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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

DECLARATION OF MICHAEL
JOAQUIN REGARDING NOTICE AND
CLAIMS PROCESS

1 I, MICHAEL JOAQUIN, declare and state as follows:

2 1. I am a Senior Vice President of Securities at Gilardi & Co. LLC
3 (“Gilardi”), located at 3301 Kerner Boulevard, San Rafael, California 94901. I make this
4 declaration based on personal knowledge, and if called to testify I could and would do so
5 competently.

6 2. At the request of Lead Counsel Robbins Geller Rudman & Dowd LLP, I
7 am providing this declaration to give the Court and the parties to the above-captioned
8 action further information about the procedures and methods that will be used to provide
9 notice of the proposed Settlement to the investors who make up the Class, and the
10 administration of the claim process.

11 3. Gilardi was retained by Lead Counsel and seeks appointment by the Court
12 to provide notice and claims administration services for the Settlement reached in the
13 above-captioned action. The Class consists of all Persons who purchased or otherwise
14 acquired First Solar publicly-traded securities during the period between April 30, 2008
15 and February 28, 2012, inclusive. Excluded from the Class are: Defendants, members of
16 the immediate families of each of the Defendants, the officers and directors of First Solar,
17 at all relevant times, members of their immediate families and their legal representatives,
18 heirs, successors or assigns and any entity in which Defendants had a controlling interest.
19 Additionally, the Class excludes the plaintiffs in the litigation captioned *Maverick Fund,*
20 *L.D.C. v. First Solar, Inc., et al.*, No. 2:15-cv-01156-DGC (D. Ariz.). Also excluded
21 from the Class is any Class Member who timely and validly requested exclusion in
22 accordance with the requirements set by the Court in connection with the Notice of
23 Pendency of Class Action (the “Notice of Pendency”) previously provided to the Class.

24 4. As background, Gilardi has implemented successful claims administration
25 programs in more than a thousand securities class actions during our more than three
26 decades as an administrator. Our experience includes many of the largest and most
27 complex settlement administrations of both private litigation matters and of actions
28

1 brought by government securities regulators. More information on Gilardi's experience
2 can be found on its website at www.gilardi.com.

3 5. On November 25, 2013, this Court appointed Gilardi as Notice
4 Administrator to supervise and administer the Notice of Pendency. In connection with
5 the Court's Order, commencing on December 31, 2013 and as of February 12, 2020,
6 Gilardi has mailed 670,173 Notices of Pendency to potential Class Members and other
7 entities, including institutions which requested copies to mail directly to their clients, as
8 well as brokerages, nominees and custodial banks Gilardi has identified over the course
9 of its claims administration experience, and institutions included on the Securities &
10 Exchange Commission's list of active brokers and dealers.

11 6. In addition to the mailed Notices of Pendency, on December 19, 2013,
12 Gilardi had the contents of the Summary Notice published in *Investor's Business Daily*.
13 Gilardi also posted a copy of the Notice of Pendency on the Gilardi website
14 (www.gilardi.com). Gilardi also provided the Notice of Pendency to the Depository
15 Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS") for publication
16 on the LENS notice system and established a case-dedicated, toll-free phone number for
17 the case.

18 7. The proposed notice plan for the settlement and claim processing phase of
19 this matter utilizes the information on potential Class Members obtained through the
20 Notice of Pendency process and uses procedures that have been designed to provide
21 extremely effective direct mail notification to every investor who is a member of the
22 Class and who can be identified with reasonable effort. In addition, direct email
23 notification will be provided to hundreds of financial institutions that regularly monitor
24 proposed securities class action settlements. By themselves, the proposed direct mail and
25 email notification will be sufficient to reach an extremely high percentage of the Class.
26 All persons and entities identified as potential Class Members will be sent a complete
27 Notice of Proposed Settlement of Class Action ("Settlement Notice") and Proof of Claim
28 and Release form ("Proof of Claim") package (collectively, the "Claim Package"), which

1 will include instructions for claim submission and objecting to any aspect of the
2 Settlement. The proposed notice plan also calls for publication of a summary version of
3 the Settlement Notice (the “Summary Notice”) in a national newspaper read by securities
4 investors, as well as placement of the Summary Notice on a national business newswire
5 service. Details of the complete proposed notice plan are outlined below.

6 8. Subject to the Court’s approval of the notice plan set forth in the Order
7 Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval
8 Order”), Gilardi will initially send a copy of the Claim Package by First-Class Mail to all
9 persons and entities previously identified as potential Class Members in connection with
10 the mailing of the Notice of Pendency, which includes all persons and entities previously
11 identified as potential Class Members by First Solar’s stock transfer agent.

12 9. As with the Notice of Pendency, Gilardi will send a Claim Package and
13 appropriate cover letter to each entity included on a proprietary list of approximately 250
14 Nominee Holders. This list also includes a group of firms and institutions who have
15 requested notification on every case involving publicly-traded securities and is contained
16 in a database created, maintained, and updated as necessary by Gilardi. In Gilardi’s
17 experience, the institutions included in this database represent a significant majority of
18 the beneficial holders of the securities in most settlements involving publicly-traded
19 companies.

20 10. Gilardi will also send a Claim Package and appropriate cover letter to each
21 financial institution registered with the U.S. Securities and Exchange Commission
22 (“SEC”) as a potential Nominee Holder. There are approximately 4,500 institutions on
23 that list, which changes from time to time and is, therefore, periodically updated. The
24 cover letter accompanying the Claim Package would notify the Nominee Holders of the
25 proposed Settlement and inform them of their obligation to either provide to Gilardi the
26 names and addresses of their clients who may be Class Members if they had not already
27 done so in connection with the Notice of Pendency or request copies of the Claim
28 Package to provide directly to their customers and clients.

1 11. Gilardi has long-standing relationships with all of the primary Nominee
2 Holders, and they are accustomed to providing us with information regarding their clients
3 from their records and obtaining reimbursement for doing so. Gilardi will provide
4 several supplemental notification letters to any Nominee Holder who did not respond in
5 connection with the mailing of the Notice and also does not respond to the initial request
6 for potential Class Member names and addresses in connection with this Settlement.

7 12. Gilardi will promptly mail the Claim Package to all potential Class
8 Members newly identified by Nominee Holders. Gilardi will also send copies of the
9 Claim Package directly to Nominee Holders who indicate that they will directly forward
10 the documents to their customers and clients who may be Class Members.

11 13. Prior to mailing, all name and address data obtained by Gilardi will be
12 reviewed to identify and eliminate exact duplicates and incomplete data. Addresses will
13 be checked against the United States Postal Service's National Change of Address
14 database to identify address changes and obtain current mailing addresses where
15 available. Any Claim Packages that are returned as undeliverable mail will be reviewed
16 to determine if an alternative or updated address is available from the Postal Service, and
17 will be re-mailed to the updated or alternative address. In cases where no address is
18 available from the Postal Service, Gilardi will attempt to obtain updated or alternative
19 address information from private databases, and will re-mail the Claim Package if such
20 information is available.

21 14. Gilardi will supplement the direct mailing program described above by
22 publishing the Summary Notice in *The Wall Street Journal*. The Summary Notice will
23 also be posted with Business Wire, an online newswire service, where it will be available
24 for a month. News outlets often use posted notices as the basis for their own stories
25 about litigation settlements involving publicly-traded companies, thereby creating added
26 awareness of the proposed settlement among investors.

27 15. Gilardi will also cause the Claim Package to be published by the
28 Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS").

1 LENS enables participating banks and brokers to review the Claim Package and directly
2 contact the Claims Administrator to obtain copies of the Claim Package for their clients
3 who may be Class Members.

4 16. The Claim Package will also be provided electronically to approximately
5 450 institutions that monitor securities class actions for their investor clients and
6 regularly act on their behalf in these matters.

7 17. Throughout the notification and claims processing period, Gilardi will
8 maintain a toll-free number to accommodate potential Class Members' inquiries.

9 18. Gilardi will also create a case website and post key documents related to the
10 settlement, including the Stipulation of Settlement, the Settlement Notice and Proof of
11 Claim and the executed Preliminary Approval Order, and any other documents that the
12 parties or the Court require to be posted. Gilardi will also maintain a frequently asked
13 questions section of the website and provide other summary information regarding the
14 case and Settlement and highlight important dates, including the date of the settlement
15 approval hearing and any changed deadlines. All posted documents will be available for
16 downloading from the website.

17 19. The Claim Package, settlement website, and key documents will be
18 provided in English, which is the language used for most company SEC filings and proxy
19 materials. In our experience, the typical demographic of most securities-related
20 settlement classes is English-speaking, and as such the costs and extra work associated
21 with translation of documents is generally not required unless there is specific evidence
22 that the majority of the class would only speak another language. In addition, telephone
23 and email support will be available to Class Members in all major languages through
24 Gilardi and its affiliated Computershare partners.

25 20. Based on our experience, we estimate that the combined direct mail and
26 publication program proposed will provide notice to more than 95% of the investors that
27 are potential Class Members. Because the Notice directs the cooperation of Nominee
28 Holders and provides for the reimbursement of their costs of doing so, we have

1 experienced and continue to anticipate a high level of compliance from those institutions,
2 many of which have developed regular systems for providing the required information.
3 In addition, the proposed publication will create additional awareness of the Settlement,
4 and we expect to receive a number of additional requests for the Claim Package through
5 the designated toll-free number and via email as a direct result of publication.

6 21. The procedures proposed here have proven extremely effective at
7 compiling a very comprehensive list of potential class members and providing notice to
8 those potential class members in thousands of securities class action matters prior to this
9 case. Substantially similar notice plans have been approved by numerous courts as being
10 the best notice practicable under the circumstances. Gilardi will, of course, provide a
11 reporting declaration outlining the results of the implemented notice plan and the number
12 of Claim Packages that are ultimately delivered, and will do so prior to, or in conjunction
13 with, Lead Plaintiffs' request that the Settlement be finally approved.

14 22. Given the number of Notices of Pendency mailed to date, First Solar's
15 trading history during the relevant period, including information regarding the volume of
16 shares traded and limited information about the number of trades executed, we estimate
17 that we will mail Claim Packages to approximately 750,000 potential Class Members.

18 23. Because this matter involves the purchase and sale of securities, which is
19 protected and private financial information held by a large number of different
20 brokerages, custodians and other financial institutions, a claims process is necessary to
21 gather the required information regarding each claimant's purchases or acquisitions,
22 sales, and holdings of First Solar during the periods relevant to the proposed Plan of
23 Allocation. This stock transaction information will then be used to evaluate the eligibility
24 of each claim to receive any distribution from the Settlement.

25 24. There are three typical ways that a claim may be submitted to Gilardi in
26 securities settlements such as this: a claimant may submit a claim form and supporting
27 documents by mail; a claimant may submit a claim form and supporting documents via
28 an interactive service provided on the settlement website; or a financial institution or

1 other third party which has the authority to do so may file claims on behalf of its clients
2 in electronic spreadsheet format. In our experience, the vast majority of claims, typically
3 at least 80%, are filed by institutions or third-party services which submit claims on
4 behalf of their clients who may be class members, removing the burden from those
5 claimants to file on their own behalf.

6 25. A claim may be determined ineligible for recovery for various reasons
7 related to the overall completeness of the claim and the claimant or transaction
8 information as presented. For example, where the Proof of Claim did not include any
9 purchases or acquisitions of First Solar securities during the Class Period, where
10 calculation of the Proof of Claim under the Plan of Allocation did not result in a net loss,
11 or where the beneficial owner as presented was determined to be insufficient or otherwise
12 ineligible, the claim will be deemed ineligible for recovery and claimants are so advised.

13 26. In addition to making these determinations, Gilardi also reviews claims for
14 deficiencies related to specific missing or incorrect information which may be resolved
15 with further information; for example, where a claim is missing supporting
16 documentation, lacking a signature, appears to be missing information regarding
17 transactions or holdings, or presents transaction information which does not match the
18 known history of the security. If those deficiencies can be corrected by an analyst on
19 review, some of these claims may result in a different loss determination and move into
20 eligible status. Furthermore, Gilardi will typically waive deficiencies deemed to be
21 insignificant, which may include, but is not limited to, deficiencies which impact only the
22 portion of the claim which calculates no recognized loss, and partially or undocumented
23 claims, partial or missing signatures, and other immaterial deficiencies where the loss of
24 the claim falls below certain recognized loss amount thresholds.

25 27. Deficiencies will be addressed during the normal course of the
26 administration and claimants with deficient Proofs of Claim will be provided an
27 opportunity to cure these deficiencies prior to distribution of the settlement proceeds. In
28 addition, prior to distribution of the settlement proceeds, those claimants with deficient

1 claims will be notified of the proposed rejection of their claim and will be provided an
2 opportunity to furnish additional information which may validate the claim, or request
3 more information about the reason why the claim is rejected. Claimants who furnish
4 additional information which remains insufficient or who request further review by the
5 Claims Administrator of their rejected claim and who remain dissatisfied with the
6 determination made by the Claims Administrator will also be given instructions for
7 further appealing adverse determinations to the Court to obtain a final determination for
8 the claim.

9 28. In our experience, not all class members submit claims, and some of the
10 claims submitted are not valid or eligible to receive distribution according to the plan of
11 allocation as outlined above.

12 29. In our experience, the notice process and claims process outlined above are
13 consistent with those undertaken in other securities settlements of similar size and
14 complexity.

15
16 I declare under penalty of perjury that the foregoing is true and correct and that
17 this declaration was executed this 14th day of February, 2020, at San Rafael, California.

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MICHAEL JOAQUIN

Other Documents

[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 1:08 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: [702](#)

Docket Text:

DECLARATION of Michael Joaquin Regarding Notice and Claims Process re: [700] MOTION Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement by Plaintiffs British Coal Staff Superannuation Scheme, Mineworkers' Pension Scheme. (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@kmlp.com

Ellen Gusikoff Stewart elleng@csgrr.com

Eugene G Illovsy eillovsy@mofocom

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@kmlp.com, bmirza@kmlp.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 Shinnfield jshinnfield@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@kmlp.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=20359873-0] [02d50e5c0c604648a82b5b56773159c435e5d06bdba1fe8e1494cd8dc04048e7cb9335445a5cfaace675d1004d414ded86deae1e5608ab51390ee3de71e8ee71]]