ROBBINS GELLER RUDMAN & DOWD LLP
Daniel S. Drosman (CA SBN 200643) (Admitted *pro hac vice*)
Luke O. Brooks (CA SBN 212802) (Admitted *pro hac vice*)
Ellen Gusikoff Stewart (CA SBN 144892) (Admitted *pro hac vice*)
Jessica T. Shinnefield (CA SBN 234432) (Admitted *pro hac vice*)
Darryl J. Alvarado (CA SBN 253213) (Admitted *pro hac vice*)
Christopher D. Stewart (CA SBN 270448) (Admitted *pro hac vice*)
Hillary B. Stakem (CA SBN 286152) (Admitted *pro hac vice*)
J. Marco Janoski Gray (CA SBN 306547) (Admitted *pro hac vice*)
Ting H. Liu (CA SBN 307747) (Admitted *pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
dand@rgrdlaw.com
lukeb@rgrdlaw.com
elleng@rgrdlaw.com
jshinnefield@rgrdlaw.com
dalvarado@rgrdlaw.com
cstewart@rgrdlaw.com
hstakem@rgrdlaw.com
mjanoski@rgrdlaw.com
tliu@rgrdlaw.com

Lead Counsel for Plaintiffs

[Additional counsel appear on signature page.]

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 Eagleshamm, Defendants.	No. 2:12-cv-00555-DGC CLASS ACTION LEAD PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

STATUTES, RULES AND REGULATIONS

Page

SECONDARY AUTHORITIES

I. INTRODUCTION

After more than seven years of vigorous litigation and extensive arm's-length negotiations, on the eve of trial, the Settling Parties[1] reached a proposed Settlement of this securities class action in exchange for $350,000,000 in cash. Lead Plaintiffs now request the Court to preliminarily approve the proposed Settlement. As set forth below, the Settlement is the product of good-faith, arm's-length negotiations between experienced counsel with the assistance of the Honorable Layn Phillips (Ret.) and Phillips ADR Enterprises, a highly respected mediation firm that has extensive experience in complex securities litigation. The Settlement, which represents approximately 34% of the estimated maximum possible damages in this case, is an excellent result for the Class and falls well within the range of possible approval.

The Settling Parties reached the Settlement just days prior to their trial date, at a time when each side had an appreciation for the strengths and weaknesses of its respective case. By the time the Settlement was reached, Lead Plaintiffs had, for example: (i) filed a detailed First Amended Complaint for Violation of the Federal Securities Laws ("Complaint"); (ii) litigated Defendants' motion to dismiss the Complaint; (iii) completed extensive fact discovery involving the exchange of more than 515,000 documents and more than 20 fact depositions; (iv) successfully obtained class certification; (v) distributed notice of the pendency of this Action to potential Class members; (vi) briefed, argued and defeated Defendants' motion for summary judgment, appeal from the Court's order denying the motion, and petition for certiorari to the United States Supreme Court; (vii) completed expert discovery, involving the exchange of 15 expert reports and 10 expert depositions; (viii) briefed and received rulings on nine *Daubert* motions and 38 motions *in limine*; and (ix) attended a final pretrial conference on December 18, 2019. As set forth below, the Settlement recovers an exceptional percentage of Lead Plaintiffs' estimated Class damages as compared to the median recovery percentage for securities class actions.

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement dated February 13, 2020 ("Stipulation"), submitted herewith.

The Settlement meets all the requirements for preliminary approval under Rule 23(e), as amended on December 1, 2018, and the Court should grant such approval so that notice of the Settlement may be provided to the Class.

II. OVERVIEW OF THE LITIGATION

The initial complaint in this action was filed on March 15, 2012. ECF 1. On July 23, 2012, the Court appointed Mineworkers' Pension Scheme and British Coal Staff Superannuation Scheme as Lead Plaintiffs and Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as Lead Counsel. ECF 89.

Lead Plaintiffs filed the Complaint on August 17, 2012, alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. ECF 93. The Complaint asserted claims 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. Defendants moved to dismiss the Complaint. ECF 102, 113. After Lead Plaintiffs opposed Defendants' motion (ECF 109), the Court denied Defendants' motion in its entirety on December 17, 2012. ECF 114.

Defendants answered the Complaint on January 29, 2013 (ECF 123), and the parties began formal fact discovery. ECF 120. Discovery was hard-fought; the parties held technical and exhaustive discussions about the method and form of Defendants' productions, including the search terms and techniques that Defendants would employ in responding to Lead Plaintiffs' discovery requests, and briefed several discovery disputes for decision by the Court. Ultimately, Lead Plaintiffs' and Class Counsel's efforts led to the production of 515,000 documents from nearly 40 custodians with Defendants and 30 third parties as well as sworn interrogatory responses and admissions from Defendants, and took 21 fact witness depositions. Lead Plaintiffs also responded to Defendants' discovery, including by sitting for deposition, and providing responses to document requests and interrogatories, and producing documents.

On October 8, 2013, after briefing and argument from the parties, the Court certified 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. ECF 171. The Court appointed Lead Plaintiffs as Class Representatives and appointed Robbins Geller Rudman & Dowd LLP as Class Counsel. *Id.* Class Counsel, in accordance with the Court's December 3, 2013 order, distributed notice of the Class Action to potential Class members. ECF 193. It received 231 timely requests to opt-out of the Litigation. *Id.*

On March 27, 2015, Defendants moved for summary judgment on all of Lead Plaintiffs' claims (ECF 311) and Lead Plaintiffs moved for summary judgment on 18 of Defendants' affirmative defenses. ECF 309, 310. After full briefing and argument from the parties, on August 11, 2015, the Court denied Lead Plaintiffs' motion, but struck twelve of Defendants' affirmative defenses, and denied in part and granted in part Defendants' motion for summary judgment. ECF 401. The Court also certified the issue of what test for loss causation is correct in the Ninth Circuit for immediate appeal under 28 U.S.C. §1292(b). ECF 401 at 48-49.

Defendants appealed the Court's summary judgment decision on August 20, 2015. *See Mineworkers' Pension Scheme et al. v. First Solar Inc., et al*, ECF 1-1, No. 15-80155 (9th Cir.). On March 14, 2017, after interim briefing before the Ninth Circuit, Lead Plaintiffs filed their answering brief. No. 15-17282 ("Appeal"), ECF 28. After full briefing and hearing argument by the parties on October 18, 2017, on January 31, 2018, the Ninth Circuit upheld the Court's summary judgment order. Appeal, ECF 60-1. The Ninth Circuit's formal mandate was issued on June 26, 2018. Appeal, ECF 77. On March 16, 2018, Defendants petitioned the Ninth Circuit for panel rehearing and rehearing *en banc* (Appeal, ECF 65), which were both denied on May 7, 2018. Appeal, ECF 70.

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. On October 9, 2018, the Supreme Court issued an order calling for the views of the Solicitor General on the matters raised in Defendants' petition. 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.

While Defendants' petition to the Supreme Court was pending, the parties conducted extensive expert discovery on issues including loss causation, damages, market analysis, solar technology and accounting. In total, the parties produced 15 expert reports from 11 experts, took 10 expert depositions, and produced numerous expert-related documents.

Following the Supreme Court's decision, the Court set a trial date of January 7, 2020. ECF 463. The parties' trial preparation included briefing on 38 motions *in limine* and nine motions to exclude expert testimony under *Daubert* and Federal Rules of Evidence 702, negotiation and submission of a proposed joint pretrial order to the Court, and attending a final pretrial conference.

During the course of the Litigation, the parties engaged a neutral third-party mediator, the Hon. Layn Phillips (Ret.), and held direct settlement discussions. Lead Counsel met in person with the mediator and Defendants' Counsel on multiple occasions, and convened various teleconferences. On January 5, 2020, the Settling Parties agreed to settle the Litigation for $350,000,000 subject to approval by the Court.

III. TERMS OF THE SETTLEMENT

This Settlement requires Defendants to pay, or cause to be paid, $350,000,000 to the Escrow Agent, which amount, plus all interest and accretions thereto, comprises the Settlement Fund. Stipulation, ¶2.2. The Settlement was deposited into the Escrow Account on January 24, 2020, and is currently earning interest for the benefit of the Class.

Notice to the Class and the cost of settlement administration will be funded by the Settlement Fund. *Id.*, ¶2.11. Lead Plaintiffs propose a nationally recognized class action settlement administrator, Gilardi & Co. LLC, which previously distributed notice of the class action following class certification in 2013, to be retained subject to the Court's approval. The proposed notice plan and plan for claims processing is discussed below in §V and in the Declaration of Michael Joaquin Regarding Notice and Claims Process ("Joaquin Declaration"), submitted herewith.

The Notice provides that Lead Counsel will move for final approval of the Settlement and: (a) an award of attorneys' fees in the amount of no more than 19% of the Settlement Amount; (b) payment of expenses or charges resulting from the prosecution of the Litigation not in excess of $6 million; and (c) any interest on such amounts at the same rate and for the same period as earned by the Settlement Fund. Further, as explained in the Notice, Lead Plaintiffs intend to request an amount not to exceed $100,000 in the aggregate pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

Once Notice and Administration Expenses, Taxes, Tax Expenses and Court-approved attorneys' fees and expenses and any award to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class have been paid from the Settlement Fund, the remaining amount, the Net Settlement Fund, shall be distributed pursuant to the Court approved Plan of Allocation to Authorized Claimants who are entitled to a distribution of at least $10. Stipulation, ¶5.10. These distributions shall be repeated until the balance remaining in the Settlement Fund is *de minimis*. *Id.* Any *de minimis* balance that still remains in the Net Settlement Fund after such allocation(s) and payments, which is not feasible or economical to reallocate shall be donated to an appropriate charitable organization unaffiliated with any party or their counsel serving the public interest.[2] *Id.* The Plan of Allocation treats all Class Members equitably based on the timing of their First Solar common stock purchases, acquisitions and sales.

In exchange for the benefits provided under the Stipulation, all Class Members – except those who previously requested exclusion pursuant to the Notice of Pendency of Class Action provided in December 2013 and the plaintiffs in the *Maverick* action[3] – will release any and all claims and causes of action of every nature and description, whether

[2] This *cy pres* provision is, as another court in this Circuit described a nearly identical provision, "a fallback plan." *In re Zynga Inc. Sec. Litig.*, 2015 WL 6471171, at *11 (N.D. Cal. Oct. 27, 2015) ("[I]n light of the possibility of such a small amount of the funds being directed to a charitable organization, the Court is satisfied with the conditions that the organization be unaffiliated with either party and, in any event, subject to later court approval.").

[3] *Maverick Fund, L.D.C. v. First Solar, Inc. et al.*, No. 2:15-cv-01156-DGC (D. Ariz.).

known or unknown, whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other members of the Class asserted or could have asserted in any forum that arise out of or are based upon (a) the allegations, transactions, facts, matters or occurrences, representations or omissions referred to in the Complaint, and (b) the purchase or acquisition of First Solar publicly-traded securities during the Class Period. Stipulation, ¶1.22.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED

Courts recognize that public policy strongly favors settlements to resolve disputes, "'particularly where complex class action litigation is concerned.'" *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019);[4] *see also Young v. LG Chem Ltd.*, 783 Fed. Appx. 727, 737 (9th Cir. 2019) (same). Moreover, courts should defer to "the private consensual decision of the parties" to settle and advance the "'overriding public interest in settling and quieting litigation.'" *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (quoting *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976)).

Federal Rule of Civil Procedure 23(e) requires judicial approval for a settlement of claims brought as a class action. Pursuant to Rule 23(e)(1), as recently amended, the issue at preliminary approval turns on whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." As to Rule 23(e)(1)(B)(ii), the Court need not determine whether it could certify a class here because it has already certified the Class.

Rule 23(e)(2) provides:

> (2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only if after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and

[4] All citations are omitted unless otherwise noted.

> appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

In addition, the Ninth Circuit considers the following factors, some of which overlap with Rule 23(e)(2): "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).[5]

As discussed below, the proposed Settlement here easily satisfies each of the factors identified under Rule 23(e)(2), as well as the applicable Ninth Circuit factors, such that Notice of the proposed Settlement should be sent to the Class in advance of the final Settlement Hearing.

A. Lead Plaintiffs and Lead Counsel Have Adequately Represented the Class

As described above, Lead Plaintiffs and Lead Counsel have adequately represented the Class as required by Rule 23(e)(2)(A) by diligently prosecuting this Litigation for more than seven years, until the eve of a multi-week trial. These vigorous efforts on behalf of the Class unquestionably satisfy the requirements of Rule 23(e)(2)(A). *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018) ("*Hefler*") (reiterating, in finding Rule 23(e)(2)(A) satisfied for purposes of finally approving settlement, that "Class Counsel had vigorously prosecuted this action through dispositive motion practice, extensive initial discovery, and formal mediation"); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *7 (N.D. Cal. July 22, 2019) ("*Extreme Networks*") (same).

[5] Because notice of the Settlement has not yet been provided to the Class, the Court does not yet have the benefit of the Class's reaction. *See Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12129279, at *5 (C.D. Cal. Mar. 13, 2013).

B. The Proposed Settlement Is the Result of Good Faith, Arm's-Length Negotiations by Informed, Experienced Counsel Who Were Aware of the Risks of the Litigation

Rule 23(e)(2)(B) asks whether a proposed settlement is procedurally adequate, *i.e.*, whether "the proposal was negotiated at arm's length." The use of an experienced mediator to reach the settlement is an "important factor" supporting a finding this requirement is satisfied. *See In re Banc of California Sec. Litig.*, 2019 WL 6605884, at *2 (C.D. Cal. Dec. 4, 2019) ("*Banc of California*"); *Extreme Networks*, 2019 WL 3290770, at *7 (settlement procedurally fair where it was the product of "mediation sessions and follow-up communications supervised by an experienced mediator").

Here, the proposed Settlement was only achieved after multiple attempts at mediation, including three prior in-person mediation sessions with Judge Phillips where Lead Counsel and Defendants' Counsel prepared and presented submissions concerning their respective views on the merits of the litigation, along with supporting evidence obtained through discovery. In the last, successful round of mediation, Judge Phillips issued a recommended range of negotiation based on his analysis of the case, as well as the positions expressed by Lead Counsel and Defendants' Counsel through multiple phone calls and email communications, and detailed a set of procedures for negotiations to proceed. The negotiations were at all times adversarial and performed at arm's length, and produced a result that is in the Class's best interests. The protracted negotiations under the supervision of a neutral experienced mediator evidence that the $350,000,000 Settlement was reached at arm's length. *See Hefler*, 2018 WL 6619983, at *6 ("[T]he Settlement was the product of arm's length negotiations through two full-day mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn Phillips."); *In re MGM Mirage Sec. Litig.*, 708 Fed. Appx. 894, 897 (9th Cir. 2017) ("*MGM*") (district court appropriately approved settlement reached "after extensive negotiations before a nationally recognized mediator, retired U.S. District Judge Layn R. Phillips").

Additionally, "[a] settlement is presumed to be fair if reached in arms-length negotiations after relevant discovery has taken place." *Pataky v. Brigantine, Inc.*, 2018 WL

3020159, at *3 (S.D. Cal. June 18, 2018); *see also Banc of California*, 2019 WL 6605884, at *2 (that settlement had occurred after "the parties have grappled with significant discovery throughout the case," and "plaintiffs successfully opposed Defendants' motions to dismiss, obtained class certification, and underwent two full days of in-person mediation" "tend[ed] to show that the settlement is based on a sufficient understanding of what's at stake in this case"). Here, not only had Lead Plaintiffs completed exhaustive fact and expert discovery at the time they negotiated the Settlement on behalf of the Class, but as the Settlement was reached a mere two days prior to trial beginning, the contours of the trial – including which witnesses would be permitted to testify, what types of evidence generally would be permitted, and even what expert demonstratives would be presented to the jury – were also known. In sum, Lead Counsel, experienced securities litigators, were armed with extensive information generated through seven years of litigation at the time they and Lead Plaintiffs negotiated the Settlement. The result, as discussed below, is the recovery of a substantial portion of the Class' potential damages.

C. The Settlement Provides Adequate Relief for the Class

The $350 million recovery achieved by the Settlement is undeniably an excellent result for the Class. The Settlement Amount recovers approximately 34% of the estimated maximum recoverable damages as calculated by Plaintiffs' damages expert, Dr. Steven Feinstein, and 122% of a maximum to Plaintiffs' calculation of damages described by Defendants' expert, Dr. Allan Kleidon.[6] The 34% of damages recovered is over 15 times the median percentage recovery for cases settled with estimated damages of $1 billion or more in 2018, and approximately 16 times the median ratio of settlements to investor losses in 2019. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements – 2018 Review and Analysis* at 6, Figure 5 (Cornerstone Research 2019) (median settlements as a percentage of estimated damages was 2% in 2018 for Rule 10b-5 cases involving over $1 billion in damages); Janeen McIntosh and Svetlana Starykh, *Recent*

[6] Dr. Kleidon's expert opinion was that damages were $0, which presented litigation risk to Plaintiffs.

Trends in Securities Class Action Litigation: 2019 Full-Year Review at 20, Figure 13 (NERA Jan. 21, 2020) (median ratio of settlements to investor losses was 2.1% in 2019); *Hefler*, 2018 WL 6619983, at *8 (15% recovery weighed in favor of approving settlement, as it was "higher than recoveries achieved in other securities fraud class actions of similar size (over $1 billion in estimated damages), which settled for median recoveries of 2.5 percent between 2008 and 2016 and 3 percent in 2017"); *Zynga*, 2015 WL 6471171, at *11 (14% recovery "exceeds the typical recovery" in securities fraud class action settlements); *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *9 (C.D. Cal. Oct. 10, 2019) ("A 10% recovery of estimated damages is a favorable outcome in light of the challenging nature of securities class action cases.").

As discussed below, the benefits conferred on Class Members by the Settlement outweigh the costs, risks and delay of further litigation and the attorneys' fees to be requested are reasonable.[7] Accordingly, the relief provided by the Settlement is adequate and supports approval.

1. The Costs, Risks and Delay of Trial and Appeal Support Approval of the Settlement

Rule 23(e)(2)(C)(i) and the Ninth Circuit's factors concerning the "strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation"; and "the amount offered in settlement," are also satisfied because the $350,000,000 recovery provides a significant and immediate benefit to the Class, especially in light of the costs, risks and delay posed by continued litigation. *Hefler*, 2018 WL 6619983, at *3. "'[S]ecurities actions are highly complex and . . . securities class litigation is notably difficult and notoriously uncertain.'" *Id.* at *13; *Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *6 (S.D. Cal. Dec. 6, 2018) ("*NuVasive*") (noting that "[s]ecurities class actions are complex actions to litigate" and involve "a complex and highly risky trial and likely post-trial appeals and motion practice").

[7] There are no other agreements that have been entered into as part of the proposed settlement that are required to be identified under Rule 23(e)(3).

While Lead Plaintiffs remain confident in their ability to ultimately prove the Class' claims at trial, Lead Plaintiffs would be required to prove all elements of their claims to prevail, while Defendants need only succeed on one defense to potentially defeat the entire action.

Here, Defendants advanced several arguments disputing both liability and damages. For example, Defendants raised numerous challenges disputing the falsity of their alleged misstatements and vigorously disputed scienter. Defendants also challenged Plaintiffs' theory of loss causation and damages, arguing that it does not match their liability allegations and so could not support a jury verdict in Plaintiffs' favor. *See Zynga*, 2015 WL 6471171, at *9 ("[I]n 'any securities litigation case, it is difficult for plaintiff to prove loss causation and damages at trial.'"). Defendants intended to proffer expert testimony that ***no*** damages could be properly attributed to the alleged fraud, and that even if the jury found some liability and damages, the maximum provable damages were less than ***20%*** of the damages Plaintiffs claimed. These arguments, plus the sheer complexity of the subjects at issue – solar technology, accounting, and complex statistics – and the fact that Defendants engaged competing expert witnesses to testify in support of Defendants' major defenses were substantial obstacles to Plaintiffs' success at trial. *See, e.g.*, *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *13 (C.D. Cal. Nov. 23, 2013) ("The fact that this issue, which is at the heart of plaintiffs' case, would have been the subject of competing expert testimony suggests that plaintiffs' ability to prove liability was somewhat unclear; this favors a finding that the settlement is fair.").

Barring settlement, this case would require the expenditure of substantial additional sums of money, with no guarantee that any additional benefit would be provided to the Class. Even if Lead Plaintiffs succeeded at trial, Defendants would almost certainly file an appeal – a process that could further extend the litigation for years, as the parties in this case have already seen, and risk reversal of the verdict in favor of Defendants. Defense counsel also indicated that Defendants may push for a "Phase Two" of the litigation after trial, where Defendants would seek to rebut the presumption of reliance for absent Class Members. *See,*

e.g., ECF 611 at 2 n.2 ("Issues of individual reliance for ***absent*** class members – who have not yet been identified – naturally must follow trial.") (emphasis in original). Such a process can be lengthy, complex, and extremely costly. Conversely, the settlement confers a substantial and immediate benefit on the Class, and avoids the risks associated with obtaining a wholly speculative, but potentially larger, sum several years from now.

The Settlement balances the risks, costs and delay inherent in complex cases evenly with respect to all parties. Given the risks of continued litigation and the time and expense that would be incurred to prosecute the Litigation through trial, the $350 million Settlement is a meaningful recovery that is in the Class's best interests.

2. The Proposed Method for Distributing Relief Is Effective

As demonstrated below in §V and in the Joaquin Declaration submitted herewith, the method and effectiveness of the proposed notice and claims administration process (Rule 23(e)(2)(C)(ii)) are effective. The notice plan includes direct mail notice to all those who can be identified with reasonable effort supplemented by publication of the Summary Notice in *The Wall Street Journal* and once over a national newswire service. In addition, a settlement-specific website will be created where key documents will be posted. Joaquin Decl., ¶18.

The claims process is also effective and includes a standard claim form that requests the information necessary to calculate a claimant's claim amount pursuant to the Plan of Allocation ("Plan"). The Plan will govern how Class Members' claims will be calculated and, ultimately, how money will be distributed to Authorized Claimants. The Plan was prepared with the assistance of Lead Plaintiffs' damages expert and is based primarily on the expert's event study and analysis estimating the amount of artificial inflation in the price of First Solar common stock during the Class Period. A thorough claim review process, is also explained in the Joaquin Declaration, ¶¶25-27.

3. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." As discussed above (*supra* §IV.C.3.), Lead Counsel intends

to seek an award of attorneys' fees of no more than 19% of the Settlement Amount and expenses in an amount not to exceed $6 million, plus interest on both amounts. This fee request is in line with other settlements approved in the Ninth Circuit. *See MGM*, 708 Fed. Appx. at 897 (upholding fee award of 25% in $75 million settlement); *Hefler*, 2018 WL 6619983 at *13 (granting fee award of 20% of $480 million settlement); *Dusek v. Mattel, Inc.*, 2003 WL 27380800, at *6-*7 (C.D. Cal. Sept. 29, 2003) (class counsel's request for 27% fee award from $127 million settlement was reasonable); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153006, at *4 (C.D. Cal. Sept. 12, 2005) (granting requested fee of 25% of $150 million settlement). Moreover, the requested fee is less than the 25% "benchmark" that the Ninth Circuit has held is reasonable for fee awards in class action cases. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding 28% fee award of $97 million cash settlement fund). In addition, Lead Counsel will request that any award of fees and expenses be paid at the time the Court makes its award.

D. The Proposed Plan of Allocation Treats Class Members Equitably and Does Not Confer Preferential Treatment

Rule 23(e)(2)(D) asks whether the proposal, here the Plan, treats class members equitably relative to each other. Drafted with the assistance of Lead Plaintiffs' damages expert, the Plan of Allocation is fair, reasonable, and adequate; it does not treat the Lead Plaintiffs or any other Class Member preferentially. *See Zynga*, 2015 WL 6471171, at *10. Specifically, the Plan provides formulas for calculating the recognized claim of each Class Member, based on each such person's purchases or acquisitions of First Solar common stock on the open market during the Class Period and when they sold. "'A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.'" *NuVasive*, 2018 WL 6421623, at *4.

Each Authorized Claimant, including the Lead Plaintiffs, will receive a distribution pursuant to the Plan. Lead Plaintiffs will be subject to the same formula for distribution of the Settlement. *See Ciuffitelli v. Deloitte & Touche LLP*, 2019 WL 1441634, at *18 (D. Or.

Mar. 19, 2019) (finding "[t]he Proposed Settlement does not provide preferential treatment to Plaintiffs or segments of the class" where "the proposed Plan of Allocation compensates all Class Members and Class Representatives equally in that they will receive a *pro rata* distribution based [sic] of the Settlement Fund based on their net losses").

E. The Remaining Ninth Circuit Factors Support Preliminary Approval of the Settlement

1. The Extent of Discovery Completed and the Stage of the Proceedings at Which the Settlement Was Achieved Strongly Supports Preliminary Approval

The extent of discovery completed and the stage of the proceedings also support preliminary approval of the Settlement. Lead Plaintiffs' decision to enter into the Settlement was based on an understanding of the strengths and weaknesses of the Class' claims and Defendants' defenses. Indeed, as the Settlement was reached just days before trial was due to start, both sides had a thorough understanding of the arguments, evidence, and witnesses that would be presented. There can be no question that, at the time the Settlement was reached, Lead Plaintiffs were able to knowledgably evaluate the Settlement. *See In re Charles Schwab Corp. Sec. Litig.*, 2011 WL 1481424, at *5 (N.D. Cal. Apr. 19, 2011) ("[T]he class settlements were reached on the eve of trial when class counsel . . . were thus well aware of the issues and attendant risks involved in going to trial as well as the adequacy of the amount of the class settlement.").

2. Risk of Maintaining Class Action Status Through Trial

Lead Counsel believes the risk of maintaining class action status through trial was minimal, given the imminence of trial at the time the Settlement was reached. Nevertheless, Rule 23(c)(1) provides that a class certification order may be altered or amended at any time before a decision on the merits, meaning that the Defendants could have moved to decertify the Class or shorten the Class Period up until the time the jury reached a verdict. *See Rodriguez*, 563 F.3d at 966.

3. Experience and Views of Counsel

The opinion of experienced counsel supporting a class settlement after arm's-length negotiations is entitled to considerable weight. *See Hefler*, 2018 WL 6619983, at *9 ("That counsel advocate in favor of this Settlement weighs in favor of its approval."). Lead Counsel has significant experience in securities and other complex class action litigation and has negotiated numerous other substantial class action settlements throughout the country. *See* www.rgrdlaw.com. Here, "[t]here is nothing to counter the presumption that Lead Counsel's recommendation is reasonable." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).

Lead Counsel actively litigated this case since being appointed by this Court, defeating Defendants' motions to dismiss, obtaining class certification, aggressively pursuing discovery critical to the claims asserted, and defeating Defendants' motion for summary judgment and subsequent appeals. At the time the Settlement was reached, with trial only days away, Lead Counsel and Lead Plaintiffs had a firm understanding of the strengths and weaknesses of the claims, and supplemented their understanding with the assistance of sophisticated experts where appropriate.

In sum, each factor identified under rule 23(e)(2) and by the Ninth Circuit is satisfied. The Settlement is fair, adequate and reasonable, and meets each of the applicable factors such that notice of the Settlement should be sent to the Class.

V. THE PROPOSED FORMS AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE AND SATISFY FED. R. CIV. P. 23, THE PSLRA, AND DUE PROCESS

Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *See also* Fed. R. Civ. P. 23(e)(1)(B) ("The court must direct notice in a reasonable manner to all class members who would be bound by the propos[ed settlement]."). Courts evaluating proposed notice documents have held that "'[n]otice is satisfactory if it "generally describes the terms of the settlement in sufficient

detail to alert those with adverse viewpoints to investigate and to come forward and be heard."'" *Rodriguez*, 563 F.3d at 962.

Here, the Settling Parties propose to mail, by first class mail, postage prepaid, individual copies of the Notice, together with a copy of the Proof of Claim, to all potential Class Members who can reasonably be identified and located. Joaquin Decl., ¶12. In addition, the Summary Notice will be published in *The Wall Street Journal* and over newswire.[8] *Id.*, ¶14. The proposed methods of providing notice satisfy the requirements of Rule 23, the PSLRA, and due process. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *MGM*, 708 F. App'x at 896; *Hefler*, 2018 WL 6619983, at *5 (finding notice sufficient where potential class members were mailed notice packets and notice was published in *The Wall Street Journal*, the *Los Angeles Times* and over the *PR Newswire*).

The proposed Notice provides detailed information in plain English. It includes all of the information required by the PSLRA, Federal Rules of Civil Procedure and Due Process. The proposed Notice describes the proposed Settlement and sets forth, among other things: (1) the nature, history and status of the Litigation; (2) the definition of the Class and who is excluded; (3) the reasons the parties have proposed the Settlement; (4) the amount of the Settlement Fund; (5) the estimated average distribution per damaged share; (6) the Class' claims and issues; (7) the parties' disagreement over damages and liability; (8) the maximum amount of attorneys' fees and expenses that Lead Counsel intend to seek in connection with final Settlement approval; (9) the maximum amount Lead Plaintiffs will request pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class; (10) the plan for allocating the Settlement proceeds to the Class; and (11) the date, time, and place of the Final Approval Hearing. The content of the proposed Notice and Summary Notice are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

[8] The Notice and Summary Notice are annexed as Exhibits A-1 and A-3 to the Stipulation.

In addition, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed Notice satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 19% of the Settlement Amount and litigation expenses not to exceed $6 million, to be paid from the Settlement Fund. The Notice also notes the application for an award of no more than $ 100,000 to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

The notice program proposed in connection with the Settlement and the form and content of the Notice and Summary Notice thus satisfy all applicable requirements of both the Federal Rules of Civil Procedure and the PSLRA. Accordingly, in granting preliminary approval of the Settlement, the Court should also approve the proposed form and method of giving notice to the Class, and the schedule set forth in Exhibit 1 hereto.

VI. CONCLUSION

For each of the foregoing reasons, the Court should enter the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, which will: (a) preliminarily approve the Settlement; (b) approve the form and manner of providing notice of this Settlement to the Class; and (c) set a Settlement Hearing date to consider final approval of the Settlement and related matters.

DATED: February 14, 2020

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP

s/ Daniel S. Drosman
DANIEL S. DROSMAN

Daniel S. Drosman
Luke O. Brooks
Ellen Gusikoff Stewart
Jessica T. Shinnefield
Darryl J. Alvarado
Christopher D. Stewart
Hillary B. Stakem
J. Marco Janoski Gray
Ting H. Liu
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C.
Andrew S. Friedman (AZ005425)
Kevin Hanger (AZ027346)
2325 E. Camelback Road, Suite 300
Phoenix, AZ 85016
Telephone: 602/274-1100
602/274-1199 (fax)

Liaison Counsel for Plaintiffs

EXHIBIT 1

Proposed Schedule for Giving Notice to the Class

Event	Deadline for Compliance
Deadline to commence mailing the Notice and Proof of Claim to potential Class Members (the "Notice Date")	21 calendar days after the Court signs and enters the Preliminary Approval Order
Publication of the Summary Notice	7 calendar days after the Notice Date
Deadline for filing papers in support of the Settlement, the Plan, and application for attorneys' fees and expenses	35 calendar days prior to the Final Approval Hearing
Deadline for requests for exclusion or objections	21 calendar days prior to the Final Approval Hearing
Deadline for submission of reply papers in support of the Settlement, the Plan and application for attorneys' fees and expenses	7 calendar days prior to the Final Approval Hearing
Proof of Claim submission deadline	120 calendar days after the Notice Date
Date for the Final Approval Hearing	100 calendar days (or more) from entry of the Preliminary Approval Order

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 Eaglesham, Defendants.	No. 2:12-cv-00555-DGC CLASS ACTION [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL PURSUANT TO FED. R. CIV. P. 23(E)(1) AND PERMITTING NOTICE TO THE CLASS

WHEREAS, an action pending before this Court is styled *Smilovits v. First Solar, Inc. et al.*, No. 2:12-cv-00555-DGC (D. Ariz.) (the "Litigation");

WHEREAS, Lead Plaintiffs having made a motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with a Stipulation of Settlement, dated February 13, 2020 (the "Stipulation"), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation between the Settling Parties and for dismissal of the Litigation with prejudice upon, and subject to, the terms and conditions set forth therein; and the Court having read and considered: (1) the motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith, and (2) the Stipulation and the exhibits annexed thereto;

WHEREAS, the Settling Parties having consented to the entry of this Order; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Stipulation and the Settlement set forth therein as fair, reasonable and adequate, subject to further consideration at the Final Approval Hearing (as defined in ¶3 below).

2. The Court preliminarily finds that the proposed Settlement should be approved as: (i) it is the result of serious, extensive arm's-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; (iv) there is no substantive deviation from the Class previously

certified by the Court; and (v) warranting notice of the proposed Settlement to Class Members and further consideration of the Settlement at the Final Approval Hearing described below.

3. A hearing shall be held before this Court on _____, 2020, at ___ _.m. [a date that is one hundred (100) calendar days or more from the date of this Order] (the "Final Approval Hearing"), at the Sandra Day O'Connor United States Courthouse, United States District Court for the District of Arizona, 401 West Washington Street, Phoenix, AZ, in Courtroom 603, to determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class and should be approved by the Court; to determine whether a Judgment as provided in ¶1.11 of the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine the amount of attorneys' fees, costs, charges and expenses that should be awarded to Lead Counsel; to determine any award to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4); to hear any objections by Class Members to: (i) the Settlement or Plan of Allocation; (ii) the award of attorneys' fees and expenses to Lead Counsel; and (iii) awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4); and to consider such other matters the Court deems appropriate. The Court may adjourn the Final Approval Hearing without further notice to the Class.

4. The Court approves the form, substance, and requirements of the Notice of Proposed Settlement of Class Action ("Notice") and Proof of Claim and Release, substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

5. The Court approves the form of the Summary Notice of Proposed Settlement of Class Action ("Summary Notice"), substantially in the form annexed hereto as Exhibit A-3.

6. The firm of Gilardi & Co. LLC ("Claims Administrator") is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

7. Not later than _____, 2020 [a date twenty-one (21) calendar days after the Court signs and enters this Order] (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and Proof of Claim and Release, substantially in the forms annexed hereto, to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort and to be posted on the case-designated website, www.FirstSolarSecuritiesLitigation.com.

8. Not later than _____, 2020 [a date seven (7) calendar days after the Notice Date], the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal*, and once over a national newswire service.

9. At least seven (7) calendar days prior to the Final Approval Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

10. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired First Solar publicly-traded securities between April 30, 2008 and February 28, 2012, inclusive, as record owners but not as beneficial owners. Such nominee

purchasers are directed, within fourteen (14) business days of their receipt of the Notice, to either forward copies of the Notice and Proof of Claim and Release to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim and Release promptly to such identified beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim and Release to their beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notice and Proof of Claim and Release to beneficial owners.

11. The form and content of the notice program described herein and the methods set forth herein for notifying the Class of the Settlement and its terms and conditions, the Fee and Expense Application, and the Plan of Allocation meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

12. All fees, costs, and expenses incurred in identifying and notifying Members of the Class shall be paid from the Settlement Fund and in no event shall any of the Released Persons bear any responsibility or liability for such fees, costs, or expenses.

13. All Class Members (except Persons who requested exclusion pursuant to the Notice of Pendency of Class Action provided in December, 2013 and plaintiffs in the action entitled *Maverick Fund, L.D.C. v. First Solar, Inc. et al.*, No. 2:15-cv-01156-DGC (D. Ariz.)) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

14. Class Members who wish to participate in the Settlement shall complete and submit a Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than _____, 2020 [a date one hundred twenty (120) calendar days from the Notice Date]. Any Class Member who does not submit a Proof of Claim and Release within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against Lead Plaintiffs, Lead Counsel or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late submitted claims.

15. Any Member of the Class may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

16. Any Member of the Class may appear at the Final Approval Hearing and object if he, she, or it has any reason why the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, or why attorneys' fees, together with costs, charges and expenses should not be awarded or awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) should not be awarded; provided, however, that no Class Member or any other Person shall be heard at the Final Approval Hearing or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any attorneys' fees, together with costs and expenses to be awarded to Lead Counsel or any award to Lead Plaintiffs, unless the Person objecting has filed said written objections and copies of any papers and briefs with the Clerk of the United States District Court for the District of Arizona and mailed copies thereof by first-class mail to Robbins Geller Rudman & Dowd LLP, Daniel S. Drosman, 655 West Broadway, Suite 1900, San Diego, CA 92101, and Cravath, Swaine & Moore LLP, Daniel Slifkin, Worldwide Plaza, 828 Eighth Avenue, New York, NY 10019 no later than _____, 2020 [a date twenty-one (21) calendar days prior to the Final Approval Hearing]. Any Member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the

fairness, reasonableness or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the award of fees, costs, charges and expenses to Lead Counsel or Lead Plaintiffs, unless otherwise ordered by the Court. Attendance at the Final Approval Hearing is not necessary. However, Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of fees, costs, charges and expenses are required to indicate in their written objection their intention to appear at the hearing and to include in their written objections the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the Final Approval Hearing. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

17. Any Class Member who does not object to the Settlement, the Plan of Allocation, or Lead Counsel's application for an award of attorneys' fees, costs, charges and expenses in the manner prescribed herein and in the Notice shall be deemed to have waived such objection, and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement, this Order and the Judgment to be entered approving the Settlement, the Plan of Allocation and/or the application by Lead Counsel for an award of attorneys' fees together with costs, charges and expenses.

18. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

19. All papers in support of the Settlement, Plan of Allocation, and any application by Lead Counsel for attorneys' fees, costs, charges and expenses and awards to Lead Plaintiffs shall be filed and served no later than _____, 2020 [a date thirty-five (35) calendar days prior to the Final Approval Hearing], and any reply papers shall be filed and served no later than _____, 2020 [a date seven (7) calendar days prior to the Final Approval Hearing].

20. The Released Persons shall have no responsibility for the Plan of Allocation or any application for attorneys' fees, costs, charges or expenses submitted by Lead Counsel, and such matters will be considered by the Court separately from the fairness, reasonableness, and adequacy of the Settlement.

21. At or after the Final Approval Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees, costs, charges and expenses, should be approved. The Court reserves the right to enter the Order and Final Judgment approving the Settlement regardless of whether it has approved the Plan or Allocation or awarded attorneys' fees and/or costs, charges and expenses.

22. All reasonable expenses incurred in identifying and notifying Class Members as well as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Lead Plaintiffs nor Lead Counsel nor the Claims Administrator shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶¶2.11 or 2.13 of the Stipulation.

23. Neither this Order nor the Stipulation, nor any of their respective terms or provisions, nor any of the negotiations, discussions, proceedings connected with them, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement or this Order may be construed as an admission or concession by the Defendants or any other Released Persons of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind, or offered or received in evidence, or otherwise used by any person in the Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation or this Order. The Released Persons, Lead Plaintiffs, Class Members, and each of their counsel may file the Stipulation, and/or this Order and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

24. All proceedings in the Litigation are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation. Pending final determination of whether the Settlement should be approved, neither the Lead Plaintiffs nor any Class Member, either directly, representatively, or in any other capacity shall commence or prosecute against any of the Released Persons any action or proceeding in any court or tribunal asserting any of the Released Claims.

25. The Court reserves the right to alter the time or the date of the Final Approval Hearing without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

26. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and they shall be deemed to have reverted to their respective litigation positions as of January 5, 2020.

Motions

2:12-cv-00555-DGC Smilovits v. First Solar Incorporated et al

CLASSACT,STD

U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered by Drosman, Daniel on 2/14/2020 at 12:53 PM MST and filed on 2/14/2020

Case Name: Smilovits v. First Solar Incorporated et al
Case Number: 2:12-cv-00555-DGC
Filer: British Coal Staff Superannuation Scheme
Mineworkers' Pension Scheme
Document Number: 700

Docket Text:
MOTION Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement by British Coal Staff Superannuation Scheme, Mineworkers' Pension Scheme. (Attachments: # (1) Exhibit 1 - Proposed Schedule, # (2) Text of Proposed Order)(Drosman, Daniel)

2:12-cv-00555-DGC Notice has been electronically mailed to:

Andrew S Friedman afriedman@bffb.com, paquilino@bffb.com, rcreech@bffb.com

Antony L Ryan aryan@cravath.com, mao@cravath.com

Brian J Robbins brobbins@robbinsarroyo.com, notice@robbinsarroyo.com, rsalazar@robbinsarroyo.com

Bryan Jens Gottfredson Bryan.Gottfredson@sackstierney.com

Christopher Dennis Stewart CStewart@rgrdlaw.com, e_file_sd@rgrdlaw.com

Cody R LeJeune e_file_sd@rgrdlaw.com

Daniel Slifkin dslifkin@cravath.com, mao@cravath.com, mbyars@cravath.com

Daniel S Drosman dand@rgrdlaw.com, tholindrake@rgrdlaw.com

Danielle S Myers danim@rgrdlaw.com, e_file_sd@rgrdlaw.com

Darren J Robbins darrenr@rgrdlaw.com, E_File_SD@rgrdlaw.com

Darryl J Alvarado Dalvarado@rgrdlaw.com

David Thorpe david@dstlegal.com

David H Korn dkorn@cravath.com, mao@cravath.com

David R Scott drscott@scott-scott.com, efile@scott-scott.com

Edward M Varga , III evarga@kmllp.com

Ellen Gusikoff Stewart elleng@csgrr.com

Eugene G Illovsky eillovsky@mofo.com

Francis A Bottini , Jr fbottini@bottinilaw.com, sammirati@bottinilaw.com

Garrett Webster Wotkyns gwotkyns@schneiderwallace.com, efilings@schneiderwallace.com

George C Aguilar gaguilar@robbinsarroyo.com, notice@robbinsarroyo.com

Hart Lawrence Robinovitch AZDocketing@zimmreed.com, Hart.Robinovitch@zimmreed.com, sabine.king@zimmreed.com

Hillary B Stakem hstakem@rgrdlaw.com, scaesar@rgrdlaw.com

Ira Michael Press ipress@kmllp.com, bmirza@kmllp.com

Jason A Forge jforge@rgrdlaw.com, e_file_sd@rgrdlaw.com

Jay N Razzouk jrazzouk@robbinsarroyo.com

Jeffrey Dale Gardner jgardner@jsslaw.com, eblackmountain@jsslaw.com

Jeffrey S Leonard jeffrey.leonard@sackstierney.com, michelle.curtsinger@sackstierney.com

Jennifer Lynn Kroll jkroll@martinbonnett.com

Jennifer N Caringal Jcaringal@rgrdlaw.com, JCaringal@rgrdlaw.com

Jeremy A Lieberman jalieberman@pomlaw.com, disaacson@pomlaw.com

Jessica Tally Shinnefield jshinnefield@rgrdlaw.com

Jonathan Adam Dessaules jdessaules@dessauleslaw.com, minuteentries@dessauleslaw.com

Joseph Nathaniel Roth jroth@omlaw.com, bwendt@omlaw.com

Joseph P Guglielmo jguglielmo@scott-scott.com

Karin A DeMasi kdemasi@cravath.com, aelbakhar@cravath.com, mao@cravath.com

Keith Michael Cochran kcochran@cfsblaw.com

Kevin Richard Hanger kevin@guymonlaw.com

Lauren M Rosenberg lrosenberg@cravath.com, mao@cravath.com

Lonnie A Browne LBrowne@rgrdlaw.com

Luke Brooks lukeb@rgrdlaw.com

Marco Janoski mjanoski@rgrdlaw.com, tdevries@rgrdlaw.com

Mark Solomon marks@rgrdlaw.com

Michael Craig McKay mmckay@mckaylaw.us, mckay@mckay.law

Michael J Dowd miked@rgrdlaw.com, e_file_sd@rgrdlaw.com, karenc@rgrdlaw.com

Michael T Reynolds mreynolds@cravath.com, mao@cravath.com

Morgan J Cohen mcohen@cravath.com, mao@cravath.com

Patrick Powers patrick@powerstaylor. com, sarah@powerstaylor.com

Patrick V Dahlstrom pdahlstrom@pomlaw.com, mzehel@pomlaw.com

Peter S Linden plinden@kmllp.com

Rebecca J Schindel rschindel@cravath.com, mao@cravath.com

Richard W Gonnello rgonnello@faruqilaw.com, dbehnke@faruqilaw.com, ecf@faruqilaw.com

Salvatore Jo Graziano salvatore@blbglaw.com

Samuel M Ward sward@barrack.com

Stephen Richard Basser sbasser@barrack.com, cfessia@barrack.com

Susan Joan Martin smartin@martinbonnett.com, mblawfirm@aol.com, tmahabir@martinbonnett.com

Ting Liu TLiu@rgrdlaw.com

Tor Gronborg Torg@rgrdlaw.com

Willie Briscoe wbriscoe@thebriscoelawfirm.com

2:12-cv-00555-DGC Notice will be sent by other means to those listed below if they are affected by this filing:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359774-0] [5a71f9c05218b0e9874e0d0a0a7367c67d65ead33b02203de19df96ba6d5c90a6b8c576417770d3ab837fac82e5be2fb23ee7047915d71482d7caaf09225f34f]]
Document description: Exhibit 1 - Proposed Schedule
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359774-1] [9cc53804e53f9b2fa120ac6cbe3e43a41eadd2bed653dc8b96ff2fae1caedbf0489633acd74f94b9e429fe7f608d0142f052079a2075bc5909639514e7d87742]]
Document description: Text of Proposed Order

Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359774-2] [2f75716f8552c045c2d6fe20b261ddca533f985b7d7f54d0d4d4000c608f6e02fc9a70d8579db6056ab810e1424f165eea73926728d98056141263129f645368]]