-person mediation session occurred on December 5, 2018, prior to which the parties again drafted and exchanged mediation statements. By this date, the Supreme Court had entered its October 9, 2018 order calling for the views of the Solicitor General as to: (1) whether the Ninth Circuit's January 1, 2018 opinion was correctly decided; and (2) whether the Supreme Court should grant *certiorari*. The December 2018 session, like the preceding session in August 2014, ended without a resolution.

82. Weeks before trial was scheduled to begin, the parties again engaged with Judge Phillips in a third in-person mediation session on November 15, 2019. Despite their

efforts, the parties were unable to reach a resolution, and both sides continued to prepare for trial. Notwithstanding their unsuccessful attempts to resolve the Litigation, the parties remained in contact with Judge Phillips in an effort to reach a resolution.

83. On January 5, 2020, two days before a jury was to be empaneled, the parties accepted a mediator's proposal from Judge Phillips to settle the action for $350,000,000. That night, the parties signed and executed a binding Memorandum of Understating, and promptly informed the Court of their agreement in principle to settle the action.

84. The parties appeared before the Court the next morning, to satisfy the Court that the Settlement was reasonably likely to receive preliminary approval. *See generally* January 6, 2020 Tr.; ECF 694 (January 6, 2020 order). During that conference, the parties provided the Court with details regarding the terms of the settlement, including the methods by which notice of the settlement would reach the Class, the Class' claims would be calculated, Class Members' claims would be processed, and the settlement funds would be distributed. At the conclusion of the January 6, 2020 conference, the Court vacated the trial scheduled to begin the next day, and set a deadline for Lead Plaintiffs to file a motion for preliminary approval of the Settlement. January 6, 2020 Tr. at 22:14-23:8.

85. Thereafter, the parties negotiated a Stipulation of Settlement and filed it along with its exhibits on February 14, 2020. ECF 701. That same date, Lead Plaintiffs filed their unopposed motion for preliminary approval of the settlement. ECF 700. On March 2, 2020, following a February 27 hearing on the matter, this Court granted preliminary approval of the parties' Stipulation of Settlement, approved the form and manner of notice to the Class, and scheduled the final approval hearing for June 30, 2020. ECF 709 at 1-2.

B. Reasons for the Settlement

86. Lead Plaintiffs and Lead Counsel both strongly endorse the Settlement. Lead Plaintiffs are sophisticated institutional investors who have actively overseen the prosecution of this Litigation since 2012. Lead Counsel, meanwhile, specializes in complex securities litigation, and is highly experienced in such litigation. *See* Declaration of Luke O. Brooks Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for

Award of Attorneys' Fees and Expenses ("Brooks Declaration"), Ex. G. Based on their experience and intimate knowledge from litigating this case for nearly eight years, Lead Counsel and Lead Plaintiffs determined that the Settlement was in the best interest of the Settlement Class.

87. Lead Plaintiffs faced numerous risks throughout the Litigation, including up to the date they agreed to settle. One such risk concerned the amount of damages that could be recovered at trial. Dr. Feinstein, Lead Plaintiffs' trial expert on market efficiency, loss causation, and damages, estimated total damages were up to $28.55 per share. However, even assuming Lead Plaintiffs prevailed at trial, a jury could have awarded much less than Lead Plaintiffs' estimated total damages, or no damages at all. Under prevailing case law, damages under Section 10(b) may be reduced or eliminated if a portion or all of the damages are attributable to causes other than the misstatements or omissions. In this case, Defendants repeatedly contended that factors other than the alleged misstatements and omissions caused Lead Plaintiffs' losses.

88. Defendants undoubtedly planned to showcase this defense at trial. Allan W. Kleidon, Ph.D., Defendants' damages and loss causation expert, was prepared to testify at trial that there was no evidence that any company-specific disclosures caused First Solar's stock price to decline on the alleged corrective disclosure dates. Rather, as Dr. Kleidon planned to testify, widespread macroeconomic and industry factors were to blame for the declines in First Solar's stock price. Defendants also planned to offer the expert testimony of Dan Reicher, a Stanford lecturer and former member of President Obama's Transition Team. Mr. Reicher planned to testify that various industry-wide and macroeconomic factors ravaged the entire solar industry, and thin-film module manufacturers like First Solar specifically, during the Class Period. Presented with this testimony, a jury may well have concluded that Lead Plaintiffs were entitled to far less than their estimated damages – or no damages at all.

89. In addition to challenging loss causation and damages at trial, Lead Plaintiffs expected Defendants to present evidence that Defendants' alleged misstatements and

omissions were not materially misleading, that no Defendants acted with scienter, and that this case bore none of the hallmarks of a "traditional" fraud. For instance, some of the major themes Defendants pushed at summary judgment were: (1) First Solar never corrected, retracted, or restated its publicly-issued statements or financial results; (2) the Department of Justice never indicted First Solar; (3) the SEC never commenced an enforcement action against First Solar; and (4) PwC never resigned as First Solar's auditor or withdrew its unqualified audit opinions. The individual Defendants, meanwhile, repeatedly and steadfastly asserted they relied in good faith on the estimates and information provided to them by engineers and technologists within First Solar, whom they claimed were most knowledgeable about LPM and heat degradation.

90. Lead Plaintiffs also expected Defendants to present evidence that First Solar's counsel reviewed Defendants' corporate disclosures (including the disclosures containing the alleged misstatements and omissions) and stock-sale plans during the Class Period. *See* ECF 661 at 3 (holding "Defendants may present evidence that counsel reviewed corporate disclosures and stock-sale plans or attended meetings").

91. Lead Plaintiffs expected Defendants to lean heavily on these and other themes at trial, posing a real risk one or more of the themes would gain traction with a jury and result in a verdict in Defendants' favor.

92. The fact that key trial witnesses remained employed by First Solar, retained relationships with one or more Defendants, or were Defendants themselves, posed another considerable risk to bringing this case to trial. Lead Plaintiffs expected these witnesses to attempt to exculpate Defendants at trial. As mentioned above, many of the trial witnesses – even former employee witnesses – had executed declarations in support of Defendants' motion for summary judgment.

93. For example, Mike Koralewski – perhaps the most central fact witness in this Litigation – submitted ***two*** declarations in support of Defendants' motion for summary judgment, and was a Senior Vice President at First Solar at the time trial was to commence. Among other things, Lead Plaintiffs expected Mr. Koralewski to testify that: (1) his 450,000

modules estimate (of affected modules) formed the basis for Defendants' public statements that the manufacturing excursion affected "less than 4%" of modules produced between June 2008 and June 2009; and (2) his 450,000 module estimate remained the best estimate of the number of actual LPM modules produced. Such testimony, if credited by a jury, could have considerably undermined Lead Plaintiffs' claim that the "less than 4%" statement was materially false and misleading.

94. Meanwhile, PwC's engagement partner for First Solar during the Class Period (Adam D'Angelo) submitted two declarations in support of Defendants' bid for summary judgment, and PwC continued to serve as First Solar's outside auditor as the time trial was to commence. Moreover, as First Solar's present Chief Executive Officer, defendant Mark Widmar was expected to strenuously defend the actions he and First Solar took during the Class Period. In short, Lead Counsel had every reason to believe that these and other trial witnesses would have, if provided the opportunity, offered testimony favorable to the defense.

95. The Settlement eliminates these and other risks, enabling the Class to recover a substantial sum of money, while avoiding continued litigation and the unpredictability of a jury trial.

C. Notice to the Class Meets the Requirements of Due Process and Federal Rule of Civil Procedure 23

96. In accordance with the Court's March 2, 2020 Preliminary Approval Order (ECF 709), beginning on March 25, 2020, Lead Plaintiffs, through Gilardi & Co. LLC ("Gilardi" or the "Claims Administrator"), caused a copy of the Notice and Proof of Claim and Release, substantially in the forms annexed to the Court's Preliminary Approval Order, to be mailed by First-Class Mail to all Class Members who could be identified with reasonable effort. In total, Gilardi has disseminated over 780,314 copies of the Notice and Proof of Claim and Release to potential Class Members and their nominees as of April 23, 2020. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, Distribution of the Net Settlement Fund dated April 23, 2020 ("Murray Decl."), ¶11.

97. On April 8, 2020, Gilardi caused the Summary Notice to be published in *The Wall Street Journal*, and on April 6, 2020 caused the Summary Notice to be published on *BusinessWire*. *See* Murray Decl., ¶12.

98. In addition, Gilardi caused a copy of the Notice and Proof of Claim and Release to be posted on the case-designated website, www.FSLRSecuritiesLitigation.com. This multi-faceted method of providing the Class notice, previously approved by the Court, is wholly appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the propos[ed judgment]." Fed. R. Civ. P. 23(e)(1).

99. Among other things, the Notice advises Class Members of the essential terms of the Settlement, the proposed Plan of Allocation, the general terms of the Fee and Expense Application, the procedure for objecting to the Settlement, and specifics on the date, time and place of the Final Approval Hearing.

100. As set forth in the accompanying Memorandum of Points and Authorities in Support of Motion for Final Approval of Settlement and Plan of Allocation, the Notice fairly apprises Class Members of their rights and options with respect to the Settlement, is the best notice practicable under the circumstances, and complies with the Court's March 2, 2020 Preliminary Approval Order (ECF 709), Federal Rule of Civil Procedure 23, the PSLRA, and due process.

D. The Plan of Allocation Is Fair and Reasonable

101. Lead Plaintiffs have proposed a Plan of Allocation to govern the method by which Class Members' claims will be calculated, and the proceeds of the Settlement will be allocated among Class Members who suffered economic losses as a result of the alleged fraud.

102. Lead Plaintiffs engaged Dr. Feinstein to develop the Plan of Allocation, based upon the event study and analyses Dr. Feinstein performed in this Litigation. In summary, Dr. Feinstein employed generally accepted and widely used methodologies in order to determine how much artificial inflation resided in First Solar's stock price on each day of the Class Period. Dr. Feinstein reached this determination by measuring how much the stock

price: (1) was inflated as a result of alleged misrepresentations and omissions; and (2) declined as a result of disclosures that corrected the alleged misrepresentations and omissions.

103. Under the Plan, for each Class Period purchase of First Solar common stock that is properly documented, a "Recognized Loss" will be calculated according to the formulas described in the Notice. As set forth in greater detail in the Notice, the calculation of a Claimant's Recognized Loss is based upon a formula that takes into account such information as: (a) when a Claimant's share was purchased and sold; (b) the amount of the alleged artificial inflation per share; (c) the purchase price of the share; and (d) the purchase price minus the average closing price for First Solar common stock during the 90-day look-back period described in Section 21(D)(e)(1) of the Exchange Act. Because the alleged corrective disclosures reduced the artificial inflation in stages over the course of the Class Period, the damages suffered by any particular Claimant may vary.

104. In sum, the Plan of Allocation represents a reliable method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

105. The successful prosecution of this Litigation required Lead Plaintiffs' Counsel and their para-professionals to perform more than 41,700 hours of work, valued at $28,307,662, and incur $5,263,516.69 in expenses, as detailed in the accompanying Brooks Declaration and Declaration of Andrew S. Friedman Filed on Behalf of Bonnett Fairbourn Friedman & Balint, PC in Support of Application for Award of Attorneys' Fees and Expenses, filed herewith.

106. Based on Lead Plaintiffs' Counsel's extensive efforts on behalf of the Class, including those described herein, Lead Plaintiffs' Counsel is applying for compensation from the Settlement Fund on a percentage basis in the amount of 18.83% of the Settlement Fund, and for $5,263,516.69 in litigation expenses, plus interest at the same rate and for the same time as that earned on the Settlement Fund. In addition, Lead Plaintiffs seek an award of

$42,591.42, plus interest, pursuant to 15 U.S.C. §78u-4(a)(4), for reasonable costs and expenses directly relating to Lead Plaintiffs' representation of the Class.

107. In consideration of the points and authorities set forth in the Fee Memorandum, Lead Counsel and Lead Plaintiffs respectfully submit that the fees and expenses described above should be granted.

A. Application for Attorneys' Fees

1. The Requested Fee of 18.83% of the Settlement Fund Is Fair and Reasonable

108. For their extensive efforts on behalf of the Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy and the PSLRA, has been recognized as appropriate by the United States Supreme Court for cases of this nature, and represents the prevailing trend in the Ninth Circuit.

109. The fact Lead Counsel was able to obtain such an exceptional result for the Class supports the requested fee. As explained in the Fee Memorandum, the $350,000,000 cash Settlement represents approximately 34% of estimated recoverable damages, and is more than fifteen times the size of the median percentage recovery for cases settled with estimated damages of $1 billion or more in 2018. *See* Fee Memorandum at 6. An 18.83% fee is fair and reasonable for attorneys' fees in common fund cases such as this, and is well within the range of the percentages typically awarded in securities class actions in the Ninth Circuit. *See* Fee Memorandum at 11-12.

110. It bears noting that, at the time they retained Class Counsel, Lead Plaintiffs negotiated a fee structure designed to maximize the Class' recovery and align Class Counsel's interests with those of the Class. *See* ¶10, *supra*. The sophisticated institutional investor Lead Plaintiffs, who negotiated this fee grid and who supervised Lead Counsel and

remained well informed throughout the Litigation and settlement negotiations, approve of Lead Counsel's fee request. *See* McCormick Decl., ¶7.

2. The Complexity and Risk Inherent in the Litigation

111. The requested fee is also reasonable in light of the various risks Lead Plaintiffs faced over the years, as well as the complexity of the Litigation.

112. The Litigation was highly complex, both procedurally and substantively, which rendered the path to resolution long, time-consuming, extremely challenging, and fraught with risk. As set forth above, Lead Counsel vigorously prosecuted the Class' claims for nearly eight years, before multiple courts, against multiple top-tier law firms. In doing so, Lead Counsel engaged in substantial briefing of complex legal and factual issues: (1) on motions to dismiss, to compel, for class certification, for reconsideration, and for summary judgment; and (2) in connection with Defendants' appeals before the Ninth Circuit and the Supreme Court.

113. Lead Counsel conducted an extensive pre-filing investigation, filed a comprehensive Complaint, engaged in complex document discovery and discovery disputes, deposed dozens of fact and expert witnesses, and relocated eighteen lawyers and staff to Phoenix to prepare for a four-week jury trial. The Litigation settled on the eve of trial, only after Lead Counsel overcame a relentless stream of complex legal and factual challenges.

114. The requested fee is also reasonable in light of the substantial risks Lead Plaintiffs faced. Defendants were given various opportunities to chip away at, or defeat entirely, Lead Plaintiffs' claims, including at the pleadings stage in 2012 and the summary judgment stage in 2015. The risk of outright dismissal on appeal, either before the Ninth Circuit or the Supreme Court, presented a huge risk as well. Class certification also presented a significant challenge, one Lead Plaintiffs overcame despite Defendants' fierce opposition.

115. Jury trials are notoriously unpredictable, and Lead Plaintiffs faced a bevy of risks in proceeding to a four-week jury trial in January. As discussed above, Lead Plaintiffs expected Defendants to parade before the jury a variety of defenses, a lineup of friendly

witnesses, and a squad of highly-decorated experts. Moreover, Lead Plaintiffs knew that Defendants only had to knock out one element of Lead Plaintiffs' Section 10(b) claim in order to prevail at trial. Further, even if Lead Plaintiffs prevailed in proving fraud at trial, a jury could have awarded damages that paled in comparison to the damages Lead Plaintiffs sought. Finally, a favorable verdict could have been reversed on appeal.

116. In light of the uncertain nature and prolonged extent of the Litigation, the complexity of the factual and legal issues presented at all stages of the Litigation, the substantial risks that Lead Plaintiffs overcame at the pleading, class certification, fact discovery, expert discovery, and appellate phases of the Litigation, and the other factors described in the accompanying Fee Memorandum, Lead Counsel submits that the requested 18.83% fee is fair, reasonable, and should be approved.

3. The Contingent Nature of the Fee and the Financial Burden Carried by Lead Counsel

117. Lead Counsel prosecuted this Litigation on an "at-risk" contingent-fee basis. At the outset in 2012, Lead Counsel knew they were embarking on complex and expensive litigation with no guarantee of compensation for the time, money and effort they poured into this case over its eight-year lifespan. Accordingly, Lead Counsel fully assumed the risk of an unsuccessful result and has received no compensation for services rendered or the significant expenses incurred in litigating this action.

118. In undertaking the responsibility for prosecuting the Litigation, Lead Counsel assured that sufficient attorney resources were dedicated to advancing Lead Plaintiffs' and the Class' claims over the years, and that sufficient funds were available to advance the expenses required to zealously pursue such complex litigation. Lead Plaintiffs' Counsel received no compensation and, in total, seek $5,263,516.69 in litigation expenses incurred in prosecuting this Litigation for the benefit of the Class.

119. Lead Counsel also shouldered the risk that no recovery would be achieved. Lead Counsel know from experience that success in contingent-fee litigation is never assured, and that the commencement of a securities class action in no way guarantees a

recovery. Instead, it takes diligence, commitment, and years of tireless work by skilled counsel to develop the facts, theories and evidence necessary to prevail on the merits. Lead Plaintiffs' claims could have been dismissed at the pleadings stage in 2012, at summary judgment in 2015, or on appeal before the Ninth Circuit in 2018 or before the Supreme Court in 2019. Instead, their claims survived substantially intact at each step of the way, as a result of Lead Counsel's vigorous and unwavering efforts and superlative litigation and appellate expertise.

120. Courts have repeatedly held it is in the public interest to have experienced and able counsel enforce the securities laws. Vigorous private enforcement of the federal securities laws can only occur if private plaintiffs – particularly institutional investors like Lead Plaintiffs – can obtain some parity in representation with that available to large corporate Defendants. If this important public policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks inherent in prosecuting securities class actions on a contingent-fee basis.

4. The Standing and Expertise of Lead Counsel

121. Lead Counsel is among the most experienced and skilled securities litigation law firms in the field, as illustrated by Lead Counsel's firm biography attached as Exhibit G to the Brooks Declaration. Indeed, Lead Counsel has consistently obtained significant recoveries for defrauded investors, including in: *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (recovering in excess of $7.2 billion for investors); *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., et al.*, No. 02-C-05893 (N.D. Ill.) (largest securities class action settlement following a trial: $1.575 billion); *In re American Realty Capital Properties, Inc.*, No. 15-CV-00040 (recovering $1.025 billion for investors); *In re UnitedHealth Group, Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.) (recovering over $925 million); *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio) (recovering $600 million); and *In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.) (obtaining a combined recovery of $671 million).

122. The quality of work Lead Counsel provided in attaining the Settlement should also be evaluated in light of the quality of opposing counsel in this Litigation. Over the course of the Litigation, Defendants were well-represented by teams of attorneys from the law firms of Morrison & Foerster LLP, Cravath, Swaine & Moore LLP, and Osborn Maledon, as well as former acting U.S. Solicitor General Neal Katyal of Hogan Lovells. Faced with knowledgeable, experienced, and formidable opposing counsel, Lead Counsel were nonetheless able to develop a strong case that proceeded to the eve of trial and persuaded Defendants to settle the action for $350,000,000.

5. The Class' Reaction to Date to the Settlement

123. The Notice advises the Class that Lead Counsel intends to request an award of attorneys' fees in an amount not to exceed of 18.83% of the Settlement Amount, for payment of litigation expenses reasonably incurred, and for an award to Lead Plaintiffs (pursuant to 15 U.S.C. §78u-4(a)(4)) in the amount of $42,591.42, plus interest. The Notice provided Class Members until June 9, 2020 to submit objections to Lead Counsel's fee and expense application.

124. While the time to object to the fee and expense application has not expired, it is my understanding that to date, only a single objection has been received, and that submission does not contain any substantive basis.

B. Application for Litigation Expenses, Charges and Costs

125. Lead Plaintiffs' Counsel request $5,263,516.69 for expenses, charges and costs reasonably and necessarily incurred in prosecuting Lead Plaintiffs' claims for the past eight years. Lead Plaintiffs' Counsel respectfully submit that this amount is appropriate, fair and reasonable and should be approved.

126. Since 2012, Lead Counsel knew they may never recover any of the expenses they incurred in prosecuting this case. Lead Counsel also understood that, even assuming the case was ultimately successful, an award of expenses would not compensate them for the lost use of the funds they had dedicated to this Litigation. Accordingly, Lead Counsel was

motivated to, and did, take steps to minimize expenses where practicable without jeopardizing the vigorous and efficient prosecution of this Litigation.

127. As set forth in the Brooks Declaration, the expenses, charges and costs incurred were necessary and appropriate in light of the complex nature of the action and were associated with, among other things, hiring experts and consultants, service of process, online legal and factual research, and mediation.

128. Lead Plaintiffs also seek an award of $42,591.42, plus interest, pursuant to 15 U.S.C. §78u-4(a)(4), for reasonable costs and expenses directly relating to their representation of the Class. In addition to monitoring the developments in the Litigation, Lead Plaintiffs dedicated time and resources to gathering documents and information responsive to Defendants' discovery requests, preparing a representative to sit for deposition in order to obtain class certification, and participating in mediations and other settlement negotiations. *See* McCormick Decl., submitted herewith.

V. CONCLUSION

129. In light of the $350,000,000 Settlement obtained – representing more than a third of the Class's estimated recoverable damages – the substantial risks Lead Counsel faced, the exceptional quality of Lead Counsel's work, the contingent nature of the requested fee, and the substantial complexity of the case, as described above and in the accompanying memoranda in support of their motions, Lead Plaintiffs and their Counsel respectfully submit that the Court should approve the Settlement and Plan of Allocation as fair, reasonable, and adequate, and approve Lead Counsel's application for an award of attorneys' fees and expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of April, 2020, at San Diego, California.

s/ Daniel S. Drosman
DANIEL S. DROSMAN

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 24, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Luke O. Brooks

LUKE O. BROOKS

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