

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 AWARDING
ATTORNEYS' FEES AND EXPENSES
AND AWARD TO LEAD PLAINTIFFS
PURSUANT TO 15 U.S.C. §78u-4(a)(4)

1 This matter having come before the Court on June 30, 2020, on the motion of Lead
2 Counsel for an award of attorneys' fees and expenses incurred in the Litigation and an award
3 to Lead Plaintiffs, the Court, having considered all papers filed and proceedings conducted
4 herein, having found the Settlement of this Litigation to be fair, reasonable and adequate, and
5 otherwise being fully informed in the premises and good cause appearing therefore;

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

7 1. This Order incorporates by reference the definitions in the Stipulation of
8 Settlement, dated February 14, 2020 (the "Stipulation"), and all capitalized terms used, but
9 not defined herein, shall have the same meanings as set forth in the Stipulation.

10 2. This Court has jurisdiction over the subject matter of this application and all
11 matters relating thereto, including all Members of the Class who have not timely and validly
12 requested exclusion.

13 3. Notice of Lead Counsel's request for attorneys' fees and expenses was given to
14 all Class Members who could be located with reasonable effort. The form and method of
15 notifying the Class of the request for attorneys' fees and expenses met the requirements of
16 Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §78u-4(a)(7), the Securities
17 Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995,
18 due process, and any other applicable law, constituted the best notice practicable under the
19 circumstances, and constituted due and sufficient notice to all persons and entities entitled
20 thereto.

21 4. The Court hereby awards Lead Counsel attorneys' fees of 18.83% of the
22 Settlement Amount, plus expenses in the amount of \$5,263,516.69, together with the interest
23 earned on both amounts for the same time period and at the same rate as that earned on the
24 Settlement Fund until paid. The Court finds that the amount of fees awarded is fair,
25 reasonable, and appropriate under the "percentage-of-recovery" method.

26 5. The awarded attorneys' fees and expenses and interest earned thereon shall be
27 paid to Lead Counsel immediately upon execution of the Order and Final Judgment and this
28

1 Order, and subject to the terms, conditions and obligations of the Stipulation, and in
2 particular the terms of ¶6.2, which terms, conditions and obligations are incorporated herein.

3 6. In making this award of fees and expenses to Lead Counsel, the Court has
4 considered and found that:

5 (a) the Settlement has created a fund of \$350,000,000 in cash that is already
6 on deposit, and numerous Class Members who submit, or have submitted, valid Proof of
7 Claim and Release forms will benefit from the Settlement created by Lead Counsel;

8 (b) over 848,000 copies of the Notice were disseminated to potential Class
9 Members indicating that Lead Counsel would move for attorneys' fees in an amount not to
10 exceed 19% of the Settlement Amount and for expenses in an amount not to exceed
11 \$6,000,000, plus interest on both amounts, and no substantive objections to the fees or
12 expenses were filed by Class Members;

13 (c) Lead Counsel have pursued the Litigation and achieved the Settlement
14 with skill, perseverance, and diligent advocacy;

15 (d) Lead Counsel have expended substantial time and effort pursuing the
16 Litigation on behalf of the Class;

17 (e) Lead Counsel pursued the Litigation on a contingent basis, having
18 received no compensation during the Litigation, and any fee amount has been contingent on
19 the result achieved;

20 (f) the Litigation involves complex factual and legal issues and, in the
21 absence of settlement, would involve lengthy proceedings whose resolution would be
22 uncertain;

23 (g) had Lead Counsel not achieved the Settlement, there would remain a
24 significant risk that the Class may have recovered less or nothing from Defendants;

25 (h) public policy concerns favor the award of reasonable attorneys' fees and
26 expenses in securities class action litigation; and

27 (i) the attorneys' fees and expenses awarded are fair and reasonable and
28 consistent with awards in similar cases within the Ninth Circuit.

1 7. Any appeal or any challenge affecting this Court’s approval regarding the Fee
2 Motion shall in no way disturb or affect the finality of the Judgment entered with respect to
3 the Settlement.

4 8. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards \$42,591.42, plus interest,
5 to Lead Plaintiffs Mineworkers Pension Scheme and the British Coal Staff Superannuation
6 Scheme in order to reimburse them for their time and expenses directly related to their
7 representation of the Class.

8 9. In the event that the Settlement is terminated or does not become Final or the
9 Effective Date does not occur in accordance with the terms of the Stipulation, this Order
10 shall be rendered null and void to the extent provided in the Stipulation and shall be vacated
11 in accordance with the Stipulation.

12 10. The Court has reviewed the letters submitted by Katherine A. Vinceri and
13 Jeanne I. Levesque, and finds that they raise no substantive objection to this motion.
14 Therefore, to the extent that the letters might be considered objections to this motion, they
15 are overruled in their entirety.

16
17
18
19
20
21
22
23
24
25
26
27
28