

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

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)
ddrosman@rgrdlaw.com
lukeb@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, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> First Solar, Inc., Michael J. Ahearn, Robert J. Gillette, Mark R. Widmar, Jens Meyerhoff, James Zhu, Bruce Sohn and David Eaglesham, <p style="text-align: center;">Defendants.</p>	No. 2:12-cv-00555-DGC <u>CLASS ACTION</u> STIPULATION OF SETTLEMENT
---	---

1 This Stipulation of Settlement, dated February 13, 2020 (the “Stipulation”), is made
2 and entered into by and among the following: (i) Lead Plaintiffs Mineworkers’ Pension
3 Scheme and British Coal Staff Superannuation Scheme on behalf of themselves and the
4 Class, by and through Lead Counsel in the Litigation; and (ii) First Solar, Inc. (“First Solar”),
5 Michael J. Ahearn, Robert J. Gillette, Mark R. Widmar, Jens Meyerhoff, James Zhu, Bruce
6 Sohn and David Eaglesham (the “Defendants”), by and through their counsel of record in the
7 Litigation.¹ The Stipulation is intended to fully, finally, and forever resolve, discharge, and
8 settle the Released Claims, subject to the approval of the Court and the terms and conditions
9 set forth in this Stipulation.

10 **I. THE LITIGATION**

11 The Litigation is currently pending in the United States District Court for the District
12 of Arizona before the Honorable David G. Campbell (the “Court”). The initial complaint in
13 this action was filed on March 15, 2012. On July 23, 2012, the Court appointed
14 Mineworkers’ Pension Scheme and British Coal Staff Superannuation Scheme as Lead
15 Plaintiffs and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as Lead Counsel.

16 Plaintiffs’ First Amended Complaint for Violation of the Federal Securities Laws
17 (“Complaint”) was filed on August 17, 2012. The Complaint alleges that the Defendants
18 violated the Securities Exchange Act of 1934 by making materially false and misleading
19 statements or omitting to state material facts necessary to make statements made by
20 Defendants in public filings and other public statements not misleading. Plaintiffs further
21 allege that when the true facts regarding the alleged misstatements were revealed, artificial
22 inflation was removed from the price of First Solar publicly-traded securities damaging
23 members of the Class. Defendants deny each and all of Lead Plaintiffs’ allegations.
24 Defendants contend that they did not make any false or misleading statements and that they
25 disclosed all information required to be disclosed by the federal securities laws.

26
27 ¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them
28 in §IV.1. herein.

1 The parties vigorously litigated this case for seven years. The parties briefed
2 Defendants' motion to dismiss the Class Complaint, asserting that plaintiffs had failed to
3 plead any material misstatements or omissions, loss causation, or scienter. After the Court
4 denied the motion to dismiss, the parties engaged in extensive fact and class-related
5 discovery which involved the exchange of more than 515,000 documents and the taking of
6 more than 20 depositions, including Lead Plaintiffs, Defendants, and non-parties.
7 Additionally, the parties briefed and argued class certification, and the Court certified a Class
8 of all persons who purchased or otherwise acquired the publicly-traded securities of First
9 Solar between April 30, 2008 and February 28, 2012, inclusive. Notice of the Class Action
10 was distributed to potential Class members, and 231 timely requests to opt-out of the Class
11 Action were received. The parties also briefed and argued Defendants' motion for summary
12 judgment, appeal from the Court's order denying the motion, and petition for certiorari to the
13 Supreme Court. Following the appellate proceedings, the parties engaged in expert
14 discovery including the exchange of 15 expert reports from 11 experts, depositions of 10
15 experts, and production of expert-related documents. After expert discovery, the parties
16 prepared for trial, including submission of a proposed joint pretrial order, and attended a
17 final pretrial conference on December 18, 2019. In advance of the trial in this matter, set for
18 January 7, 2020, the parties also briefed 38 motions *in limine* and nine motions to exclude
19 expert testimony under *Daubert*.

20 During the course of the Litigation, the parties engaged a neutral third-party mediator
21 and held direct settlement discussions. Lead Counsel met in person with the mediator and
22 counsel for one or more Defendants on multiple occasions, and convened various
23 teleconferences. On January 5, 2020, two days before the trial was scheduled to begin, the
24 Settling Parties agreed to settle the Litigation in return for a cash payment of \$350,000,000
25 for the benefit of the Class, subject to approval by the Court. This Stipulation (together with
26 the Exhibits hereto) reflects the final and binding agreement between the Settling Parties.

27
28

1 **II. LEAD PLAINTIFFS' CLAIMS AND THE BENEFITS OF**
2 **SETTLEMENT**

3 Lead Plaintiffs and Lead Counsel believe that the claims asserted in the Litigation
4 have merit and that the evidence developed to date supports the claims asserted therein.
5 However, Lead Plaintiffs and Lead Counsel recognize the expense and risk of continued
6 proceedings necessary to prosecute the Litigation against Defendants through trial and post-
7 trial appeals. Lead Plaintiffs and Lead Counsel also have taken into account the uncertain
8 outcome and the risk of litigation, especially in complex actions such as this Litigation, as
9 well as the difficulties and delays inherent in such litigation. Lead Plaintiffs and Lead
10 Counsel also are mindful of the inherent problems of proof under and possible defenses to
11 the securities law violations asserted in the Litigation. Lead Plaintiffs and Lead Counsel
12 believe that the Settlement set forth in this Stipulation confers substantial benefits upon the
13 Class. Based on their evaluation, Lead Plaintiffs and Lead Counsel have determined that the
14 Settlement set forth in this Stipulation is in the best interests of Lead Plaintiffs and the Class.

15 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

16 Throughout this Litigation, Defendants have denied, and continue to deny, any and all
17 allegations of fault, liability, wrongdoing, or damages whatsoever arising out of any of the
18 conduct, statements, acts, or omissions alleged, or that could have been alleged, in the
19 Litigation. Defendants also have denied, and continue to deny, among other allegations, the
20 allegations that Lead Plaintiffs or the Class have suffered any damages, or that Lead
21 Plaintiffs or the Class were harmed by the conduct alleged in the Litigation or that could
22 have been alleged as part of the Litigation. In addition, Defendants maintain that they have
23 meritorious defenses to all claims alleged in the Litigation. Defendants' decision to settle the
24 Litigation is based on the conclusion that it is desirable that the Litigation be fully and finally
25 settled in the manner and upon the terms and conditions set forth in this Stipulation, and that
26 it would be beneficial to avoid the burden, inconvenience, and expense associated with
27 continuing the Litigation, and the uncertainty and risks inherent in any litigation, especially
28 in complex cases like this Litigation.

1 **IV. TERMS OF THE STIPULATION AND AGREEMENT OF**
2 **SETTLEMENT**

3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
4 Lead Plaintiffs (for themselves and the Class Members) and Defendants, by and through
5 their counsel, that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal
6 Rules of Civil Procedure, in consideration of the benefits flowing to the parties from the
7 Settlement, the Litigation and the Released Claims shall be finally and fully compromised,
8 settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling
9 Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

10 **1. Definitions**

11 As used in this Stipulation the following terms, when capitalized, have the meanings
12 specified below:

13 1.1 “Claim(s)” means a paper claim submitted on a Proof of Claim and Release
14 form or an electronic claim that is submitted to the Claims Administrator.

15 1.2 “Claims Administrator” means Gilardi & Co. LLC.

16 1.3 “Class” means all Persons who purchased or otherwise acquired the publicly-
17 traded securities of First Solar between April 30, 2008 and February 28, 2012, inclusive.
18 Excluded from the Class are: Defendants, members of the immediate families of each of the
19 Defendants, the officers and directors of First Solar, at all relevant times, members of their
20 immediate families and their legal representatives, heirs, successors or assigns and any entity
21 in which Defendants had a controlling interest. The Class also excludes plaintiffs in the
22 action *Maverick Fund, L.D.C. v. First Solar, Inc., et al.*, Case No. 2:15-cv-01156-DGC (D.
23 Ariz.) (the “Opt-Out Litigation”), and any Class Member that validly and timely requested
24 exclusion in accordance with the requirements set by the Court in connection with the Notice
25 of Pendency of Class Action previously provided to the Class.

26 1.4 “Class Member” or “Member of the Class” means a Person who falls within
27 the definition of the Class as set forth in ¶1.3 above.
28

1 1.5 “Class Period” means the period between April 30, 2008 and February 28,
2 2012, inclusive.

3 1.6 “Defendants’ Counsel” means, collectively, the law firms of Cravath, Swaine
4 & Moore LLP and Osborn Maledon, P.A.

5 1.7 “Derivative Action” means the action captioned *Bargar, et al. v. Ahearn, et al.*,
6 No. CV2013-009938, pending in the Superior Court of Arizona, Maricopa County.

7 1.8 “Effective Date,” or the date upon which this Settlement becomes “effective,”
8 means the first date by which all of the events and conditions specified in ¶7.1 of the
9 Stipulation have been met and have occurred or have been waived.

10 1.9 “Escrow Agent” means the law firm of Robbins Geller Rudman & Dowd LLP
11 or its successor(s).

12 1.10 “Final” means, with respect to any order or Judgment of the Court, that such
13 order or Judgment represents a final and binding determination of all issues within its scope
14 and has not been reversed, vacated, or modified in any way and is no longer subject to
15 appellate review, either because of disposition on appeal and conclusion of the appellate
16 process or because of passage, without action, of time for seeking appellate review. Without
17 limitation, an order or Judgment becomes final when: (a) either no appeal therefrom has been
18 filed and the time has passed for any notice of appeal to be timely filed therefrom; or (b) an
19 appeal has been filed and either (i) the court of appeals has either affirmed the order or
20 Judgment or dismissed that appeal and the time for any reconsideration or further appellate
21 review has passed; or (ii) a higher court has granted further appellate review and that court
22 has either affirmed the underlying order or Judgment or affirmed the court of appeals’
23 decision affirming the Judgment or dismissing the appeal. For purposes of this paragraph, an
24 “appeal” shall include any motion for reconsideration or rehearing or petition for a writ of
25 *certiorari* or other writ that may be filed in connection with approval or disapproval of this
26 Settlement. Any appeal or proceeding seeking subsequent judicial review pertaining solely
27 to an order issued with respect to: (i) attorneys’ fees, costs, or expenses or awards to Lead
28 Plaintiffs, (ii) the Plan of Allocation (as submitted or subsequently modified), or (iii) the

1 procedures for determining Authorized Claimants' recognized claims, shall not in any way
2 delay, affect, or preclude the time set forth above for the Judgment to become Final, or
3 otherwise preclude the Judgment from becoming Final.

4 1.11 "Judgment" means the Order and Final Judgment to be rendered by the Court,
5 substantially in the form attached hereto as Exhibit B, as well as any form of final judgment
6 that may be entered by the Court in a form other than the form attached hereto as Exhibit B
7 and where none of the Settling Parties elects to terminate this Settlement by reason of such
8 variance, consistent with the terms of this Stipulation.

9 1.12 "Lead Counsel" means the law firm of Robbins Geller Rudman & Dowd LLP.

10 1.13 "Lead Plaintiffs" means Mineworkers' Pension Scheme and British Coal Staff
11 Superannuation Scheme.

12 1.14 "Liaison Counsel" means Bonnett Fairbourn Friedman & Balint, P.C.

13 1.15 "Litigation" means the consolidated actions captioned *Smilovits v. First Solar,*
14 *Inc. et al.*, No. 2:12-cv-00555-DGC pending in the United States District Court for the
15 District of Arizona.

16 1.16 "Net Settlement Fund" means the Settlement Fund less: (i) any Court-awarded
17 attorneys' fees, expenses, costs and charges (including awards to Lead Plaintiffs pursuant to
18 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class), and interest
19 thereon; (ii) Notice and Administration Expenses; (iii) Taxes and Tax Expenses; and
20 (iv) other Court-approved deductions.

21 1.17 "Person(s)" means an individual, corporation (including all its divisions and
22 subsidiaries thereof), limited liability corporation, professional corporation, partnership,
23 limited partnership, limited liability partnership, limited liability company, joint venture,
24 association, joint stock company, estate, legal representative, trust, unincorporated
25 association, government or any political subdivision or agency thereof, and any business or
26 legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators,
27 predecessors, successors, representatives, or assignees.

28

1 1.18 “Plaintiffs’ Counsel” means Lead Counsel, Liaison Counsel, and any attorney
2 or firm who has appeared in the Litigation on behalf of plaintiffs or the Class.

3 1.19 “Plan of Allocation” means a plan or formula of allocation of the Net
4 Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized
5 Claimants. Any Plan of Allocation is not part of this Stipulation and neither Defendants nor
6 their Related Parties shall have any responsibility or liability with respect thereto.

7 1.20 “Proof of Claim and Release” means the Proof of Claim and Release form for
8 submitting a Claim, which, subject to approval of the Court, shall be substantially in the form
9 attached hereto as Exhibit A-2. A Class Member must complete and submit the Proof of
10 Claim and Release should that Class Member seek to share in a distribution of the Net
11 Settlement Fund.

12 1.21 “Related Parties” means each Defendant’s respective families, parent entities,
13 associates, affiliates or subsidiaries and each and all of their respective past, present or future
14 officers, directors, stockholders, agents, representatives, employees, attorneys, financial or
15 investment advisors, advisors, consultants, accountants, investment bankers, commercial
16 bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors,
17 general or limited partners or partnerships, personal or legal representatives, estates,
18 administrators, predecessors, successors and assigns.

19 1.22 “Released Claims” means any and all claims (including Unknown Claims), and
20 causes of action of every nature and description whatsoever, in law, equity, or otherwise,
21 whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether
22 arising under federal, state, local, statutory, common law, foreign law, or any other law, rule,
23 or regulation, and whether class, individual, representative, legal, or equitable in nature,
24 concerning, based on, arising out of, or in connection with both: (i) the purchase or other
25 acquisition of First Solar publicly-traded securities by Lead Plaintiffs or any other Class
26 Member during the period between April 30, 2008 and February 28, 2012, inclusive; and (ii)
27 the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions
28 which have been or could have been asserted by or on behalf of any member of the Class.

1 Released Claims do not include claims to enforce the Settlement, or any shareholder
2 derivative claims on behalf of First Solar being pursued in the Derivative Action.

3 1.23 “Released Defendants’ Claims” means any and all claims and causes of action
4 of every nature and description whatsoever, including both known claims and Unknown
5 Claims, that arise out of, are based upon, or relate in any way to the institution, prosecution,
6 or settlement of the claims against Defendants in the Litigation, except for claims relating to
7 the enforcement of the Settlement.

8 1.24 “Released Persons” means each and all of the Defendants and their Related
9 Parties.

10 1.25 “Releasing Plaintiff Party” or “Releasing Plaintiff Parties” means Plaintiffs’
11 Counsel and each and every plaintiff, Class Member, and counsel to any plaintiff in their
12 capacity as such, and each of their respective past or present trustees, officers, directors,
13 partners, employees, contractors, accountants, auditors, principals, agents, attorneys,
14 predecessors, successors, assigns, representatives, affiliates, insurers, parents, subsidiaries,
15 general or limited partners or partnerships, and limited liability companies; and the spouses,
16 members of the immediate families, representatives, and heirs of any Releasing Plaintiff
17 Party who is an individual, as well as any trust of which any Releasing Plaintiff Party is the
18 settlor or which is for the benefit of any of their immediate family members. Releasing
19 Plaintiff Parties does not include any Person who timely and validly sought exclusion from
20 the Class, or the plaintiffs in the Opt-Out Litigation.

21 1.26 “Settlement” means the resolution of the Litigation in accordance with the
22 terms and provisions of this Stipulation.

23 1.27 “Settlement Amount” means Three Hundred Fifty Million Dollars (U.S.
24 \$350,000,000.00) to be paid by check(s) and/or wire transfer(s) to the Escrow Agent
25 pursuant to ¶2.2 of this Stipulation.

26 1.28 “Settlement Fund” means the Settlement Amount plus all interest and
27 accretions thereto.

28

1 1.29 “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2)
2 of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

3 1.30 “Settling Parties” means, collectively, Defendants and Lead Plaintiffs, on
4 behalf of themselves and the Class.

5 1.31 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts,
6 and other charges of any kind, in each case in the nature of a tax (together with any and all
7 interest, penalties, additions to tax and additional amounts imposed with respect thereto)
8 imposed by any governmental authority, including, but not limited to, any federal, state, and
9 local taxes.

10 1.32 “Unknown Claims” means (a) any and all Released Claims which the
11 Releasing Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time
12 of the release of the Released Persons, which, if known by him, her, or it, might have
13 affected his, her, or its settlement with and release of the Released Persons, or might have
14 affected his, her, or its decision(s) with respect to the Settlement, including, but not limited
15 to, whether or not to object to this Settlement or seek exclusion from the Class; and (b) any
16 and all Released Defendants’ Claims that the Released Persons do not know or suspect to
17 exist in his, her, or its favor at the time of the release of the Lead Plaintiffs, the Class and
18 Plaintiffs’ Counsel, which, if known by him, her, or it, might have affected his, her, or its
19 settlement and release of Lead Plaintiffs, the Class and Lead Plaintiffs’ Counsel. With
20 respect to (a) any and all Released Claims against the Released Persons, and (b) any and all
21 Released Defendants’ Claims against Plaintiffs, the Class and Plaintiffs’ Counsel, the
22 Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties shall
23 expressly waive and each Releasing Plaintiff Party and Released Person shall be deemed to
24 have, and by operation of the Judgment shall have expressly waived, the provisions, rights,
25 and benefits of California Civil Code §1542, which provides:

26 **A general release does not extend to claims that the creditor or releasing**
27 **party does not know or suspect to exist in his or her favor at the time of**
28 **executing the release and that, if known by him or her, would have**
 materially affected his or her settlement with the debtor or released party.

1 The Settling Parties shall expressly waive and each Releasing Plaintiff Party and Released
2 Person shall be deemed to have, and by operation of the Judgment shall have, expressly
3 waived any and all provisions, rights, and benefits conferred by any law of any state or
4 territory of the United States, or principle of common law, which is similar, comparable, or
5 equivalent to California Civil Code §1542. The Releasing Plaintiff Parties and Released
6 Persons acknowledge that they may hereafter discover facts in addition to or different from
7 those which he, she, it or their counsel now knows or believes to be true with respect to the
8 subject matter of the Released Claims or Released Defendants' Claims, but (a) the Releasing
9 Plaintiff Parties shall expressly fully, finally, and forever waive, compromise, settle,
10 discharge, extinguish, and release, and each Releasing Plaintiff Party shall be deemed to
11 have waived, compromised, settled, discharged, extinguished, and released, and upon the
12 Effective Date, and by operation of the Judgment shall have waived, compromised, settled,
13 discharged, extinguished, and released, fully, finally, and forever, any and all Released
14 Claims against the Released Persons, known or unknown, suspected or unsuspected,
15 contingent or non-contingent, whether or not concealed or hidden, which now exist, or
16 heretofore have existed, upon any theory of law or equity now existing or coming into
17 existence in the future, including, but not limited to, conduct which is negligent, intentional,
18 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
19 discovery or existence of such different or additional facts, legal theories, or authorities, and
20 (b) the Released Persons shall expressly fully, finally, and forever waive, compromise, settle,
21 discharge, extinguish, and release, and upon the Effective Date, and by operation of the
22 Judgment shall have waived, compromised, settled, discharged, extinguished, and released,
23 fully, finally, and forever, any and all Released Defendants' Claims against the Lead
24 Plaintiffs, the Class and Plaintiffs' Counsel, known or unknown, suspected or unsuspected,
25 contingent or non-contingent, whether or not concealed or hidden, which now exist, or
26 heretofore have existed, upon any theory of law or equity now existing or coming into
27 existence in the future, including, but not limited to, conduct which is negligent, intentional,
28 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent

1 discovery or existence of such different or additional facts, legal theories, or authorities. The
2 Settling Parties acknowledge, and the Releasing Plaintiff Parties and Released Persons shall
3 be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver
4 was separately bargained for and is an essential element of the Settlement of which this
5 release is a part.

6 **2. The Settlement**

7 2.1 The obligations incurred pursuant to the Stipulation are: (a) subject to approval
8 by the Court and the Judgment becoming Final; and (b) in full and final disposition of the
9 Litigation with respect to the Releasing Plaintiff Parties and Released Persons and any and
10 all Released Claims and Released Defendants' Claims upon and subject to the terms and
11 conditions set forth herein.

12 2.2 On or before January 25, 2020, Defendants shall pay the Settlement Amount to
13 the Escrow Agent.

14 2.3 In the event Defendants fail to make the payment provided within the time
15 period provided for in ¶2.2, Lead Plaintiffs shall have the right to terminate and cancel the
16 Settlement on behalf of itself and the Class with respect to the Settlement in its entirety, by
17 providing written notice of their election to do so to the other parties to this Stipulation.

18 2.4 Other than the obligation to pay or cause to be paid the Settlement Amount into
19 the Settlement Fund set forth in ¶2.2, the Released Persons shall have no responsibility for,
20 interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by
21 Lead Counsel or the Claims Administrator, or any of their respective designees, in
22 connection with the administration of the Settlement or otherwise; (ii) the management,
23 investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the
24 determination, administration, calculation, or payment of any Claims asserted against the
25 Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or
26 (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection
27 with the taxation of the Settlement Fund, distributions or other payments from the Escrow
28 Account, or the filing of any federal, state, or local returns.

1 2.5 Other than the obligation to cause the payment of the Settlement Amount in
2 accordance with the terms of ¶2.2, Defendants shall have no obligation to make any other
3 payments into the Escrow Account, to any Class Member or to Lead Plaintiffs pursuant to
4 the Stipulation.

5 **a. Condition Precedent**

6 2.6 The Settlement is conditioned on the Court granting final approval of the
7 Settlement, and approval of the Settlement becoming Final. Approval of the Settlement
8 becomes Final when the conditions set forth in ¶1.10 are satisfied.

9 **b. The Escrow Agent**

10 2.7 The Escrow Agent shall invest the Settlement Amount deposited pursuant to
11 ¶2.2 hereof in United States Agency or Treasury Securities or other instruments backed by
12 the Full Faith & Credit of the United States Government or an Agency thereof, or fully
13 insured by the United States Government or an Agency thereof and shall reinvest the
14 proceeds of these instruments as they mature in similar instruments at their then-current
15 market rates. All risks related to the investment of the Settlement Fund in accordance with
16 the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund,
17 and the Released Persons shall have no responsibility for, interest in, or liability whatsoever
18 with respect to investment decisions or the actions of the Escrow Agent, or any transactions
19 executed by the Escrow Agent. Provided the Escrow Agent invests the Settlement Fund as
20 set forth herein, the Escrow Agent shall have no liability whatsoever with respect to any
21 investment decision made in connection with the Settlement Fund.

22 2.8 The Escrow Agent shall not disburse the Settlement Fund except as provided in
23 this Stipulation, by an order of the Court, or with the prior written agreement of Defendants'
24 Counsel and Lead Counsel.

25 2.9 Subject to further order(s) and/or directions as may be made by the Court, or as
26 provided in this Stipulation, the Escrow Agent is authorized to execute such transactions as
27 are consistent with the terms of this Stipulation and shall incur no liability whatsoever for
28 doing so. The Released Persons shall have no responsibility for, interest in, or liability

1 whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by
2 the Escrow Agent.

3 2.10 All funds held by the Escrow Agent shall be deemed and considered to be in
4 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until
5 such time as such funds shall be distributed pursuant to this Stipulation and/or further
6 order(s) of the Court.

7 2.11 Notwithstanding the fact that the Effective Date of the Settlement has not yet
8 occurred, Lead Counsel may pay from the Settlement Fund, upon approval from the Court,
9 costs and expenses actually incurred in connection with providing notice of the Settlement to
10 the Class by mail, publication, and other means, locating Class Members, assisting with the
11 submission of Claims, processing Proof of Claim and Release forms, administering the
12 Settlement, and paying escrow taxes, fees and costs, if any, up to a maximum of \$1.25
13 million (“Notice and Administration Expenses”). The \$1.25 million maximum only applies
14 to such costs and expenses paid prior to the Effective Date. After the Effective Date, Lead
15 Counsel may pay all of the costs and expenses actually incurred in connection with the
16 administration of the Settlement Fund without further order of the Court. In the event that
17 the Settlement does not become Final, any money paid or incurred for the above purposes,
18 including any related fees, shall not be returned or repaid to Defendants.

19 2.12 It shall be Lead Counsel’s responsibility to disseminate the Notice, Proof of
20 Claim and Release, and Summary Notice to the Class in accordance with this Stipulation and
21 as ordered by the Court. The Released Persons shall have no responsibility for or liability
22 whatsoever with respect to the Notice and Administration Expenses, nor shall they have any
23 responsibility or liability whatsoever for any claims with respect thereto, including any
24 claims that may arise from any failure of the notice process. The Escrow Agent through the
25 Settlement Fund, shall indemnify and hold each of the Released Persons and their counsel
26 harmless for any Notice and Administration Expenses.

27
28

1 **c. Taxes**

2 2.13 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement
3 Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.
4 §1.468B-1, and the regulations promulgated thereunder. The Settling Parties and the Escrow
5 Agent further agree that the Settlement Fund shall be established pursuant to the Court’s
6 subject matter jurisdiction within the meaning of Treas. Reg. §1.468B-1(c)(1). In addition,
7 the Escrow Agent shall timely make such elections as necessary or advisable to carry out the
8 provisions of this ¶2.13, and the Escrow Agent and the Released Persons shall jointly make
9 the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest
10 permitted date. Such elections shall be made in accordance with the procedures and
11 requirements contained in such regulations. It shall be the responsibility of the Escrow
12 Agent to timely and properly prepare and deliver the necessary documentation for signature
13 by all necessary parties, and thereafter to cause the appropriate filing to occur.

14 (b) For the purpose of §468B of the Internal Revenue Code of 1986, as
15 amended, and the regulations promulgated thereunder, the “administrator” (as defined in
16 Treas. Reg. §1.468B-2(k)(3)) shall be the Escrow Agent. The Escrow Agent shall timely and
17 properly file all informational and other federal, state, or local Tax returns necessary or
18 advisable with respect to the earnings on the Settlement Fund (including, without limitation,
19 the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the elections
20 described in ¶2.13(a) hereof) shall be consistent with this ¶2.13 and in all events shall reflect
21 that all Taxes (including any estimated Taxes) on the income earned by the Settlement Fund
22 shall be paid out of the Settlement Fund as provided in ¶2.13(c) hereof.

23 (c) All (i) Taxes (including any estimated Taxes) arising with respect to the
24 income earned by the Settlement Fund, including any Taxes or Tax detriments to which the
25 Released Persons or their counsel may be subject with respect to any income earned by the
26 Settlement Fund for any period, after the deposit of the Settlement Amount, during which the
27 Settlement Fund is not treated, or does not qualify, as a “qualified settlement fund” for
28 federal or state income Tax purposes, and (ii) expenses and costs incurred in connection with

1 the operation and implementation of this ¶2.13 (including, without limitation, expenses of
2 tax attorneys and/or accountants and mailing and distribution costs and expenses relating to
3 filing (or failing to file) the returns described in this ¶2.13) (“Tax Expenses”), shall be paid
4 out of the Settlement Fund; in all events the Released Persons and their counsel shall have no
5 liability or responsibility whatsoever for any Taxes or Tax Expenses. The Escrow Agent,
6 through the Settlement Fund, shall indemnify and hold each of the Released Persons and
7 their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes
8 payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be
9 treated as, and considered to be, a cost of administration of the Settlement Fund and shall be
10 timely paid by the Escrow Agent out of the Settlement Fund without prior order from the
11 Court and the Escrow Agent shall be authorized (notwithstanding anything herein to the
12 contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay
13 such amounts, including the establishment of adequate reserves for any Taxes and Tax
14 Expenses (as well as any amounts that may be required to be withheld under Treas. Reg.
15 §1.468B-2(l)(2)); neither the Released Persons nor their counsel are responsible nor shall
16 they have any liability for any Taxes or Tax Expenses. The Settling Parties hereto agree to
17 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the
18 extent reasonably necessary to carry out the provisions of this ¶2.13.

19 2.14 The Settlement is non-recapture, *i.e.*, it is not a claims-made settlement. If this
20 Settlement is finally approved, the Defendants will have no ability to get back any of the
21 Settlement Fund for any reason.

22 2.15 Each Released Person shall timely deliver to the Escrow Agent a “Section
23 1.468B-3 Statement” (as provided in Treas. Reg. §1.468B-3(e)) with respect to any transfers
24 it makes to the Settlement Fund.

25 **d. Termination of Settlement**

26 2.16 In the event that the Settlement is not approved, or is terminated, canceled, or
27 the Effective Date otherwise fails to occur for any reason, including, without limitation, in
28 the event the Judgment does not become Final, the Settlement Fund less Notice and

1 Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing
2 pursuant to ¶¶2.11 and 2.13 hereof in connection with the Settlement provided for herein,
3 shall be refunded pursuant to written instructions from Defendants' Counsel in accordance
4 with ¶7.4 herein.

5 **3. Preliminary Approval Order and Settlement Hearing**

6 3.1 Promptly after execution of this Stipulation, Lead Counsel shall submit this
7 Stipulation together with its Exhibits to the Court forthwith for entry of an order (the
8 "Preliminary Approval Order"), substantially in the form of Exhibit A attached hereto,
9 requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation
10 and approval for the mailing of a settlement notice (the "Notice") and publication of a
11 summary notice ("Summary Notice"), substantially in the forms of Exhibits A-1 and A-3
12 attached hereto. The Notice shall include the general terms of the Settlement set forth in this
13 Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense
14 Application, as defined in ¶6.1 hereof, and the date of the Settlement Hearing as defined
15 below.

16 3.2 Lead Counsel shall request that, after notice is given and not earlier than one
17 hundred (100) calendar days after the Court issues preliminary approval of the proposed
18 Settlement, the Court hold a hearing (the "Settlement Hearing") and approve the Settlement
19 of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also
20 will request that the Court approve the proposed Plan of Allocation and the Fee and Expense
21 Application.

22 **4. Releases**

23 4.1 Upon the Effective Date, as defined in ¶1.8 hereof, Lead Plaintiffs shall, and
24 each and every Releasing Plaintiff Party shall be deemed to have, and by operation of the
25 Judgment shall have, fully, finally, and forever waived, released, relinquished, discharged,
26 and dismissed each and every one of the Released Claims against each and every one of the
27 Released Persons and shall forever be barred and enjoined from commencing, instituting,
28 prosecuting, or maintaining any and all of the Released Claims against any and all of the

1 Released Persons, whether or not such Releasing Plaintiff Party executes and delivers the
2 Proof of Claim and Release or shares in the Net Settlement Fund. Claims to enforce the
3 terms of this Stipulation are not released.

4 4.2 Any Proof of Claim and Release that is executed by Class Members shall
5 release all Released Claims against the Released Persons and shall be substantially in the
6 form contained in Exhibit A-2 attached hereto.

7 4.3 Upon the Effective Date, the Releasing Plaintiff Parties will be forever barred
8 and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any
9 action or other proceeding in any court of law or equity, arbitration tribunal, or
10 administrative forum, asserting the Released Claims against any of the Released Persons.

11 4.4 Upon the Effective Date, each of the Released Persons shall be deemed to
12 have, and by operation of the Judgment shall have, fully, finally, and forever released,
13 relinquished, and discharged all Released Defendants' Claims against Lead Plaintiffs, the
14 Class and Plaintiffs' Counsel. Claims to enforce the terms of this Stipulation are not
15 released.

16 **5. Administration and Calculation of Claims, Final Awards, and**
17 **Supervision and Distribution of the Settlement Fund**

18 5.1 The Claims Administrator, subject to such supervision and direction of Lead
19 Counsel and the Court as may be necessary or as circumstances may require, shall administer
20 and calculate the Claims submitted by Class Members and shall oversee distribution of the
21 Net Settlement Fund to Authorized Claimants. The Released Persons and Defendants'
22 Counsel shall have no responsibility for or interest in whatsoever with respect to the
23 administration of the Settlement or the actions or decisions of the Claims Administrator, and
24 shall have no liability whatsoever to the Releasing Plaintiff Parties, including Lead Plaintiffs,
25 any other Class Members, or Plaintiffs' Counsel, in connection with such administration,
26 including, but not limited to: (i) any act, omission, or determination by Lead Counsel, the
27 Escrow Agent, and/or the Claims Administrator, or any of their respective designees or
28 agents, in connection with the administration of the Settlement or otherwise; (ii) the

1 management or investment of the Settlement Fund or the Net Settlement Fund, or the
2 distribution of the Net Settlement Fund; (iii) the Plan of Allocation; (iv) the determination,
3 administration, calculation, or payment of any Claims asserted against the Settlement Fund;
4 (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the
5 payment or withholding of any Taxes, expenses, and/or costs incurred with the taxation of
6 the Settlement Fund or the filing of any federal, state, or local returns.

7 5.2 The Settlement Fund shall be applied as follows:

8 (a) to pay all Notice and Administration Expenses;

9 (b) to pay the Taxes and Tax Expenses;

10 (c) to pay attorneys' fees and expenses of Plaintiffs' Counsel and awards to
11 Lead Plaintiffs (the "Fee and Expense Award"); and

12 (d) after the Effective Date, to distribute the Net Settlement Fund to
13 Authorized Claimants as provided by this Stipulation, the Plan of Allocation, or the orders of
14 the Court.

15 5.3 After the Effective Date, and in accordance with the terms of this Stipulation,
16 the Plan of Allocation, or such further approval and further order(s) of the Court as may be
17 necessary or as circumstances may require, the Net Settlement Fund shall be distributed to
18 Authorized Claimants, subject to and in accordance with the following provisions of this
19 Stipulation.

20 5.4 Within one hundred twenty (120) calendar days after the mailing of the Notice
21 or such other time as may be set by the Court, each Class Member shall be required to
22 submit to the Claims Administrator a completed Proof of Claim and Release, substantially in
23 the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by
24 such documents as are specified in the Proof of Claim and Release.

25 5.5 Except as provided for herein or otherwise ordered by the Court, all Class
26 Members who fail to timely submit a valid Proof of Claim and Release shall be forever
27 barred from receiving any payments pursuant to this Stipulation and the Settlement set forth
28 herein, but will in all other respects be subject to and bound by the provisions of this

1 Stipulation, the releases contained herein, and the Judgment, and will be barred from
2 bringing any action against the Released Persons concerning the Released Claims.
3 Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not an
4 obligation) to accept late-submitted Claims for processing by the Claims Administrator so
5 long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially
6 delayed thereby. No Person shall have any claim against any Lead Plaintiff, Plaintiffs’
7 Counsel, the Claims Administrator or any Class Member by reason of the exercise or non-
8 exercise of such discretion.

9 5.6 Each Proof of Claim and Release shall be submitted to and reviewed by the
10 Claims Administrator, who shall determine, in accordance with this Stipulation and the
11 approved Plan of Allocation, the extent, if any, to which each Claim shall be allowed, subject
12 to review by the Court pursuant to ¶5.8 below.

13 5.7 Proof of Claim and Release forms that do not meet the submission
14 requirements may be rejected. Prior to rejecting a Proof of Claim and Release in whole or in
15 part, the Claims Administrator shall communicate with the claimant in writing to give the
16 claimant the chance to remedy any curable deficiencies in the Proof of Claim and Release
17 submitted. The Claims Administrator, under the supervision of Lead Counsel, shall notify,
18 in a timely fashion and in writing, all claimants whose Claims the Claims Administrator
19 proposes to reject in whole or in part for curable deficiencies, setting forth the reasons
20 therefor, and shall indicate in such notice that the claimant whose Claim is to be rejected has
21 the right to a review by the Court if the claimant so desires and complies with the
22 requirements of ¶5.8 below.

23 5.8 If any claimant whose timely Claim has been rejected in whole or in part for
24 curable deficiency desires to contest such rejection, the claimant must, within twenty (20)
25 calendar days after the date of mailing of the notice required in ¶5.7 above, or a lesser period
26 of time if the Claim was untimely, serve upon the Claims Administrator a notice and
27 statement of reasons indicating the claimant’s grounds for contesting the rejection along with
28 any supporting documentation, and requesting a review thereof by the Court. If a dispute

1 concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the
2 claimant's request for review to the Court.

3 5.9 Each claimant shall be deemed to have submitted to the jurisdiction of the
4 Court with respect to the Person's claim to the Net Settlement Fund. All proceedings with
5 respect to the administration, processing and determination of Claims and the determination
6 of all controversies relating thereto, including disputed questions of law and fact with respect
7 to the validity of Claims, shall be subject to the jurisdiction of the Court, but shall not in any
8 event delay or affect the finality of the Judgment. All Class Members, other claimants, and
9 parties to this Settlement expressly waive trial by jury (to the extent any such right may
10 exist) and any right of appeal or review with respect to such determinations.

11 5.10 Following the Effective Date, the Net Settlement Fund shall be distributed to
12 the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in
13 the Notice and approved by the Court. No distributions will be made to Authorized
14 Claimants who would otherwise receive a distribution of less than \$10.00. If there is any
15 balance remaining in the Net Settlement Fund after a reasonable period of time after the date
16 of the distribution of the Net Settlement Fund, the Claims Administrator at Lead Counsel's
17 direction shall, if feasible, redistribute such balance among Authorized Claimants who
18 negotiated the checks sent in the initial distribution and who would receive a minimum of
19 \$10.00. These redistributions shall be repeated until the balance remaining in the Net
20 Settlement Fund is *de minimis*. Any *de minimis* balance that still remains in the Net
21 Settlement Fund after such reallocation(s) and payments, which is not feasible or economical
22 to reallocate, shall be donated to any appropriate, non-profit charitable organization(s)
23 serving the public interest that is unaffiliated with any party or their counsel.

24 5.11 The Released Persons shall have no responsibility for, interest in, or liability
25 whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of
26 Allocation, the determination, administration, or calculation of Claims, the payment or
27 withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No
28 Person shall have any claim of any kind against the Released Persons with respect to the

1 matters set forth in ¶¶5.1-5.13 hereof; and the Releasing Plaintiff Parties release the Released
2 Persons from any and all liability and claims arising from or with respect to the
3 administration, investment, or distribution of the Settlement Fund.

4 5.12 No Person shall have any claim against any Released Persons, any Lead
5 Plaintiff, any counsel to any Lead Plaintiff or the Claims Administrator, or any other Person
6 designated by Lead Counsel based on determinations or distributions made substantially in
7 accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation,
8 or further order(s) of the Court.

9 5.13 It is understood and agreed by the Settling Parties that any proposed Plan of
10 Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an
11 Authorized Claimant's Claim set forth therein, is not a part of this Stipulation and is to be
12 considered by the Court separately from the Court's consideration of the fairness,
13 reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or
14 proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this
15 Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the
16 Settlement set forth herein, or any other orders entered pursuant to the Stipulation.

17 **6. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses**

18 6.1 Lead Counsel may submit an application or applications (the "Fee and Expense
19 Application") from the Settlement Fund for: (a) an award of attorneys' fees; plus (b)
20 expenses or charges in connection with prosecuting the Litigation; plus (c) any interest
21 earned on such attorneys' fees and expenses at the same rate and for the same periods as
22 earned by the Settlement Fund (until paid). In addition, Lead Plaintiffs may request awards
23 in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4).
24 Lead Counsel reserves the right to make additional applications for fees and expenses
25 incurred.

26 6.2 Any fees and expenses, as awarded by the Court, shall be paid to Lead Counsel
27 from the Settlement Fund, as ordered, immediately after the Court executes the Judgment
28 and an order awarding such fees and expenses, notwithstanding the existence of any timely

1 filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral
2 attack on the Settlement or any part thereof. Lead Counsel may thereafter allocate the
3 attorneys' fees among Plaintiffs' Counsel in a manner in which it in good faith believes
4 reflects the contributions of such counsel to the initiation, prosecution, and resolution of the
5 Litigation.

6 6.3 In the event that the Effective Date does not occur, or the Judgment or the
7 order making the Fee and Expense Award is reversed or modified, or this Stipulation is
8 canceled or terminated for any other reason, and such reversal, modification, cancellation or
9 termination becomes Final and not subject to review, and in the event that the Fee and
10 Expense Award has been paid, then Lead Counsel, including its partners, and such other
11 Plaintiffs' Counsel, including their law firms, partners, and/or shareholders who received any
12 portion of the Fee and Expense Award shall, within ten (10) business days from receiving
13 notice from Defendants' Counsel, or from a court of appropriate jurisdiction, refund to the
14 Settlement Fund all such fees and expenses previously paid to them from the Settlement
15 Fund, in an amount consistent with such reversal, modification, cancellation or termination,
16 and such fees and expenses shall be distributed from the Settlement Fund in accordance with
17 ¶7.4. Any refunds required pursuant to this ¶6.3 shall be the several obligation of Plaintiffs'
18 Counsel, including their law firms, partners, and/or shareholders, to make appropriate
19 refunds or repayments to the Settlement Fund. Each such Plaintiffs' Counsel receiving an
20 award of fees and expenses or Lead Plaintiff receiving an award pursuant to 15 U.S.C. §78u-
21 4(a)(4), as a condition of receiving such fees, expenses or award on behalf of itself and each
22 partner and/or shareholder of it, agrees that (a) such Person and its partners, shareholders,
23 and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the
24 provisions of this paragraph, and (b) are severally liable for the full amount of any fees,
25 expenses and/or costs paid to them from the Settlement Fund together with the interest
26 earned thereon. Without limitation, Plaintiffs' Counsel and Lead Plaintiffs and their
27 partners, shareholders, and/or members agree that the Court may, upon application of
28 Defendants and notice to Plaintiffs' Counsel, summarily issue orders, including, but not

1 limited to, judgments and attachment orders, and may make appropriate findings of or
2 sanctions for contempt, should such law firms or any of its partners, shareholders, or
3 members fail to timely repay fees, interest and expenses pursuant to this paragraph.

4 6.4 The procedure for and the allowance or disallowance by the Court of any
5 applications by any Plaintiffs' Counsel for attorneys' fees and expenses to be paid out of the
6 Settlement Fund is not part of the Settlement set forth in this Stipulation, and is to be
7 considered by the Court separately from the Court's consideration of the fairness,
8 reasonableness, and adequacy of the Settlement set forth in this Stipulation, and shall have
9 no effect on the terms of the Stipulation or on the validity or enforceability of this
10 Settlement. The approval of the Settlement, and it becoming Final, shall not be contingent
11 on the award of attorneys' fees and expenses, any award to Lead Plaintiffs, Lead Counsel, or
12 Plaintiffs' Counsel, nor any appeals from such awards. Any order or proceeding relating to
13 the Fee and Expense Application, or any appeal from any order relating thereto or reversal or
14 modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or
15 delay the finality of the Judgment approving this Stipulation and the Settlement of the
16 Litigation set forth therein.

17 6.5 Any fees and/or expenses awarded by the Court shall be paid solely from the
18 Settlement Fund. With the sole exception of Defendants' obligation to pay or cause the
19 Settlement Amount to be paid into the Escrow Account as provided for in ¶2.2, the Released
20 Persons shall have no responsibility for, and no liability whatsoever with respect to, any
21 payment of attorneys' fees and/or expenses (including Taxes) to Plaintiffs' Counsel, or any
22 other counsel or Person who receives payment from the Net Settlement Fund.

23 6.6 The Released Persons shall have no responsibility for, and no liability
24 whatsoever with respect to, the allocation among Plaintiffs' Counsel and/or any other Person
25 who may assert some claim thereto, of any Fee and Expense Award that the Court may make
26 in the Litigation.

27
28

1 6.7 The Released Persons shall have no responsibility for, and no liability
2 whatsoever with respect to, any attorneys' fees, costs, or expenses (including Taxes) incurred
3 by or on behalf of any Class Member, whether or not paid from the Escrow Account.

4 **7. Conditions of Settlement, Effect of Disapproval, Cancellation, or**
5 **Termination**

6 7.1 The Effective Date of the Settlement shall be conditioned on the occurrence of
7 all of the following events:

- 8 (a) the Settlement Amount has been deposited into the Escrow Account;
9 (b) the Court has entered the Preliminary Approval Order directing notice
10 to the Class, as required by ¶3.1 hereof;
11 (c) the Court has entered the Judgment, or a judgment substantially in the
12 form of Exhibit B attached hereto;
13 (d) the Judgment has become Final, as defined in ¶1.10 hereof.

14 7.2 Upon the Effective Date, any and all remaining interest or right of the
15 Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.
16 If the conditions specified in ¶7.1 hereof are not met, then the Settlement shall be canceled
17 and terminated subject to ¶¶7.4, 7.5 and 7.6 hereof unless Lead Counsel and counsel for the
18 Defendants mutually agree in writing to proceed with the Settlement.

19 7.3 Each of Lead Plaintiffs and Defendants shall have the right to terminate the
20 Settlement and this Stipulation by providing written notice of their election to do so
21 (“Termination Notice”) to all other parties hereto within thirty (30) calendar days of: (a) the
22 Court’s refusal to enter the Preliminary Approval Order; (b) the Court’s refusal to approve
23 the Settlement; (c) the Court’s refusal to enter the Judgment; (d) the date upon which the
24 Judgment is reversed or vacated or altered following any appeal taken therefrom, or is
25 successfully collaterally attacked; or (e) the failure of the Effective Date to occur for any
26 reason. For avoidance of doubt, no order of the Court or modification or reversal on appeal
27 of any order of the Court concerning the Plan of Allocation or the amount of any attorney’s
28 fees, expenses, and interest awarded by the Court to Lead Counsel or costs and expenses to

1 Lead Plaintiffs shall operate to terminate or cancel this Stipulation or constitute grounds for
2 cancellation or termination of the Stipulation.

3 7.4 Unless otherwise ordered by the Court, in the event this Stipulation is not
4 approved or this Stipulation or the Settlement is terminated, or canceled, or the Effective
5 Date otherwise fails to occur for any reason, including, without limitation, in the event the
6 Judgment is reversed or vacated or altered following any appeal taken therefrom, within ten
7 (10) business days after written notification of such event is sent by Defendants' Counsel, or
8 Lead Counsel to the Escrow Agent, the Settlement Fund, less Taxes, Tax Expenses and
9 Notice and Administration Expenses which have either been disbursed pursuant to ¶¶2.11
10 and/or 2.13 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶2.11 and/or 2.13
11 hereof, shall be returned to Defendants by the Escrow Agent. The Escrow Agent or its
12 designee shall apply for any Tax refund owed on the Settlement Amount and pay the
13 proceeds, after deduction of any fees or expenses incurred in connection with such
14 application(s) for refund to the same Persons in the same manner as the Settlement Fund
15 described in this ¶7.4. Such payments shall be pursuant to written instructions from
16 Defendants' Counsel.

17 7.5 In the event that this Stipulation is not approved or this Stipulation or the
18 Settlement is terminated, canceled, or the Effective Date otherwise fails to occur for any
19 reason, the Settling Parties shall be restored to their respective positions in the Litigation as
20 of January 5, 2020. In such event, the terms and provisions of the Stipulation, with the
21 exception of ¶¶1.1-1.32, 2.11-2.13, 2.15-2.16, 6.3-6.4, 7.4-7.6, and 9.6 hereof, shall have no
22 further force and effect with respect to the Settling Parties and shall not be used in this
23 Litigation or in any other proceeding for any purpose, and any judgment or order entered by
24 the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc*
25 *pro tunc*. No order of the Court or modification or reversal on appeal of any order of the
26 Court concerning the Plan of Allocation or any Fee and Expense Award shall operate to
27 terminate or cancel this Stipulation or constitute grounds for cancellation or termination of
28 this Stipulation.

1 7.6 If the Effective Date does not occur, or if this Stipulation is terminated
2 pursuant to its terms, neither Lead Plaintiffs nor Plaintiffs' Counsel shall have any obligation
3 to repay any amounts disbursed pursuant to ¶¶2.11 or 2.13. In addition, any amounts already
4 incurred pursuant to ¶¶2.11 or 2.13 hereof at the time of such termination or cancellation but
5 which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of
6 this Stipulation prior to the balance being refunded in accordance with ¶¶2.16 and 7.4 hereof.

7 **8. No Admission of Wrongdoing**

8 8.1 Neither the Settlement, this Stipulation (whether or not consummated),
9 including the Exhibits hereto and the Plan of Allocation contained therein (or any other plan
10 of allocation that may be approved by the Court), the negotiations leading to the execution of
11 this Stipulation and the Settlement, nor any proceedings taken pursuant to or in connection
12 with this Stipulation, and/or approval of the Settlement (including any arguments proffered
13 in connection therewith):

14 (a) shall be offered or received against any Defendant as evidence of or
15 construed as or deemed to be evidence of any presumption, concession, or admission by any
16 Defendant of the truth of any allegations by Lead Plaintiffs or any Member of the Class or
17 the validity of any claim that has been or could have been asserted in the Litigation, or the
18 deficiency of any defense that has been or could have been asserted in the Litigation or in
19 any other litigation, including, but not limited to, litigation of the Released Claims, or of any
20 liability, negligence, fault, or wrongdoing of any kind of any of the Defendants;

21 (b) shall be referred to for any other reason as against any of the
22 Defendants, in any civil, criminal, or administrative action or proceeding, other than in such
23 proceedings as may be necessary to effectuate the provisions of this Stipulation;

24 (c) shall be offered or received against any Defendant as evidence of a
25 presumption, concession, or admission of any fault, misrepresentations, or omission with
26 respect to any statement or written document approved or made by any Defendant, or against
27 Lead Plaintiffs or any Member of the Class as evidence of any infirmity in the claims of
28 Lead Plaintiffs and the Class;

1 (d) shall be offered or received against any Defendant as evidence of a
2 presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or
3 in any way referred to for any other reason as against any of the parties to this Stipulation, in
4 any other civil, criminal, or administrative action or proceeding; provided, however, that if
5 this Stipulation is approved by the Court, Defendants and their Related Parties may refer to it
6 to effectuate the release granted them hereunder; or

7 (e) shall be construed against Defendants, Lead Plaintiffs, or the Class as
8 evidence of a presumption, concession, or admission that the consideration to be given
9 hereunder represents the amount which could be or would have been recovered after trial or
10 in any proceeding other than this Settlement.

11 **9. Miscellaneous Provisions**

12 9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this
13 agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and
14 implement all terms and conditions of this Stipulation and to exercise their best efforts to
15 accomplish the foregoing terms and conditions of this Stipulation.

16 9.2 The Settling Parties intend this Settlement to be a final and complete resolution
17 of all disputes between the Class and the Defendants with respect to the Litigation. The
18 Settlement shall not be deemed an admission by any Settling Party as to the merits of any
19 claim or defense. The Judgment will contain a finding that, during the course of the
20 Litigation, the Settling Parties and their respective counsel at all times complied with the
21 requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the
22 Settlement Amount and the other terms of the Settlement were negotiated in good faith by
23 the Settling Parties, and reflect a settlement that was reached voluntarily after consultation
24 with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner
25 that such party determines to be appropriate, any contention made in any public forum
26 regarding the Litigation, including that the Litigation was brought or defended in bad faith or
27 without a reasonable basis.

28

1 9.3 Defendants and/or the Released Persons may file this Stipulation and/or the
2 Judgment from this action in any other action that may be brought against them in order to
3 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,
4 release, statute of limitations, statute of repose, good faith settlement, judgment bar or
5 reduction, or any theory of claim preclusion or issue preclusion or similar defense or
6 counterclaim, or to effectuate any liability protection under any applicable insurance policy.
7 The Settling Parties may file this Stipulation and/or the Judgment in any action that may be
8 brought to enforce the terms of this Stipulation and/or the Judgment. All Settling Parties
9 submit to the jurisdiction of the Court for purposes of implementing and enforcing the
10 Settlement.

11 9.4 All agreements made and orders entered during the course of the Litigation
12 relating to the confidentiality of information shall survive this Stipulation.

13 9.5 All of the Exhibits to this Stipulation are material and integral parts hereof and
14 are fully incorporated herein by this reference.

15 9.6 This Stipulation, along with its Exhibits, may be amended or modified only by
16 a written instrument signed by or on behalf of all Settling Parties or their respective
17 successors-in-interest.

18 9.7 This Stipulation and the Exhibits attached hereto constitute the entire
19 agreement between Lead Plaintiffs, on the one hand, and Defendants, on the other hand, as to
20 the subject matter hereof and supersede any prior or contemporaneous written or oral
21 agreements or understandings between the Lead Plaintiffs, on the one hand, and Defendants,
22 on the other hand. No representations, warranties, or inducements have been made between
23 the Lead Plaintiffs, on the one hand, and Defendants on the other hand, concerning this
24 Stipulation or its Exhibits, other than the representations, warranties, and covenants
25 contained and memorialized in such documents.

26 9.8 Except as provided herein, or otherwise agreed to in writing by the parties
27 hereto, each party shall bear his, her, or its own fees and costs.

28

1 9.9 Lead Counsel, on behalf of the Class, is expressly authorized by Lead Plaintiffs
2 to take all appropriate action required or permitted to be taken by the Class pursuant to this
3 Stipulation to effectuate its terms and also is expressly authorized to enter into any
4 modifications or amendments to this Stipulation on behalf of the Class which it deems
5 appropriate.

6 9.10 Each counsel or other Person executing this Stipulation, its Exhibits, or any
7 related Settlement document, on behalf of any party hereto hereby warrants that such Person
8 has the full authority to do so, and that they have the authority to take appropriate action
9 required or permitted to be taken pursuant to the Stipulation to effectuate its terms, without
10 requiring additional consent, approval, or authorization of any other Person, board, entity,
11 tribunal, or other regulatory or governmental authority.

12 9.11 This Stipulation may be executed in one or more counterparts. All executed
13 counterparts and each of them shall be deemed to be one and the same instrument. A
14 complete set of executed counterparts shall be filed with the Court. Signatures sent by
15 facsimile or pdf'd via e-mail shall be deemed originals.

16 9.12 All notices, requests, demands, claims, and other communications hereunder
17 shall be in writing and shall be deemed duly given (i) when delivered personally to the
18 recipient, (ii) one (1) business day after being sent to the recipient by UPS overnight courier
19 service (charges prepaid), or (iii) seven (7) business days after being mailed to the recipient
20 by certified or registered mail, return receipt requested and postage prepaid, and addressed to
21 the intended recipient as set forth below:

22 ***If to Lead Plaintiffs or to Lead Counsel:***

23 ROBBINS GELLER RUDMAN
24 & DOWD LLP
25 DANIEL S. DROSMAN
26 655 West Broadway, Suite 1900
27 San Diego, CA 92101

28 ***If to Defendants to Defendants' Counsel:***

1 CRAVATH, SWAINE
2 & MOORE LLP
3 DANIEL SLIFKIN
4 Worldwide Plaza
5 828 Eighth Avenue
6 New York, NY 10019

7 9.13 This Stipulation shall be binding upon, and inure to the benefit of, the
8 successors and assigns of the Settling Parties.

9 9.14 The Court shall retain jurisdiction with respect to implementation and
10 enforcement of the terms of this Stipulation, and all Settling Parties submit to the jurisdiction
11 of the Court for purposes of implementing and enforcing the Settlement embodied in this
12 Stipulation and matters related to the Settlement.

13 9.15 The waiver by one Settling Party of any breach of this Stipulation by any other
14 party shall not be deemed a waiver by any other Settling Party or a waiver of any other prior
15 or subsequent breach of this Stipulation.

16 9.16 Pending approval of the Court of this Stipulation and its Exhibits, all non-
17 settlement-related proceedings in this Litigation shall be stayed and all Members of the Class
18 shall be barred and enjoined from prosecuting any of the Released Claims against any of the
19 Released Persons.

20 9.17 This Stipulation and its Exhibits shall be considered to have been negotiated,
21 executed and delivered, and to be wholly performed, in the State of Arizona and the rights
22 and obligations of the parties to the Stipulation shall be construed and enforced in
23 accordance with, and governed by, the internal, substantive laws of Arizona without giving
24 effect to its choice-of-law principles, except to the extent that federal law requires that
25 federal law govern.

26 9.18 The headings herein are used for the purpose of convenience only and are not
27 meant to have legal effect.

28 9.19 This Stipulation shall not be construed more strictly against one party than
another merely by virtue of the fact that it, or any part of it, may have been prepared by
counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length

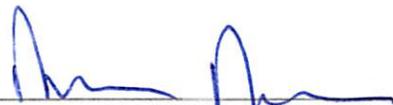
1 negotiations between the Settling Parties and the Settling Parties have contributed
2 substantially and materially to the preparation of this Stipulation.

3 9.20 Nothing in the Stipulation, or the negotiations relating thereto, is intended to or
4 shall be deemed to constitute a waiver of any applicable privilege or immunity, including,
5 without limitation, attorney-client privilege, joint defense privilege, or work product
6 protection.

7 9.21 Unless otherwise provided, the Settling Parties may agree to reasonable
8 extensions of time to carry out any of the provisions of this Stipulation without further order
9 of the Court.

10 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
11 executed, by their duly authorized attorneys, dated February 13, 2020.

12 ROBBINS GELLER RUDMAN
13 & DOWD LLP
14 Daniel S. Drosman
15 Luke O. Brooks
16 Ellen Gusikoff Stewart
17 Jessica T. Shinnfield
18 Darryl J. Alvarado
19 Christopher D. Stewart
20 Hillary B. Stakem
21 J. Marco Janoski Gray
22 Ting H. Liu



DANIEL S. DROSMAN

23 655 West Broadway, Suite 1900
24 San Diego, CA 92101
25 Telephone: 619/231-1058
26 619/231-7423 (fax)

Lead Counsel for Plaintiffs

27 BONNETT FAIRBOURN FRIEDMAN
28 & 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)

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

Liaison Counsel for Plaintiffs

CRAVATH, SWAINE
& MOORE LLP
DANIEL SLIFKIN
ANTONY L. RYAN
KARIN A. DeMASI
LAUREN M. ROSENBERG



KARIN A. DeMASI

Worldwide Plaza
828 Eighth Avenue
New York, NY 10019
Telephone: 212/474-1000

OSBORN MALEDON, P.A.
Joseph N. Roth
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012
Telephone: 602/640-9000

Counsel for Defendants

EXHIBIT A

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 GRANTING
PRELIMINARY APPROVAL
PURSUANT TO FED. R. CIV. P. 23(E)(1)
AND PERMITTING NOTICE TO THE
CLASS

EXHIBIT A

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

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

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

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

15 NOW, THEREFORE, IT IS HEREBY ORDERED:

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

19 2. The Court preliminarily finds that the proposed Settlement should be approved
20 as: (i) it is the result of serious, extensive arm’s-length and non-collusive negotiations;
21 (ii) falling within a range of reasonableness warranting final approval; (iii) having no
22 obvious deficiencies; (iv) there is no substantive deviation from the Class previously
23

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

4
5 3. A hearing shall be held before this Court on _____, 2020, at ____
6 __.m. [a date that is one hundred (100) calendar days or more from the date of this Order] (the
7 “Final Approval Hearing”), at the Sandra Day O’Connor United States Courthouse, United
8 States District Court for the District of Arizona, 401 West Washington Street, Phoenix, AZ,
9
10 in Courtroom 603, to determine whether the proposed Settlement of the Litigation on the
11 terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the
12 Class and should be approved by the Court; to determine whether a Judgment as provided in
13 ¶1.11 of the Stipulation should be entered; to determine whether the proposed Plan of
14 Allocation should be approved; to determine the amount of attorneys’ fees, costs, charges
15 and expenses that should be awarded to Lead Counsel; to determine any award to Lead
16 Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4); to hear any objections by Class Members to:
17 (i) the Settlement or Plan of Allocation; (ii) the award of attorneys’ fees and expenses to
18 Lead Counsel; and (iii) awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4); and to
19 consider such other matters the Court deems appropriate. The Court may adjourn the Final
20 Approval Hearing without further notice to the Class.
21
22

23 4. The Court approves the form, substance, and requirements of the Notice of
24 Proposed Settlement of Class Action (“Notice”) and Proof of Claim and Release,
25 substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.
26
27
28

1 5. The Court approves the form of the Summary Notice of Proposed Settlement
2 of Class Action (“Summary Notice”), substantially in the form annexed hereto as Exhibit A-
3 3.
4

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

8 7. Not later than _____, 2020 [a date twenty-one (21) calendar days after
9 the Court signs and enters this Order] (the “Notice Date”), the Claims Administrator shall
10 cause a copy of the Notice and Proof of Claim and Release, substantially in the forms
11 annexed hereto, to be mailed by First-Class Mail to all Class Members who can be identified
12 with reasonable effort and to be posted on the case-designated website, [www.First
13 SolarSecuritiesLitigation.com](http://www.FirstSolarSecuritiesLitigation.com).
14
15

16 8. Not later than _____, 2020 [a date seven (7) calendar days after the
17 Notice Date], the Claims Administrator shall cause the Summary Notice to be published
18 once in *The Wall Street Journal*, and once over a national newswire service.
19

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

23 10. The Claims Administrator shall use reasonable efforts to give notice to
24 nominee purchasers such as brokerage firms and other persons or entities who purchased or
25 otherwise acquired First Solar publicly-traded securities between April 30, 2008 and
26 February 28, 2012, inclusive, as record owners but not as beneficial owners. Such nominee
27
28

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

13
14
15
16 11. The form and content of the notice program described herein and the methods
17 set forth herein for notifying the Class of the Settlement and its terms and conditions, the Fee
18 and Expense Application, and the Plan of Allocation meet the requirements of Rule 23 of the
19 Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 and
20 due process, constitute the best notice practicable under the circumstances, and shall
21 constitute due and sufficient notice to all Persons entitled thereto.

22
23 12. All fees, costs, and expenses incurred in identifying and notifying Members of
24 the Class shall be paid from the Settlement Fund and in no event shall any of the Released
25 Persons bear any responsibility or liability for such fees, costs, or expenses.
26
27
28

1 13. All Class Members (except Persons who requested exclusion pursuant to the
2 Notice of Pendency of Class Action provided in December, 2013 and plaintiffs in the action
3 entitled *Maverick Fund, L.D.C. v. First Solar, Inc. et al.*, No. 2:15-cv-01156-DGC (D.
4 Ariz.)) shall be bound by all determinations and judgments in the Litigation concerning the
5 Settlement, including, but not limited to, the releases provided for therein, whether favorable
6 or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means,
7 including, without limitation, by submitting a Proof of Claim and Release or any similar
8 document, any distribution from the Settlement Fund or the Net Settlement Fund.
9
10

11 14. Class Members who wish to participate in the Settlement shall complete and
12 submit a Proof of Claim and Release in accordance with the instructions contained therein.
13 Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted
14 electronically no later than _____, 2020 [a date one hundred twenty (120) calendar
15 days from the Notice Date]. Any Class Member who does not submit a Proof of Claim and
16 Release within the time provided shall be barred from sharing in the distribution of the
17 proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall
18 nevertheless be bound by any final judgment entered by the Court. Notwithstanding the
19 foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept late-
20 submitted claims for processing by the Claims Administrator so long as distribution of the
21 Net Settlement Fund is not materially delayed thereby. No person shall have any claim
22 against Lead Plaintiffs, Lead Counsel or the Claims Administrator by reason of the decision
23 to exercise such discretion whether to accept late submitted claims.
24
25
26
27
28

1 15. Any Member of the Class may enter an appearance in the Litigation, at his, her,
2 or its own expense, individually or through counsel of his, her, or its own choice. If they do
3 not enter an appearance, they will be represented by Lead Counsel.
4

5 16. Any Member of the Class may appear at the Final Approval Hearing and object
6 if he, she, or it has any reason why the proposed Settlement of the Litigation should not be
7 approved as fair, reasonable and adequate, or why a judgment should not be entered thereon,
8 why the Plan of Allocation should not be approved, or why attorneys' fees, together with
9 costs, charges and expenses should not be awarded or awards to Lead Plaintiffs pursuant to
10 15 U.S.C. §78u-4(a)(4) should not be awarded; provided, however, that no Class Member or
11 any other Person shall be heard at the Final Approval Hearing or entitled to contest the
12 approval of the terms and conditions of the proposed Settlement, or, if approved, the
13 Judgment to be entered thereon approving the same, or the order approving the Plan of
14 Allocation, or any attorneys' fees, together with costs and expenses to be awarded to Lead
15 Counsel or any award to Lead Plaintiffs, unless the Person objecting has filed said written
16 objections and copies of any papers and briefs with the Clerk of the United States District
17 Court for the District of Arizona and mailed copies thereof by first-class mail to Robbins
18 Geller Rudman & Dowd LLP, Daniel S. Drosman, 655 West Broadway, Suite 1900, San
19 Diego, CA 92101, and Cravath, Swaine & Moore LLP, Daniel Slifkin, Worldwide Plaza,
20 828 Eighth Avenue, New York, NY 10019 no later than _____, 2020 [a date
21 twenty-one (21) calendar days prior to the Final Approval Hearing]. Any Member of the
22 Class who does not make his, her, or its objection in the manner provided shall be deemed to
23 have waived such objection and shall forever be foreclosed from making any objection to the
24
25
26
27
28

1 fairness, reasonableness or adequacy of the proposed Settlement as incorporated in the
2 Stipulation, to the Plan of Allocation, or to the award of fees, costs, charges and expenses to
3 Lead Counsel or Lead Plaintiffs, unless otherwise ordered by the Court. Attendance at the
4 Final Approval Hearing is not necessary. However, Persons wishing to be heard orally in
5 opposition to the approval of the Settlement, the Plan of Allocation, and/or the application
6 for an award of fees, costs, charges and expenses are required to indicate in their written
7 objection their intention to appear at the hearing and to include in their written objections the
8 identity of any witnesses they may call to testify and copies of any exhibits they intend to
9 introduce into evidence at the Final Approval Hearing. Class Members do not need to
10 appear at the Final Approval Hearing or take any other action to indicate their approval.
11
12

13 17. Any Class Member who does not object to the Settlement, the Plan of
14 Allocation, or Lead Counsel's application for an award of attorneys' fees, costs, charges and
15 expenses in the manner prescribed herein and in the Notice shall be deemed to have waived
16 such objection, and shall forever be foreclosed from making any objection to the fairness,
17 adequacy or reasonableness of the proposed Settlement, this Order and the Judgment to be
18 entered approving the Settlement, the Plan of Allocation and/or the application by Lead
19 Counsel for an award of attorneys' fees together with costs, charges and expenses.
20
21

22 18. All funds held by the Escrow Agent shall be deemed and considered to be in
23 *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as
24 such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the
25 Court.
26
27
28

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

8 20. The Released Persons shall have no responsibility for the Plan of Allocation or
9 any application for attorneys' fees, costs, charges or expenses submitted by Lead Counsel,
10 and such matters will be considered by the Court separately from the fairness,
11 reasonableness, and adequacy of the Settlement.
12

13 21. At or after the Final Approval Hearing, the Court shall determine whether the
14 Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees, costs,
15 charges and expenses, should be approved. The Court reserves the right to enter the Order
16 and Final Judgment approving the Settlement regardless of whether it has approved the Plan
17 or Allocation or awarded attorneys' fees and/or costs, charges and expenses.
18

19 22. All reasonable expenses incurred in identifying and notifying Class Members
20 as well as administering the Settlement Fund shall be paid as set forth in the Stipulation. In
21 the event the Court does not approve the Settlement, or it otherwise fails to become effective,
22 neither Lead Plaintiffs nor Lead Counsel nor the Claims Administrator shall have any
23 obligation to repay any amounts actually and properly incurred or disbursed pursuant to
24 ¶¶2.11 or 2.13 of the Stipulation.
25
26
27
28

1 23. Neither this Order nor the Stipulation, nor any of their respective terms or
2 provisions, nor any of the negotiations, discussions, proceedings connected with them, nor
3 any act performed or document executed pursuant to or in furtherance of the Stipulation or
4 the Settlement or this Order may be construed as an admission or concession by the
5 Defendants or any other Released Persons of the truth of any of the allegations in the
6 Litigation, or of any liability, fault, or wrongdoing of any kind, or offered or received in
7 evidence, or otherwise used by any person in the Litigation, or in any other action or
8 proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or
9 other tribunal, except in connection with any proceeding to enforce the terms of the
10 Stipulation or this Order. The Released Persons, Lead Plaintiffs, Class Members, and each
11 of their counsel may file the Stipulation, and/or this Order and/or the Judgment in any action
12 that may be brought against them in order to support a defense or counterclaim based on
13 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or
14 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
15 counterclaim.
16
17
18

19 24. All proceedings in the Litigation are stayed until further order of this Court,
20 except as may be necessary to implement the Settlement or comply with the terms of the
21 Stipulation. Pending final determination of whether the Settlement should be approved,
22 neither the Lead Plaintiffs nor any Class Member, either directly, representatively, or in any
23 other capacity shall commence or prosecute against any of the Released Persons any action
24 or proceeding in any court or tribunal asserting any of the Released Claims.
25
26
27
28

1 25. The Court reserves the right to alter the time or the date of the Final Approval
2 Hearing without further notice to Class Members, and retains jurisdiction to consider all
3 further applications arising out of or connected with the proposed Settlement. The Court
4 may approve the Settlement, with such modifications as may be agreed to by the Settling
5 Parties, if appropriate, without further notice to the Class.
6

7 26. If the Settlement fails to become effective as defined in the Stipulation or is
8 terminated, then, in any such event, the Stipulation, including any amendment(s) thereof,
9 except as expressly provided in the Stipulation, and this Order shall be null and void, of no
10 further force or effect, and without prejudice to any Settling Party, and may not be
11 introduced as evidence or used in any actions or proceedings by any person or entity against
12 the Settling Parties, and they shall be deemed to have reverted to their respective litigation
13 positions as of January 5, 2020.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A-1

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

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

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mark Smilovits, Individually and on Behalf) No. 2:12-cv-00555-DGC
of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION
First Solar, Inc., Michael J. Ahearn, Robert) EXHIBIT A-1
J. Gillette, Mark R. Widmar, Jens)
Meyerhoff, James Zhu, Bruce Sohn and)
David Eaglesham,)
Defendants.)

1 **TO: ALL PERSONS AND ENTITIES THAT PURCHASED OR OTHERWISE**
2 **ACQUIRED THE PUBLICLY-TRADED SECURITIES OF FIRST SOLAR,**
3 **INC. (“FIRST SOLAR”) DURING THE PERIOD BETWEEN APRIL 30, 2008**
4 **AND FEBRUARY 28, 2012, INCLUSIVE (THE “CLASS PERIOD”)**

5 **IN ORDER TO QUALIFY FOR A SETTLEMENT PAYMENT, YOU MUST**
6 **TIMELY SUBMIT A PROOF OF CLAIM AND RELEASE FORM BY**
7 **_____, 2020.**

8 **THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A**
9 **LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY**
10 **AND IN ITS ENTIRETY.**

11 **WHY SHOULD I READ THIS NOTICE?**

12 This Notice is given pursuant to an order issued by the United States District Court for
13 the District of Arizona (the “Court”). This Notice serves to inform you of the proposed
14 settlement of the above-captioned class action lawsuit for \$350,000,000.00 in cash (the
15 “Settlement”) and the hearing (the “Settlement Fairness Hearing”) to be held by the Court to
16 consider the fairness, reasonableness, and adequacy of the Settlement, as set forth in the
17 Stipulation of Settlement dated February 13, 2020 (the “Stipulation”), by and between Lead
18 Plaintiffs Mineworkers’ Pension Scheme and British Coal Staff Superannuation Scheme on
19 behalf of themselves and the Class (as defined below), on the one hand, and Defendants First
20 Solar, Michael J. Ahearn, Robert J. Gillette, Mark R. Widmar, Jens Meyerhoff, James Zhu,
21 Bruce Sohn and David Eaglesham, on the other hand (collectively, “Defendants”).¹

22 **This Notice is intended to inform you how this lawsuit and proposed Settlement**
23 **may affect your rights and what steps you may take in relation to it. This Notice is**
24 **different than the one you previously received advising you of the pendency of this**
25 **Litigation. This Notice is NOT an expression of any opinion by the Court as to the**
26 **merits of the claims or defenses asserted in the lawsuit or whether the Defendants**
27 **engaged in any wrongdoing.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM AND RELEASE	The only way to be eligible to receive a payment from the Settlement. Proofs of Claim and Release must be postmarked (if mailed) or received (if submitted online) on or before _____, 2020.

28 ¹ The Stipulation can be viewed and/or downloaded at www.FSLRSecurities Litigation.com. All capitalized terms used herein have the same meaning as the terms defined in the Stipulation.

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

OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION	Write to the Court about why you do not like the Settlement, the Plan of Allocation and/or the request for attorneys' fees and expenses. Objections must be postmarked on or before _____, 2020.
GO TO THE HEARING ON _____, 2020, AND FILE A NOTICE OF INTENTION TO APPEAR	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be postmarked on or before _____, 2020. If you submit a written objection, you may (but you do not have to) attend the hearing.
DO NOTHING	Receive no payment. You will, however, still be a Class Member, which means that you give up your right to ever be part of any other lawsuit against the Defendants or any other Released Person about the legal claims being resolved by this Settlement and you will be bound by any judgments or orders entered by the Court in the Litigation.

1 **SUMMARY OF THIS NOTICE**

2 **Description of the Litigation and the Class**

3 This Notice relates to a proposed settlement of claims in a pending securities class
4 action brought by First Solar investors alleging, among other things, that Defendants violated
5 the federal securities laws by making materially false and misleading statements or omitting
6 to state facts necessary to make statements not misleading in public filings and other public
7 statements during the Class Period. A more detailed description of the Litigation is set forth
8 on pages ____ below. The proposed Settlement, if approved by the Court, will settle claims
9 of the Class, as defined on pages ____ below.

8 **Statement of Class Recovery**

9 Pursuant to the Settlement described herein, a \$350,000,000.00 settlement fund has
10 been established (the “Settlement Amount”). The Settlement Amount together with any
11 interest earned thereon is the “Settlement Fund.” The Settlement Fund, less (a) any taxes, (b)
12 any Notice and Administration Expenses, and (c) any attorneys’ fees and litigation costs,
13 charges and expenses (including any awards to Lead Plaintiffs of their costs and expenses in
14 representing the Class) awarded by the Court, will be distributed to Class Members in
15 accordance with a plan of allocation that is approved by the Court. The proposed plan of
16 allocation (the “Plan of Allocation”) is set forth on pages ____ below. Based on Lead
17 Plaintiffs’ estimate of the number of First Solar publicly-traded securities eligible to recover,
18 the average distribution under the Plan of Allocation is roughly \$2.58 per common share,
19 before deduction of any taxes on the income earned on the Settlement Fund, Notice and
20 Administration Expenses, and allowable attorneys’ fees and expenses (including any awards
21 to Lead Plaintiffs) as determined by the Court. **Class Members should note, however, that
22 these are only estimates.** A Class Member’s actual recovery will be a proportion of the Net
23 Settlement Fund determined by that claimant’s claims as compared to the total claims of all
24 Class Members who submit acceptable Proofs of Claim. An individual Class Member may
25 receive more or less than these estimated average amounts. *See* Plan of Allocation set forth
26 and discussed at pages ____ below for more information on the calculation of your claim.

21 **Statement of Potential Outcome of Case**

22 The Settling Parties disagree on both liability and damages and do not agree on the
23 amount of damages per security, if any, that would be recoverable if the Class prevailed on
24 each claim alleged. Defendants deny that they are liable to the Class and deny that the Class
25 has suffered any injury or damages. The issues on which the parties disagree are many, but
26 include: (1) whether Defendants engaged in conduct that would give rise to any liability to
27 the Class under the federal securities laws; (2) whether Defendants have valid defenses to
28 any such claims of liability; (3) the appropriate economic model for determining the amount
by which the prices of First Solar publicly-traded securities were allegedly artificially
inflated (if at all) during the Class Period; (4) the amount, if any, by which the prices of First
Solar publicly-traded securities were allegedly artificially inflated (if at all) during the Class
Period; (5) the effect of various market forces on the prices of First Solar publicly-traded

1 securities at various times during the Class Period; (6) the extent to which external factors
2 influenced the price of First Solar publicly-traded securities at various times during the Class
3 Period; (7) the extent to which the various matters that Lead Plaintiffs alleged were
4 materially false or misleading influenced (if at all) the prices of First Solar publicly-traded
5 securities at various times during the Class Period; and (8) the extent to which the various
6 allegedly adverse material facts that Lead Plaintiffs alleged were omitted influenced (if at all)
7 the price of First Solar publicly-traded securities during the Class Period.

8 **Statement of Attorneys' Fees and Expenses Sought**

9 Lead Counsel will apply to the Court on behalf of all Plaintiffs' Counsel for an award
10 of attorneys' fees not to exceed nineteen percent (19%) of the Settlement Amount, plus costs,
11 charges and expenses not to exceed \$6 million, including awards to Lead Plaintiffs not to
12 exceed \$100,000 in the aggregate pursuant to 15 U.S.C. §78u-4(a)(4) in connection with
13 their representation of the Class, plus interest earned on these amounts at the same rate
14 earned by the Settlement Fund. Since the Litigation's inception, Lead Counsel have
15 expended considerable time and effort in the prosecution of this Litigation on a wholly
16 contingent basis and have advanced the expenses of the Litigation in the expectation that if
17 they were successful in obtaining a recovery for the Class they would be paid from such
18 recovery. The requested attorneys' fees, costs, charges and expenses amount to an average
19 cost of approximately \$0.53 per allegedly damaged First Solar common share. The average
20 cost per damaged share will vary depending on the number of acceptable Proofs of Claim
21 submitted.

22 **Further Information**

23 For further information regarding the Litigation or this Notice or to review the
24 Stipulation, please contact the Claims Administrator toll-free at 866-688-4903, or visit the
25 website www.FSLRSecuritiesLitigation.com.

26 You may also contact a representative of counsel for the Class: Rick Nelson,
27 Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway,
28 Suite 1900, San Diego, CA 92101, 1-800-449-4900, www.rgrdlaw.com.

29 **Please Do Not Call the Court or Defendants with Questions About the 30 Settlement.**

31 **Reasons for the Settlement**

32 Lead Plaintiffs' principal reason for entering into the Settlement is the benefit to the
33 Class now, without further risk or the delays inherent in continued litigation. The cash
34 benefit under the Settlement must be considered against the significant risk that a smaller
35 recovery – or, indeed, no recovery at all – might be achieved after trial, and likely appeals, a
36 process that could last several years into the future.

1 Defendants have denied and continue to deny each and all of the claims alleged by
2 Lead Plaintiffs in the Litigation. Defendants expressly have denied and continue to deny all
3 charges of wrongdoing or liability against them arising out of any of the conduct, statements,
4 acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also
5 have denied and continue to deny, among other things, the allegations that Lead Plaintiffs or
6 the Class have suffered any damage, or that Lead Plaintiffs or the Class were harmed by the
7 conduct alleged in the Litigation. For Defendants, the principal reason for entering into the
8 Settlement is to eliminate the uncertainty, risk, costs, and burdens inherent in any litigation,
9 especially in complex cases such as this Litigation. Defendants have concluded that further
10 conduct of this Litigation could be expensive, protracted and distracting.

11 **WHAT IS THIS LAWSUIT ABOUT?**

12 **THE ALLEGATIONS**

13 The Litigation is currently pending before the Honorable David G. Campbell in the
14 United States District Court for the District of Arizona (the “Court”). The initial complaint
15 in this action was filed on March 15, 2012. On July 23, 2012, the Court appointed
16 Mineworkers’ Pension Scheme and British Coal Staff Superannuation Scheme as Lead
17 Plaintiffs and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as Lead Counsel.

18 Lead Plaintiffs’ First Amended Complaint for Violation of the Federal Securities
19 Laws (the “Complaint”) alleges that Defendants violated §§10(b) and 20(a) of the Securities
20 Exchange Act of 1934. More specifically, Lead Plaintiffs allege that Defendants issued
21 materially false and misleading statements and omitted material information regarding its
22 solar modules. Lead Plaintiffs further allege that when the true facts regarding the solar
23 modules were revealed, that artificial inflation was removed from the prices of First Solar
24 securities, causing the prices to drop and damaging members of the Class.

25 Defendants deny all of Lead Plaintiffs’ allegations. Defendants contend that they did
26 not make any false or misleading statements and that they disclosed all information required
27 to be disclosed by the federal securities laws.

28 **THE COURT HAS NOT RULED AS TO WHETHER DEFENDANTS ARE
LIABLE TO LEAD PLAINTIFFS OR TO THE CLASS. THIS NOTICE IS NOT
INTENDED TO BE AN EXPRESSION OF ANY OPINION BY THE COURT WITH
RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THIS LITIGATION OR
THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED. THIS NOTICE IS
SOLELY TO ADVISE YOU OF THE PROPOSED SETTLEMENT OF THIS
ACTION AND YOUR RIGHTS IN CONNECTION WITH THAT SETTLEMENT.**

PROCEDURAL HISTORY

The Settling Parties vigorously litigated this case for seven years. The Parties
litigated Defendants’ motion to dismiss the Complaint, and thereafter engaged in extensive
fact and class-related discovery which included the exchange of more than 515,000

1 documents and the taking of more than 20 depositions, including Lead Plaintiffs,
2 Defendants, and non-parties. After full briefing the Court certified the Class and notice of
3 the pendency of the Litigation was provided in December 2013. The Settling Parties also
4 briefed and argued Defendants' motion for summary judgment and appeal from the Court's
5 order denying the motion, and briefed Defendants' petition for certiorari to the United States
6 Supreme Court. Following the completion of the appellate proceedings, the Parties engaged
7 in expert discovery including the exchange of 15 expert reports from 11 experts, depositions
8 of 10 experts, and production of expert-related documents. After expert discovery, the
9 parties prepared for trial, including submission of a proposed joint pretrial order, and
10 attended a final pre-trial conference on December 18, 2019.

11 The Settling Parties were scheduled to begin the trial of this Litigation in January
12 2020. In anticipation of the trial, the Settling Parties briefed 38 motions *in limine* and nine
13 motions to exclude expert testimony.

14 The Settling Parties also participated in multiple in-person mediation sessions as well
15 as numerous telephonic conferences over several years with the Honorable Layn R. Phillips
16 (Ret.), a retired United States District Court Judge and an experienced mediator. The
17 Settling Parties engaged in good-faith, arm's-length negotiations during the earlier mediation
18 sessions, but were unable to reach an agreement. The Settling Parties pursued litigation
19 while settlement discussions continued through Judge Phillips. On January 5, 2020, the
20 Settling Parties reached an agreement in principle to resolve the Litigation, subject to the
21 negotiation of the terms of a Stipulation of Settlement and approval by the Court.

22 **HOW DO I KNOW IF I AM A CLASS MEMBER?**

23 If you purchased or otherwise acquired First Solar publicly-traded securities during
24 the period between April 30, 2008 and February 28, 2012, inclusive, and are not otherwise
25 excluded, you are a Class Member. As set forth in the Stipulation, excluded from the Class
26 are: Defendants, members of the immediate families of each of the Defendants, the officers
27 and directors of First Solar, at all relevant times, members of their immediate families and
28 their legal representatives, heirs, successors or assigns and any entity in which Defendants
had a controlling interest.

Additionally, the Class excludes the plaintiffs in the litigation captioned *Maverick
Fund, L.D.C. v. First Solar, Inc., et al.*, No. 2:15-cv-01156-DGC (D. Ariz.). Also excluded
from the Class is any Class Member who timely and validly requested exclusion in
accordance with the requirements set by the Court in connection with the Notice of Pendency
of Class Action previously provided to the Class.

PLEASE NOTE: Receipt of this Notice does not mean that you are a Class Member
or that you will be entitled to receive a payment from the Settlement. If you are a Class
Member and you wish to be eligible to participate in the distribution of proceeds from the
Settlement, you are required to submit the Proof of Claim and Release that is being

1 distributed with this Notice and the required supporting documentation as set forth therein
2 postmarked or submitted online on or before _____, 2020.

3 **WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?**

4 The Settlement, if approved, will result in the creation of a cash settlement fund of
5 \$350,000,000.00. This fund, plus accrued interest and minus the costs of this Notice and all
6 costs associated with the administration of the Settlement, as well as attorneys' fees and
7 expenses, and the awards to Lead Plaintiffs in connection with representing the Class, as
8 approved by the Court (the "Net Settlement Fund"), will be distributed to eligible Class
9 Members pursuant to the Plan of Allocation that is described in the next section of this
10 Notice.

11 **WHAT IS THE PROPOSED PLAN OF ALLOCATION?**

12 **A. How will my claim be calculated?**

13 1. As discussed above, the Settlement provides \$350,000,000.00 in cash for the
14 benefit of the Class. The Settlement Amount and any interest it earns constitute the
15 "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees
16 and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses
17 approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the
18 Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*,
19 members of the Class who timely submit valid Claim Forms that are accepted for payment
20 by the Court – in accordance with this proposed Plan of Allocation ("Plan of Allocation" or
21 "Plan") or such other plan of allocation as the Court may approve. Class Members who do
22 not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will
23 otherwise be bound by the Settlement. The Court may approve this proposed Plan of
24 Allocation, or modify it, without additional notice to the Class. Any order modifying the
25 Plan of Allocation will be posted on the settlement website,
26 www.FSLRSecuritiesLitigation.com.

27 2. The objective of the Plan of Allocation is to distribute the Settlement proceeds
28 equitably among those Class Members who suffered economic losses as a proximate result
of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the
calculations made in accordance with the Plan of Allocation are not intended to be estimates
of, or indicative of, the amounts that Class Members might have been able to recover after a
trial. Nor are the calculations in accordance with the Plan of Allocation intended to be
estimates of the amounts that will be paid to Authorized Claimants under the Settlement.
The computations under the Plan of Allocation are only a method to weigh, in a fair and
equitable manner, the claims of Authorized Claimants against one another for the purpose of
making *pro rata* allocations of the Net Settlement Fund.

3. The Plan of Allocation is intended to compensate Class Members who
purchased or acquired First Solar, Inc. ("First Solar") common stock during the period April

1 30, 2008 through February 28, 2012, inclusive (“Class Period”) and were damaged thereby
2 under the Securities Exchange Act of 1934 (“Exchange Act”)

3 4. For purposes of determining the amount a Claimant may recover under the
4 Plan, Lead Counsel conferred with their damages consultants and the Plan reflects an
5 assessment of the daily per share artificial inflation amounts which allegedly were
6 proximately caused by Defendants’ alleged false and misleading statements and material
7 omissions. In calculating the estimated artificial inflation allegedly caused by Defendants’
8 alleged misrepresentations and omissions, Plaintiffs’ damages expert considered price
9 changes in First Solar common stock in reaction to certain public announcements regarding
10 First Solar in which such misrepresentations and material omissions were alleged to have
11 been revealed to the market, adjusting for price changes that were attributable to market or
12 industry forces, the allegations in the Complaint, and the evidence developed in support
13 thereof, as advised by Lead Counsel.

14 5. In order to have recoverable damages in connection with purchases and/or
15 acquisitions of First Solar common stock during the Class Period, disclosure(s) of the
16 allegedly misrepresented or omitted information must be the cause of the decline in the price
17 of First Solar common stock. In this case, Plaintiffs allege that Defendants made false
18 statements and omitted material facts during the Class Period, which had the effect of
19 artificially inflating the prices of First Solar common stock. As the result of the alleged
20 corrective disclosures, artificial inflation was removed from the price of First Solar common
21 stock on July 30, 2010, February 25, 2011, May 4, 2011, December 14, 2011, February 29,
22 2012, and March 1, 2012.

16 **B. Calculation of Recognized Loss**

17 1. To the extent there are sufficient funds in the Net Settlement Fund, each
18 Claimant will receive an amount equal to the Claimant’s “Recognized Loss,” as described
19 below. If, however, as expected, the amount in the Net Settlement Fund is not sufficient to
20 permit payment of the total Recognized Loss of each Claimant, then each Claimant shall be
21 paid the percentage of the Net Settlement Fund that each Claimant’s Recognized Loss bears
22 to the total of the Recognized Loss of all Claimants – *i.e.*, the Claimant’s pro rata share of
23 the Net Settlement Fund.

24 2. For each Settlement Class Period purchase of First Solar common stock that is
25 properly documented, a “Recognized Loss” will be calculated according to the formulas
26 described below. If a Recognized Loss Amount calculates to a negative number or zero
27 under the formulas below, that Recognized Loss Amount will be zero.

28 3. Estimated damages and the Plan were developed based on an event study
analysis, which determines how much artificial inflation was in the stock price on each day
during the Class Period by measuring how much the stock price was inflated as a result of
alleged misrepresentations and omissions and declined as a result of disclosures that
corrected the alleged misrepresentations and omissions. Because the alleged corrective

1 disclosures reduced the artificial inflation in stages over the course of the Class Period, the
2 damages suffered by any particular Claimant depend on when that Claimant purchased and
3 sold shares, or retained shares beyond the end of the Class Period.

4 4. Table 1 provides the per share amount of artificial inflation in First Solar
5 common stock during the Class Period for specified periods. Each Claimant's Recognized
6 Losses, if any, will be computed as follows:

7 (a) Sold with an equal, or greater, amount of artificial inflation (see Table
8 1), the Recognized Loss per share is zero.

9 (b) Sold prior to July 30, 2010 the Recognized Loss per share is zero.

10 (c) Sold on or after July 30, 2010 and prior to the close of trading on March
11 1, 2012, the Recognized Loss per share is equal to the lesser of:

12 (i) the difference between the per share inflation in the First Solar
13 common stock price at time of purchase (*see* Table 1) and the per share inflation in the First
14 Solar common stock price at time of sale (*see* Table 1); and

15 (ii) the difference between the purchase price and the sales price.

16 (d) Retained at the end of March 1, 2012 and sold on or before May 29,
17 2012 the Recognized Loss per share is equal to the lesser of:

18 (i) the per share inflation in the First Solar common stock price at
19 time of purchase (*see* Table 1); and

20 (ii) the difference between the purchase price and the average closing
21 price up to the date of sale as set forth in Table 2 below.

22 (e) Held as of the close of trading on May 29, 2012 or sold thereafter, the
23 Recognized Loss per share is equal to the lesser of:

24 (i) the per share inflation in the First Solar common stock price at
25 time of purchase (*see* Table 1); and

26 (ii) the difference between the purchase price and \$21.37 per share.²

27 ² Under Section 21(D)(e)(1) of the Exchange Act, "in any private action arising under this Act in
28 which the plaintiff seeks to establish damages by reference to the market price of a security, the
award of damages to the plaintiff shall not exceed the difference between the purchase or sale price
paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of
that security during the 90-day period beginning on the date on which the information correcting the
misstatement or omission that is the basis for the action is disseminated to the market." Consistent
with the requirements of the statute, Recognized Loss for First Solar common stock are reduced to
an appropriate extent by taking into account the closing prices of First Solar common stock during

1 **C. Additional Provisions**

2 1. If a Class Member held First Solar common stock at the beginning of the Class
3 Period or made multiple purchases, acquisitions or sales of First Solar common stock during
4 or after the Class Period, the starting point for calculating a Claimant's Recognized Loss is to
5 match the Claimant's holdings, purchases and acquisitions to their sales using the FIFO (*i.e.*,
6 first-in-first-out) method. Under the FIFO method, First Solar common stock sold during the
7 Class Period will be matched, in chronological order, first against the respective shares held
8 at the beginning of the Class Period. The remaining sales of First Solar common stock
9 during the Class Period will then be matched, in chronological order against the respective
10 security purchased or acquired during the Class Period.

11 2. Purchases or acquisitions and sales of First Solar common stock shall be
12 deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or
13 "payment" date. The receipt or grant by gift, inheritance or operation of law of First Solar
14 common stock during the Class Period shall not be deemed a purchase, acquisition or sale of
15 First Solar common stock for the calculation of Recognized Loss, unless (i) the donor or
16 decedent purchased or otherwise acquired such First Solar common stock during the Class
17 Period; (ii) no Proof of Claim was submitted by or on behalf of the donor, on behalf of the
18 decedent, or by anyone else with respect to such First Solar common stock; and (iii) it is
19 specifically so provided in the instrument of gift or assignment.

20 3. An Authorized Claimant's Recognized Loss shall be the amount used to
21 calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. If the sum
22 total of Recognized Loss of all Authorized Claimants who are entitled to receive payment
23 out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized
24 Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro*
25 *rata* share shall be the Authorized Claimant's Recognized Loss divided by the total of the
26 Recognized Loss of all Authorized Claimants, multiplied by the total amount in the Net
27 Settlement Fund. Given the costs of distribution, the Net Settlement Fund will be allocated
28 among all Authorized Claimants whose distribution calculates to is \$10.00 or greater.

the 90-day look-back period. The mean (average) closing price for First Solar common stock during
this 90-day look-back period was \$21.37 per share as shown in Table 2.

TABLE 1

First Solar Common Stock Artificial Inflation Per Share

Date Range		Per Share Inflation in Stock Price
4/30/2008	2/21/2010	\$17.79
2/22/2010	7/29/2010	\$28.55
7/30/2010	2/24/2011	\$20.33
2/25/2011	5/3/2011	\$13.06
5/4/2011	12/13/2011	\$8.30
12/14/2011	2/28/2012	\$5.03
	2/29/2012	\$1.86
	On and after 3/1/2012	\$0.00

TABLE 2

First Solar Common Stock Closing Prices and Average Closing Prices

March 1, 2012 – May 29, 2012

Date	Closing Price	Average Closing Price Between 3/1/2012 and Date Shown		Date	Closing Price	Average Closing Price Between 8/1/2005 and Date Shown
3/1/2012	\$30.42	\$30.42		4/16/2012	\$20.82	\$25.43
3/2/2012	\$30.02	\$30.22		4/17/2012	\$22.96	\$25.35
3/5/2012	\$28.08	\$29.51		4/18/2012	\$21.35	\$25.23
3/6/2012	\$27.63	\$29.04		4/19/2012	\$21.40	\$25.12
3/7/2012	\$25.80	\$28.39		4/20/2012	\$20.65	\$25.00
3/8/2012	\$26.15	\$28.02		4/23/2012	\$19.25	\$24.84
3/9/2012	\$27.49	\$27.94		4/24/2012	\$18.64	\$24.68
3/12/2012	\$25.83	\$27.68		4/25/2012	\$18.30	\$24.52
3/13/2012	\$27.32	\$27.64		4/26/2012	\$18.31	\$24.36
3/14/2012	\$27.10	\$27.58		4/27/2012	\$18.35	\$24.22
3/15/2012	\$27.84	\$27.61		4/30/2012	\$18.40	\$24.08
3/16/2012	\$29.08	\$27.73		5/1/2012	\$18.42	\$23.95
3/19/2012	\$28.67	\$27.80		5/2/2012	\$18.21	\$23.81
3/20/2012	\$27.46	\$27.78		5/3/2012	\$18.07	\$23.69
3/21/2012	\$26.33	\$27.68		5/4/2012	\$16.94	\$23.54
3/22/2012	\$26.95	\$27.64		5/7/2012	\$17.67	\$23.42
3/23/2012	\$26.11	\$27.55		5/8/2012	\$16.54	\$23.27
3/26/2012	\$26.42	\$27.48		5/9/2012	\$16.92	\$23.14
3/27/2012	\$26.11	\$27.41		5/10/2012	\$16.09	\$23.00
3/28/2012	\$25.07	\$27.29		5/11/2012	\$16.14	\$22.87
3/29/2012	\$25.12	\$27.19		5/14/2012	\$16.16	\$22.74
3/30/2012	\$25.05	\$27.09		5/15/2012	\$15.23	\$22.60

Date	Closing Price	Average Closing Price Between 3/1/2012 and Date Shown		Date	Closing Price	Average Closing Price Between 8/1/2005 and Date Shown
4/2/2012	\$24.53	\$26.98		5/16/2012	\$13.98	\$22.44
4/3/2012	\$22.60	\$26.80		5/17/2012	\$14.92	\$22.30
4/4/2012	\$21.73	\$26.60		5/18/2012	\$13.66	\$22.15
4/5/2012	\$20.98	\$26.38		5/21/2012	\$13.83	\$22.00
4/9/2012	\$20.19	\$26.15		5/22/2012	\$13.60	\$21.86
4/10/2012	\$21.38	\$25.98		5/23/2012	\$14.26	\$21.73
4/11/2012	\$22.50	\$25.86		5/24/2012	\$14.22	\$21.60
4/12/2012	\$22.00	\$25.73		5/25/2012	\$14.33	\$21.48
4/13/2012	\$20.83	\$25.57		5/29/2012	\$14.23	\$21.37

Distributions will be made to Authorized Claimants after all claims have been processed, after the Court has finally approved the Settlement, and after any appeals are resolved. If there is any balance remaining in the Net Settlement Fund after at least six (6) months from the initial date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), the Claims Administrator shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated until the balance remaining in the Net Settlement Fund is no longer economically feasible to distribute to Class Members. Thereafter, any balance that still remains in the Net Settlement Fund shall be donated to any appropriate non-profit charitable organization(s) serving the public interest that is unaffiliated with any party or their counsel.

Please contact the Claims Administrator or Lead Counsel if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim and Release. If you are dissatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Class Members and the claims administration process, to decide the issue by submitting a written request.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Plaintiffs, Lead Counsel, any Claims Administrator, any other Person designated by Lead Plaintiffs' counsel, or any of the Released Persons based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. All Class Members who fail to complete and submit a valid and timely Proof of Claim and Release shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all

1 of the terms of the Settlement, including the terms of any judgment entered and the releases
2 given.

3 **DO I NEED TO CONTACT LEAD COUNSEL IN ORDER TO PARTICIPATE IN
4 DISTRIBUTION OF THE SETTLEMENT FUND?**

5 No. If you have received this Notice and timely submit your Proof of Claim and
6 Release to the designated address, you need not contact Lead Counsel. If your address
7 changes, please contact the Claims Administrator at:

8 *First Solar Securities Litigation*
9 c/o Gilardi & Co. LLC
10 P.O. Box 43336
11 Providence, RI 02940-3336
12 Telephone: 866-688-4903
13 www.FSLRSecuritiesLitigation.com

14 **THERE WILL BE NO PAYMENTS IF THE STIPULATION IS TERMINATED**

15 The Stipulation may be terminated under several circumstances outlined in it. If the
16 Stipulation is terminated, the Litigation will proceed as if the Stipulation had not been
17 entered into.

18 **WHAT ARE THE REASONS FOR SETTLEMENT?**

19 The Settlement was reached after contested motion practice directed to the sufficiency
20 of Lead Plaintiffs' claims. The parties also completed document, deposition, and expert
21 discovery. Nevertheless, the Court has not reached any final decisions in connection with
22 Lead Plaintiffs' claims against Defendants. Instead, Lead Plaintiffs and Defendants have
23 agreed to this Settlement, which was reached with the substantial assistance of a highly
24 respected mediator. In reaching the Settlement, the parties have avoided the cost, delay and
25 uncertainty of further litigation.

26 As in any litigation, Lead Plaintiffs and the Class would face an uncertain outcome if
27 they did not agree to the Settlement. If Lead Plaintiffs succeeded at the upcoming trial,
28 Defendants would likely file appeals that would postpone final resolution of the case.
Continuation of the Litigation against Defendants could result in a judgment greater than this
Settlement. Conversely, continuing the case could result in no recovery at all or a recovery
that is less than the amount of the Settlement.

Lead Plaintiffs and Lead Counsel believe that this Settlement is fair and reasonable to
the Members of the Class. They have reached this conclusion for several reasons.
Specifically, if the Settlement is approved, the Class will receive a certain and immediate
monetary recovery. Additionally, Lead Counsel believes that the significant and immediate
benefits of the Settlement, when weighed against the significant risk, delay and uncertainty
of continued litigation, are a very favorable result for the Class.

1 Defendants are entering into this Settlement because it would be beneficial to avoid
2 the burden, inconvenience, and expense associated with continuing the Litigation, and the
3 uncertainty and risks inherent in any litigation. Defendants have determined that it is
4 desirable and beneficial to them that the Litigation be settled in the manner and upon the
5 terms and conditions set forth in the Stipulation.

6 **WHO REPRESENTS THE CLASS?**

7 The following attorneys are counsel for the Class:

8 Daniel S. Drosman
9 ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 800-449-4900

10 If you have any questions about the Litigation, or the Settlement, you are entitled to
11 consult with Lead Counsel by contacting counsel at the phone number listed above.

12 You may obtain a copy of the Stipulation by contacting the Claims Administrator at:

13 *First Solar Securities Litigation*
14 c/o Gilardi & Co. LLC
P.O. Box 43336
15 Providence, RI 02940-3336
Telephone: 866-688-4903
16 www.FSLRSecuritiesLitigation.com

17 **HOW WILL THE LEAD PLAINTIFFS' LAWYERS BE PAID?**

18 Lead Counsel will file a motion for an award of attorneys' fees and expenses that will
19 be considered at the Settlement Fairness Hearing. Lead Counsel will apply for an attorneys'
20 fee award for Plaintiffs' Counsel in the amount of up to 19% of the Settlement Fund, plus
21 payment of Plaintiffs' Counsel's costs, charges and expenses incurred in connection with this
22 Litigation in an amount not to exceed \$6 million, which may include awards to Lead
Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the
Class. Such sums as may be approved by the Court will be paid from the Settlement Fund.
Class Members are not personally liable for any such fees or expenses.

23 The attorneys' fees and costs, charges and expenses requested will be the only
24 payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk
25 in undertaking this representation on a wholly contingent basis. The fees requested will
26 compensate Plaintiffs' Counsel for their work in achieving the Settlement. The Court will
decide what constitutes a reasonable fee award and may award less than the amount
requested by Lead Counsel.

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

CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

No. If you did not exclude yourself from the Class in connection with the Notice of Pendency of Class Action, you remain a Class Member.

CAN I OBJECT TO THE SETTLEMENT, THE REQUESTED ATTORNEYS' FEES, THE REQUESTED PAYMENT OF COSTS AND EXPENSES AND/OR THE PLAN OF ALLOCATION?

Yes. If you are a Class Member, you may object to the terms of the Settlement. Whether or not you object to the terms of the Settlement, you may also object to the requested attorneys' fees, costs, charges and expenses, Lead Plaintiffs' request for awards for representing the Class and/or the Plan of Allocation. In order for any objection to be considered, you must file a written statement, accompanied by proof of Class membership, with the Court and send a copy to Lead Counsel and Defendants' Counsel, at the addresses listed below by _____, 2020. The Court's address is United States District Court for the District of Arizona, Sandra Day O'Connor United States Courthouse, 401 West Washington Street, Suite 623, Phoenix, AZ 85003-2156; Lead Counsel's address is Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, c/o Daniel S. Drosman; First Solar's Counsel's address is: Cravath, Swaine & Moore LLP, 825 8th Avenue, New York, NY 10019, c/o Daniel Slifkin. Attendance at the Settlement Fairness Hearing is not necessary; however, persons wishing to be heard orally at the Settlement Fairness Hearing are required to indicate in their written objection their intention to appear at the hearing and identify any witnesses they may call to testify and exhibits, if any, they intend to introduce into evidence.

WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?

If you are a Class Member and you did not exclude yourself from the Class, you may receive the benefit of, and you will be bound by, the terms of the Settlement described in this Notice, upon approval by the Court.

HOW CAN I GET A PAYMENT?

In order to qualify for a payment, you must timely complete and return the Proof of Claim and Release that accompanies this Notice. A Proof of Claim and Release is enclosed with this Notice and also may be downloaded at www.FSLRSecuritiesLitigation.com. Read the instructions carefully; fill out the Proof of Claim and Release; sign it; and mail or submit it online so that it is **postmarked (if mailed) or received (if submitted online) no later than _____, 2020**. The Proof of Claim and Release may be submitted online at www.FSLRSecuritiesLitigation.com. If you do not submit a timely Proof of Claim and Release with all of the required information, you will not receive a payment from the Settlement Fund; however, unless you expressly excluded yourself from the Class as described above, you will still be bound in all other respects by the Settlement, the Judgment, and the release contained in them.

WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?

If the Settlement is approved by the Court, the Court will enter a Judgment. If the Judgment becomes final pursuant to the terms of the Stipulation, all Class Members shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all of the Released Persons from all Released Claims.

- “Released Claims” means any and all claims (including Unknown Claims), and causes of action of every nature and description whatsoever, in law, equity, or otherwise, whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether arising under federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, and whether class, individual, representative, legal, or equitable in nature, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition of First Solar publicly-traded securities by Lead Plaintiffs or any other Class Member during the period between April 30, 2008 and February 28, 2012, inclusive; and (ii) the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions which have been or could have been asserted by or on behalf of any member of the Class. Released Claims do not include claims to enforce the Settlement, or any shareholder derivative claims on behalf of First Solar being pursued in the Derivative Action captioned *Barger, et al. v. Ahearn, et al.*, No. CV2013-009938, pending in the Superior Court of Arizona, Maricopa County.
- “Related Parties” means each Defendant’s respective present and former parents, subsidiaries, divisions, controlling persons, associates, entities and affiliates and each and all of their respective present and former employees, members, partners, principals, officers, directors, controlling shareholders, agents, attorneys, advisors (including financial or investment advisors), accountants, auditors, consultants, underwriters, investment bankers, commercial bankers, entities providing fairness opinions, general or limited partners or partnerships, limited liability companies, members, joint ventures and insurers and reinsurers of each of them; as well as the predecessors, successors, assigns, estates, immediate family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them, in their capacity as such.
- “Released Persons” means each and all of the Defendants and their Related Parties.
- “Unknown Claims” means (a) any and all Released Claims which the Releasing Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons, which, if known by

1 him, her, or it, might have affected his, her, or its settlement with and release
2 of the Released Persons, or might have affected his, her, or its decision(s) with
3 respect to the Settlement, including, but not limited to, whether or not to object
4 to this Settlement or seek exclusion from the Class; and (b) any and all
5 Released Defendants' Claims that the Released Persons do not know or
6 suspect to exist in his, her, or its favor at the time of the release of the Lead
7 Plaintiffs, the Class and Plaintiffs' Counsel, which, if known by him, her, or it,
8 might have affected his, her, or its settlement and release of Lead Plaintiffs,
9 the Class and Plaintiffs' Counsel. With respect to (a) any and all Released
10 Claims against the Released Persons, and (b) any and all Released Defendants'
11 Claims against Lead Plaintiffs, the Class and Plaintiffs' Counsel, the Settling
12 Parties stipulate and agree that, upon the Effective Date, the Settling Parties
13 shall expressly waive and each Releasing Plaintiff Party and Released Person
14 shall be deemed to have, and by operation of the Judgment shall have
15 expressly waived, the provisions, rights, and benefits of California Civil Code
16 §1542, which provides:

17 **A general release does not extend to claims that the**
18 **creditor or releasing party does not know or suspect**
19 **to exist in his or her favor at the time of executing the**
20 **release and that, if known by him or her would have**
21 **materially affected his or her settlement with the**
22 **debtor or released party.**

23 The Settling Parties shall expressly waive and each Releasing Plaintiff Party
24 and Released Person shall be deemed to have, and by operation of the
25 Judgment shall have, expressly waived any and all provisions, rights, and
26 benefits conferred by any law of any state or territory of the United States, or
27 principle of common law, which is similar, comparable, or equivalent to
28 California Civil Code §1542. The Releasing Plaintiff Parties and Released
Persons acknowledge that they may hereafter discover facts in addition to or
different from those which he, she, it or their counsel now knows or believes
to be true with respect to the subject matter of the Released Claims or
Released Defendants' Claims, but (a) the Releasing Plaintiff Parties shall
expressly fully, finally, and forever waive, compromise, settle, discharge,
extinguish, and release, and each Releasing Plaintiff Party shall be deemed to
have waived, compromised, settled, discharged, extinguished, and released,
and upon the Effective Date, and by operation of the Judgment shall have
waived, compromised, settled, discharged, extinguished, and released, fully,
finally, and forever, any and all Released Claims against the Released Persons,
known or unknown, suspected or unsuspected, contingent or non-contingent,
whether or not concealed or hidden, which now exist, or heretofore have
existed, upon any theory of law or equity now existing or coming into
existence in the future, including, but not limited to, conduct which is

1 negligent, intentional, with or without malice, or a breach of any duty, law or
 2 rule, without regard to the subsequent discovery or existence of such different
 3 or additional facts, legal theories, or authorities, and (b) the Released Persons
 4 shall expressly fully, finally, and forever waive, compromise, settle, discharge,
 5 extinguish, and release, and upon the Effective Date, and by operation of the
 6 Judgment shall have waived, compromised, settled, discharged, extinguished,
 7 and released, fully, finally, and forever, any and all Released Defendants'
 8 Claims against the Lead Plaintiffs, the Class and Plaintiffs' Counsel, known or
 9 unknown, suspected or unsuspected, contingent or non-contingent, whether or
 10 not concealed or hidden, which now exist, or heretofore have existed, upon
 11 any theory of law or equity now existing or coming into existence in the
 12 future, including, but not limited to, conduct which is negligent, intentional,
 with or without malice, or a breach of any duty, law or rule, without regard to
 the subsequent discovery or existence of such different or additional facts,
 legal theories, or authorities. The Settling Parties acknowledge, and the
 Releasing Plaintiff Parties and Released Persons shall be deemed by operation
 of the Judgment to have acknowledged, that the foregoing waiver was
 separately bargained for and is an essential element of the Settlement of which
 this release is a part.

13 THE SETTLEMENT FAIRNESS HEARING

14 The Court will hold a Settlement Fairness Hearing on _____, 2020, at ____:____.m.,
 15 before the Honorable David G. Campbell at the United States District Court for the District
 16 of Arizona, Sandra Day O'Connor United States Courthouse, 401 West Washington Street,
 17 Phoenix, Arizona for the purpose of determining whether: (1) the Settlement as set forth in
 18 the Stipulation for \$350,000,000.00 in cash should be approved by the Court as fair,
 19 reasonable and adequate; (2) Judgment as provided under the Stipulation should be entered;
 20 (3) to award Lead Counsel attorneys' fees and expenses out of the Settlement Fund and, if
 21 so, in what amount; (4) to award Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in
 connection with their representation of the Class out of the Settlement Fund and, if so, in
 what amount; and (5) the Plan of Allocation should be approved by the Court. The Court
 may adjourn or continue the Settlement Fairness Hearing without further notice to Members
 of the Class.

22 Any Class Member may appear at the Settlement Fairness Hearing and be heard on
 23 any of the foregoing matters; provided, however, that no such person shall be heard unless
 24 his, her, or its objection is made in writing and is filed, together with proof of membership in
 25 the Class and with copies of all other papers and briefs to be submitted by him, her, or it to
 26 the Court at the Settlement Fairness Hearing, with the Court no later than _____, 2020, and
 showing proof of service on the following counsel:

1 Daniel S. Drosman
2 ROBBINS GELLER RUDMAN
& DOWD LLP
3 655 West Broadway, Suite 1900
San Diego, CA 92101

Daniel Slifkin
CRAVATH, SWAINE & MOORE
LLP
Worldwide Plaza
825 8th Avenue
New York, NY 10019

4
5 *Attorneys for Lead Plaintiffs*

Attorneys for Defendants

6 Unless otherwise directed by the Court, any Class Member who does not make his,
7 her or its objection in the manner provided shall be deemed to have waived all objections to
8 this Settlement and shall be foreclosed from raising (in this or any other proceeding or on
any appeal) any objection and any untimely objection shall be barred.

9 If you hire an attorney (at your own expense) to represent you for purposes of
10 objecting, your attorney must serve a notice of appearance on counsel listed above and file it
with the Court (at the address set out above) by no later than _____, 2020.

11 INJUNCTION

12 The Court has issued an order enjoining all Class Members from instituting,
13 commencing, maintaining or prosecuting any action in any court or tribunal that asserts
14 Released Claims against any Released Persons, pending final determination by the Court of
whether the Settlement should be approved.

15 HOW DO I OBTAIN ADDITIONAL INFORMATION?

16 This Notice contains only a summary of the terms of the proposed Settlement. The
17 records in this Litigation may be examined and copied at any time during regular office
18 hours, and subject to customary copying fees, at the Clerk of the United States District Court
19 for the District of Arizona. For a fee, all papers filed in this Litigation are available at
20 www.pacer.gov. In addition, all of the Settlement documents, including the Stipulation, this
Notice, the Proof of Claim and Release and proposed Judgment may be obtained by
contacting the Claims Administrator at:

21 *First Solar Securities Litigation*
22 c/o Gilardi & Co. LLC
P.O. Box 43336
23 Providence, RI 02940-3336
Email: info@FSLRSecuritiesLitigation.com
24 Telephone: 866-688-4903
www.FSLRSecuritiesLitigation.com

25 In addition, you may contact Rick Nelson, Shareholder Relations, Robbins Geller
26 Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1(800)449-
4900, if you have any questions about the Litigation or the Settlement.

27
28

1 **DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION**

2 **SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES**

3 If you hold any First Solar publicly-traded securities purchased or acquired during the
4 Class Period as a nominee for a beneficial owner, then, within fourteen (14) business days
5 after you receive this Notice, you must either: (1) send a copy of this Notice by First-Class
6 Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to
7 the Claims Administrator:

8 *First Solar Securities Litigation*
9 c/o Gilardi & Co. LLC
10 P.O. Box 43336
11 Providence, RI 02940-3336
12 E-mail: info@FSLRSecuritiesLitigation.com
13 Telephone: 866-688-4903
14 www.FSLRSecuritiesLitigation.com

15 If you choose to mail the Notice and Proof of Claim and Release yourself, you may
16 obtain from the Claims Administrator (without cost to you) as many additional copies of
17 these documents as you will need to complete the mailing.

18 Regardless of whether you choose to complete the mailing yourself or elect to have
19 the mailing performed for you, you may obtain reimbursement for or advancement of
20 reasonable administrative costs actually incurred or expected to be incurred in connection
21 with forwarding the Notice and which would not have been incurred but for the obligation to
22 forward the Notice, upon submission of appropriate documentation to the Claims
23 Administrator.

24 DATED:

25 BY ORDER OF THE
26 UNITED STATES DISTRICT COURT
27 DISTRICT OF ARIZONA
28

EXHIBIT A-2

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

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

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

PROOF OF CLAIM AND RELEASE

EXHIBIT A-2

1 **I. GENERAL INSTRUCTIONS**

2 1. To recover as a member of the Class based on your claims in the action entitled
3 *Smilovits v. First Solar, Inc. et al.*, No. 2:12-cv-00555-DGC (the “Litigation”), you must
4 complete and, on page __ hereof, sign this Proof of Claim and Release. If you fail to submit
5 a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release form,
6 postmarked or received by the date shown below, your claim may be rejected and you may
7 be precluded from any recovery from the Net Settlement Fund created in connection with the
8 proposed settlement of the Litigation (the “Settlement”).¹

9
10
11 2. Submission of this Proof of Claim and Release form, however, does not assure
12 that you will share in the proceeds of the Settlement.

13 3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND
14 SIGNED PROOF OF CLAIM AND RELEASE FORM, ACCOMPANIED BY COPIES OF
15 THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN _____, 2020, TO
16 THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE
17 FOLLOWING ADDRESS:

18
19
20 *First Solar Securities Litigation*
21 c/o Gilardi & Co. LLC
22 P.O. Box 43336
23 Providence RI 02940-3336
24 Online Submissions: www.FSLRSecuritiesLitigation.com

25 If you are NOT a member of the Class (as defined in the Notice of Proposed Settlement of
26 Class Action (the “Notice”)), DO NOT submit a Proof of Claim and Release form.

27 ¹ This Proof of Claim and Release incorporates by reference the definitions in the
28 Stipulation of Settlement (“Stipulation”), which can be obtained at
www.FSLRSecuritiesLitigation.com.

1 4. If you are a member of the Class and you did not timely request exclusion from
2 the Class, you will be bound by the terms of any judgment entered in the Litigation,
3 including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF
4 CLAIM AND RELEASE FORM.
5

6 **II. CLAIMANT IDENTIFICATION**

7 You are a member of the Class if you purchased or otherwise acquired First Solar,
8 Inc. (“First Solar”) publicly-traded securities between April 30, 2008 and February 28, 2012,
9 inclusive. Excluded from the Class are: Defendants, members of the immediate families of
10 each of the Defendants, the officers and directors of First Solar, at all relevant times,
11 members of their immediate families and their legal representatives, heirs, successors, or
12 assigns and any entity in which Defendants had a controlling interest. The Class also
13 excludes the plaintiffs in the litigation entitled *Maverick Fund, L.D.C. v. First Solar, Inc. et*
14 *al.*, No. 2:15-cv-01156-DGC (D. Ariz.). Also excluded from the Class is any Class Member
15 that validly and timely requested exclusion in accordance with the requirements set by the
16 Court in connection with the Notice of Pendency of Class Action previously provided to the
17 Class.
18
19
20

21 Use Part I of this form entitled “Claimant Identification” to identify each purchaser or
22 acquirer of record (“nominee”), if different from the beneficial purchaser or acquirer of the
23 securities which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE
24 ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL
25 REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE FIRST
26 SOLAR SECURITIES UPON WHICH THIS CLAIM IS BASED.
27
28

1 All joint purchasers or acquirers must sign this claim. Executors, administrators,
2 guardians, conservators and trustees must complete and sign this claim on behalf of persons
3 represented by them and their authority must accompany this claim and their titles or
4 capacities must be stated. The Social Security (or taxpayer identification) number and
5 telephone number of the beneficial owner may be used in verifying the claim. Failure to
6 provide the foregoing information could delay verification of your claim or result in rejection
7 of the claim.
8

9
10 If you are acting in a representative capacity on behalf of a Class Member (for
11 example, as an executor, administrator, trustee, or other representative), you must submit
12 evidence of your current authority to act on behalf of that Class Member. Such evidence
13 would include, for example, letters testamentary, letters of administration, or a copy of the
14 trust documents.
15

16 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large
17 numbers of transactions may request to, or may be requested to, submit information
18 regarding their transactions in electronic files. All claimants MUST submit a manually
19 signed paper Proof of Claim and Release form listing all their transactions whether or not
20 they also submit electronic copies. If you wish to file your claim electronically, you must
21 contact the Claims Administrator at edata@gilardi.com to obtain the required file layout. No
22 electronic files will be considered to have been properly submitted unless the Claims
23 Administrator issues to the claimant a written acknowledgement of receipt and acceptance of
24 electronically submitted data.
25
26
27
28

1 **III. CLAIM FORM**

2 Use Part II of this form entitled “Schedule of Transactions in First Solar Publicly-
3 Traded Securities,” to supply all required details of your transaction(s) in First Solar
4 publicly-traded securities. If you need more space or additional schedules, attach separate
5 sheets giving all of the required information in substantially the same form. Sign and print
6 or type your name on each additional sheet.
7

8 On the schedules, provide all of the requested information with respect to *all* of your
9 purchases and acquisitions and *all* of your sales of First Solar publicly-traded securities
10 between April 30, 2008 and May 29, 2012, whether such transactions resulted in a profit or a
11 loss. You must also provide all of the requested information with respect to *all* of the shares
12 of First Solar publicly-traded securities you held at the close of trading on April 30, 2008,
13 February 28, 2012, and May 29, 2012. Failure to report all such transactions may result in
14 the rejection of your claim.
15
16

17 List these transactions separately and in chronological order, by trade date, beginning
18 with the earliest. You must accurately provide the month, day and year of each transaction
19 you list.
20

21 For short-sale transactions, the date of covering a “short sale” is deemed to be the date
22 of purchase of First Solar common stock, and the date of a “short sale” is deemed to be the
23 date of sale of First Solar common stock.
24

25 For each transaction, you must provide, together with this claim form, copies of
26 stockbroker confirmation slips, stockbroker statements, or other documents adequately
27 evidencing your transactions in First Solar publicly-traded securities. If any such documents
28

1 are not in your possession, please obtain a copy or equivalent documents from your broker
2 because these documents are necessary to prove and process your claim. Failure to provide
3 this documentation could delay verification of your claim or result in rejection of your claim.
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

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

Smilovits v. First Solar, Inc., et al.

Civil Action No. 2:12-cv-00555-DGC

PROOF OF CLAIM AND RELEASE

Must Be Postmarked (if mailed) or Received (if submitted online) No Later Than:

_____, 2020

Please Type or Print

**REMEMBER TO ATTACH COPIES OF BROKER CONFIRMATIONS OR
OTHER DOCUMENTATION OF YOUR TRANSACTIONS IN FIRST SOLAR
SECURITIES. FAILURE TO PROVIDE THIS DOCUMENTATION COULD
DELAY VERIFICATION OF YOUR CLAIM OR RESULT IN REJECTION OF
YOUR CLAIM.**

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

PART I: CLAIMANT IDENTIFICATION

Last Name M.I. First Name

Last Name (Co-Beneficial Owner) M.I. First Name (Co-Beneficial Owner)

IRA Joint Tenancy Employee Individual Other _____ (specify)

Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA

Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)

Account#/Fund# (Not Necessary for Individual Filers)

Social Security Number - - or Taxpayer Identification Number -

Telephone Number (Primary Daytime) - - Telephone Number (Alternate) - -

Email Address

MAILING INFORMATION

Address

Address

City State Zip Code

Foreign Province Foreign Postal Code Foreign Country Name/Abbreviation

PART II: SCHEDULE OF TRANSACTIONS IN FIRST SOLAR COMMON STOCK

A. Number of shares of First Solar common stock held at the close of trading on April 29, 2008:

Proof Enclosed?
 Y
 N

B. Purchases or acquisitions of First Solar common stock between April 30, 2008 and February 28, 2012, inclusive:

1 **YOU MUST READ AND SIGN THE RELEASE ON PAGE _____. FAILURE**
2 **TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE**
3 **REJECTION OF YOUR CLAIM.**

4
5 **IV. SUBMISSION TO JURISDICTION OF COURT AND**
6 **ACKNOWLEDGMENTS**

7 I (We) submit this Proof of Claim and Release under the terms of the Stipulation
8 described in the Notice. I (We) also submit to the jurisdiction of the United States District
9 Court for the District of Arizona with respect to my (our) claim as a Class Member and for
10 purposes of enforcing the releases set forth herein. I (We) further acknowledge that I am (we
11 are) bound by and subject to the terms of the Stipulation and any judgment that may be
12 entered in the Litigation, including the releases and the covenants set forth herein. I (We)
13 agree to furnish additional information to the Claims Administrator to support this claim if
14 requested to do so. I (We) have not submitted any other claim in connection with the
15 purchase or acquisition of First Solar publicly-traded securities during the Class Period and
16 know of no other person having done so on my (our) behalf.

17
18
19 **V. RELEASES**

20 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby
21 fully, finally, and forever settle, release, and discharge from the Released Claims each and all
22 of the Released Persons.

23
24 2. “Released Persons” means each and all of the Defendants and their Related
25 Parties.

26 3. “Released Claims” means any and all claims (including Unknown Claims), and
27 causes of action of every nature and description whatsoever, in law, equity, or otherwise,
28

1 whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether
2 arising under federal, state, local, statutory, common law, foreign law, or any other law, rule,
3 or regulation, and whether class, individual, representative, legal, or equitable in nature,
4 concerning, based on, arising out of, or in connection with both: (i) the purchase or other
5 acquisition of First Solar publicly-traded securities by Lead Plaintiffs or any other Class
6 Member during the period between April 30, 2008 and February 28, 2012, inclusive; and (ii)
7 the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions
8 which have been or could have been asserted by or on behalf of any member of the Class.
9 Released Claims do not include claims to enforce the Settlement, or any shareholder
10 derivative claims on behalf of First Solar being pursued in the Derivative Action.
11
12

13 4. “Released Defendants’ Claims” means any and all claims and causes of action
14 of every nature and description whatsoever, including both known claims and Unknown
15 Claims, that arise out of, are based upon, or relate in any way to the institution, prosecution,
16 or settlement of the claims against Defendants in the Litigation, except for claims relating to
17 the enforcement of the Settlement.
18

19 5. “Unknown Claims” means (a) any and all Released Claims which the
20 Releasing Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time
21 of the release of the Released Persons, which, if known by him, her, or it, might have
22 affected his, her, or its settlement with and release of the Released Persons, or might have
23 affected his, her, or its decision(s) with respect to the Settlement, including, but not limited
24 to, whether or not to object to this Settlement or seek exclusion from the Class; and (b) any
25 and all Released Defendants’ Claims that the Released Persons do not know or suspect to
26 exist in his, her, or its favor at the time of the release of the Lead Plaintiffs, the Class and
27 Plaintiffs’ Counsel, which, if known by him, her, or it, might have affected his, her, or its
28 settlement and release of Lead Plaintiffs, the Class and Plaintiffs’ Counsel. With respect to

1 (a) any and all Released Claims against the Released Persons, and (b) any and all Released
2 Defendants' Claims against Lead Plaintiffs, the Class and Plaintiffs' Counsel, the Settling
3 Parties stipulate and agree that, upon the Effective Date, the Settling Parties shall expressly
4 waive and each Releasing Plaintiff Party and Released Person shall be deemed to have, and
5 by operation of the Judgment shall have expressly waived, the provisions, rights, and
6 benefits of California Civil Code §1542, which provides:

7 A general release does not extend to claims that the creditor or releasing party
8 does not know or suspect to exist in his or her favor at the time of executing
9 the release and that, if known by him or her, would have materially affected
 his or her settlement with the debtor or released party.

10 The Settling Parties shall expressly waive and each Releasing Plaintiff Party and Released
11 Person shall be deemed to have, and by operation of the Judgment shall have, expressly
12 waived any and all provisions, rights, and benefits conferred by any law of any state or
13 territory of the United States, or principle of common law, which is similar, comparable, or
14 equivalent to California Civil Code §1542. The Releasing Plaintiff Parties and Released
15 Persons acknowledge that they may hereafter discover facts in addition to or different from
16 those which he, she, it or their counsel now knows or believes to be true with respect to the
17 subject matter of the Released Claims or Released Defendants' Claims, but (a) the Releasing
18 Plaintiff Parties shall expressly fully, finally, and forever waive, compromise, settle,
19 discharge, extinguish, and release, and each Releasing Plaintiff Party shall be deemed to
20 have waived, compromised, settled, discharged, extinguished, and released, and upon the
21 Effective Date, and by operation of the Judgment shall have waived, compromised, settled,
22 discharged, extinguished, and released, fully, finally, and forever, any and all Released
23 Claims against the Released Persons, known or unknown, suspected or unsuspected,
24 contingent or non-contingent, whether or not concealed or hidden, which now exist, or
25 heretofore have existed, upon any theory of law or equity now existing or coming into
26 existence in the future, including, but not limited to, conduct which is negligent, intentional,
27 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
28 discovery or existence of such different or additional facts, legal theories, or authorities, and

1 (b) the Released Persons shall expressly fully, finally, and forever waive, compromise, settle,
2 discharge, extinguish, and release, and upon the Effective Date, and by operation of the
3 Judgment shall have waived, compromised, settled, discharged, extinguished, and released,
4 fully, finally, and forever, any and all Released Defendants' Claims against the Lead
5 Plaintiffs, the Class and Plaintiffs' Counsel, known or unknown, suspected or unsuspected,
6 contingent or non-contingent, whether or not concealed or hidden, which now exist, or
7 heretofore have existed, upon any theory of law or equity now existing or coming into
8 existence in the future, including, but not limited to, conduct which is negligent, intentional,
9 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
10 discovery or existence of such different or additional facts, legal theories, or authorities. The
11 Settling Parties acknowledge, and the Releasing Plaintiff Parties and Released Persons shall
12 be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver
13 was separately bargained for and is an essential element of the Settlement of which this
14 release is a part.

15 6. These releases shall be of no force or effect unless and until the Court approves
16 the Stipulation and the Settlement becomes effective on the Effective Date.

17 7. I (We) hereby warrant and represent that I (we) have not assigned or
18 transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or
19 matter released pursuant to this release or any other part or portion thereof.

21 8. I (We) hereby warrant and represent that I (we) have included information
22 about all of my (our) purchases, acquisitions and sales of First Solar publicly-traded
23 securities during the Class Period and the number of shares of First Solar publicly-traded
24 securities held by me (us) at the close of trading on April 29, 2008, February 28, 2012, and
25 May 29, 2012.
26
27
28

1 I (We) declare under penalty of perjury under the laws of the United States of
2 America that the foregoing information supplied by the undersigned is true and correct and
3 that the Claimant has not previously entered into any settlement agreement or provided a
4 release of claims to any Defendant relating to or arising from the purchase or other
5 acquisition of First Solar publicly-traded securities prior to February 28, 2012.
6

7 Executed this _____ day of _____ in _____
(Month/Year) (City/State/Country)

8
9 _____
(Sign your name here)

_____ (Sign your name here)

10 _____
(Type or print your name here)

_____ (Type or print your name here)

11 _____
12 (Capacity of person(s) signing, e.g.,
Beneficial Purchaser, Executor or Administrator)

_____ (Capacity of person(s) signing, e.g.,
Beneficial Purchaser, Executor or Administrator)

13 **ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.**
14 **THANK YOU FOR YOUR PATIENCE.**

15 **Reminder Checklist:**

- | | |
|--|---|
| 1. Please sign the above release and declaration. | 6. If you desire an acknowledgment of receipt of your claim form please send it Certified Mail, Return Receipt Requested. |
| 2. If this Claim is being made on behalf of Joint Claimants, then both must sign. | 7. If you move, please send your new address to the address below. |
| 3. Remember to attach copies of supporting documentation, if available. | 8. Do not use red pen or highlighter on the Proof of Claim and Release form or supporting documentation. |
| 4. Do not send originals of certificates. | |
| 5. Keep a copy of your claim form and all supporting documentation for your records. | |

16
17
18
19 **THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED ONLINE OR MAILED NO LATER THAN _____, 2020,**

20 **ADDRESSED AS FOLLOWS:**

21 *First Solar Securities Litigation*
22 Claims Administrator
23 c/o Gilardi & Co. LLC
24 P.O. Box 43336
25 Providence, RI 02940-3336
26
27
28

EXHIBIT A-3

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

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

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mark Smilovits, Individually and on Behalf) No. 2:12-cv-00555-DGC
of All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) SUMMARY NOTICE OF PROPOSED
First Solar, Inc., Michael J. Ahearn, Robert) SETTLEMENT OF CLASS ACTION
J. Gillette, Mark R. Widmar, Jens)
Meyerhoff, James Zhu, Bruce Sohn and)
David Eaglesham,) EXHIBIT A-3
Defendants.)

1 **TO: ALL PERSONS AND ENTITIES THAT PURCHASED OR OTHERWISE**
2 **ACQUIRED THE PUBLICLY-TRADED SECURITIES OF FIRST SOLAR ,**
3 **INC. (“FIRST SOLAR”) DURING THE PERIOD BETWEEN APRIL 30, 2008**
4 **AND FEBRUARY 28, 2012, INCLUSIVE (THE “CLASS PERIOD”)**

4 **THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER**
5 **SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS**
6 **ENTIRETY.**

6 YOU ARE HEREBY NOTIFIED that a hearing will be held on _____, 2020,
7 at __: __.m., before the Honorable David G. Campbell at the Sandra Day O’Connor United
8 States Courthouse, 401 West Washington Street, Phoenix, AZ 85003-2156, in Courtroom
9 603, to determine whether: (1) the proposed settlement (the “Settlement”) of the above-
10 captioned action as set forth in the Stipulation of Settlement (“Stipulation”)¹ for
11 \$350,000,000.00 in cash should be approved by the Court as fair, reasonable and adequate;
12 (2) the Judgment as provided under the Stipulation should be entered dismissing the
13 Litigation with prejudice; (3) to award Lead Counsel attorneys’ fees and costs, charges and
14 expenses out of the Settlement Fund (as defined in the Notice of Proposed Settlement of
15 Class Action (“Notice”), which is discussed below) and, if so, in what amount; (4) to pay
16 Lead Plaintiffs for their costs and expenses in representing the Class out of the Settlement
17 Fund and, if so, in what amount; and (5) the Plan of Allocation should be approved by the
18 Court as fair, reasonable and adequate.

22 IF YOU PURCHASED OR ACQUIRED FIRST SOLAR PUBLICLY-TRADED
23 SECURITIES BETWEEN APRIL 30, 2008 AND FEBRUARY 28, 2012, INCLUSIVE,
24 YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION.
25

26 _____
27 ¹ The Stipulation can be viewed and/or obtained at
28 www.FSLRSecuritiesLitigation.com. Capitalized terms not otherwise defined herein have
the meaning given to them in the Stipulation.

1 To share in the distribution of the Settlement Fund, you must establish your rights by
2 submitting a Proof of Claim and Release form by mail (**postmarked no later than**
3 _____, **2020**) or electronically (**no later than** _____, **2020**). Your failure to
4 submit your Proof of Claim and Release by _____, 2020, will subject your claim to
5 rejection and preclude your receiving any of the recovery in connection with the Settlement
6 of this Litigation. If you are a Member of the Class and did not timely and validly request
7 exclusion therefrom in accordance with the requirements set forth by the Court in connection
8 with the Notice of Pendency of Class Action, you will be bound by the Settlement and any
9 judgment and release entered in the Litigation, including, but not limited to, the Judgment,
10 whether or not you submit a Proof of Claim and Release.
11
12

13 If you have not received a copy of the Notice, which more completely describes the
14 Settlement and your rights thereunder (including your right to object to the Settlement), and
15 a Proof of Claim and Release, you may obtain these documents, as well as a copy of the
16 Stipulation and other settlement documents, online at www.FSLRSecuritiesLitigation.com,
17 or by writing to:
18

19
20 *First Solar Securities Litigation*
21 c/o Gilardi & Co. LLC
22 P.O. Box 43336
23 Providence, RI 02940-3336

24 Inquiries should NOT be directed to Defendants, the Court, or the Clerk of the Court.

25 Inquiries, other than requests for the Notice or for a Proof of Claim and Release, may
26 be made to a representative of Lead Counsel:
27
28

1 ROBBINS GELLER RUDMAN & DOWD LLP

2 Rick Nelson

3 c/o Shareholder Relations

4 655 West Broadway, Suite 1900

5 San Diego, CA 92101

6 Telephone: 800/449-4900

7 IF YOU ARE A CLASS MEMBER, YOU HAVE THE RIGHT TO OBJECT TO
8 THE SETTLEMENT, THE PLAN OF ALLOCATION, THE REQUEST BY LEAD
9 COUNSEL FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND/OR THE
10 AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4) IN
11 CONNECTION WITH THEIR REPRESENTATION OF THE CLASS. ANY
12 OBJECTIONS MUST BE FILED WITH THE COURT AND SENT TO LEAD COUNSEL
13 AND DEFENDANTS' COUNSEL **BY** _____, **2020**, IN THE MANNER AND
14 FORM EXPLAINED IN THE NOTICE.

15 DATED: _____

16 BY ORDER OF THE
17 UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

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 AND FINAL
JUDGMENT

EXHIBIT B

1 On the ____ day of _____, 2020, a hearing having been held before this Court to
2 determine: (1) whether the terms and conditions of the Stipulation of Settlement dated
3 February 13, 2020 (the “Stipulation”) are fair, reasonable and adequate for the settlement of
4 all claims asserted by the Class against the Defendants in the complaint now pending in this
5 Court in the above captioned action (the “Litigation”), including the release of the Released
6 Persons, and should be approved; (2) whether judgment should be entered dismissing the
7 Complaint on the merits and with prejudice in favor of the Defendants herein and as against
8 all persons or entities who are Members of the Class herein who have not timely and validly
9 requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and
10 reasonable method to allocate the settlement proceeds among the Members of the Class; (4)
11 whether and in what amount to award Lead Counsel fees and costs, charges and expenses;
12 and (5) whether and in what amount to award Lead Plaintiffs for their costs and expenses in
13 representing the Class; the Court having considered all matters submitted to it at the hearing
14 and otherwise; it appearing that a notice of the hearing substantially in the form approved by
15 the Court was provided to all individuals and entities, reasonably identifiable, who purchased
16 or otherwise acquired First Solar publicly-traded securities between April 30, 2008 and
17 February 28, 2012, inclusive, as shown by the records compiled by the Claims Administrator
18 in connection with its providing of the Notice, at the respective addresses set forth in such
19 records, and that a summary notice of the hearing substantially in the form approved by the
20 Court was published pursuant to the Order Granting Preliminarily Approval Pursuant to Fed.
21 R. Civ. P. 23(e)(1) and Permitting Notice to the Class as set forth in the Declaration of
22 _____, and the Supplemental Declaration of _____; the Court having
23
24
25
26
27
28

1 considered and determined the fairness and reasonableness of the award of attorneys' fees
2 and costs, charges and expenses requested by Lead Counsel and the request for Lead
3 Plaintiffs' costs and expenses; and all capitalized terms not otherwise defined herein having
4 the meanings set forth and defined in the Stipulation.
5

6 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

7 1. This Judgment incorporates by reference the definitions in the Stipulation, and
8 all terms used herein shall have the same meanings as set forth in the Stipulation, unless
9 otherwise set forth herein.

10 2. The Court has jurisdiction over the subject matter of this Litigation, the Lead
11 Plaintiffs, all Class Members, and Defendants.

12 3. Excluded from the Class is any Class Member that validly and timely
13 requested exclusion, which Class Members are identified in Exhibit A hereto. Also excluded
14 from the Class are the plaintiffs in the action captioned *Maverick Fund, L.D.C. v. First Solar,*
15 *Inc. et al.*, No. 2:15-cv-01156-DGC, pending in the United States District Court for the
16 District of Arizona.

17 4. Notice of the pendency of this Litigation and the proposed Settlement was
18 given to all Class Members who could be identified with reasonable effort. The form and
19 method of notifying the Class of the pendency of the Litigation and the terms and conditions
20 of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil
21 Procedure, the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due
22 process, and any other applicable law, constituted the best notice practicable under the
23 circumstances, and constituted due and sufficient notice to all individuals and entities
24 entitled thereto.

25 5. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court hereby
26 approves the Settlement set forth in the Stipulation and finds that in light of the benefits to
27 the Class, the complexity and expense of further litigation, and the costs of continued
28

1 litigation, the Settlement is, in all respects, fair, reasonable, and adequate having considered
2 and found that: (a) Lead Plaintiffs and Lead Counsel have adequately represented the Class;
3 (b) the proposal was negotiated at arm's length; (c) the relief provided for the Class is
4 adequate, having taken into account (i) the costs, risks, and delay of trial and appeal; (ii) the
5 effectiveness of any proposed method of distributing relief to the Class, including the method
6 of processing Class Members' claims; (iii) the terms of any proposed award of attorneys'
7 fees, including timing of payment; and (iv) any agreement required to be identified under
8 Rule 23(e)(2); and (d) the proposed Plan of Allocation treats Class Members equitably
9 relative to each other.

10 6. Accordingly, the Court authorizes and directs implementation and performance
11 of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof.
12 Except as to any individual claims of those Persons (identified in Exhibit A attached hereto)
13 who have validly and timely requested exclusion from the Class, and the Plaintiffs in the
14 Opt-Out Litigation, the Court hereby dismisses all Released Claims of the Class, as against
15 the Released Persons, with prejudice. The Settling Parties are to bear their own costs, except
16 as to and to the extent provided in the Stipulation and herein.

17 7. The releases as set forth in ¶¶4.1-4.4 of the Stipulation (the "Releases"),
18 together with the definitions contained in ¶¶1.1-1.32 relating thereto, are expressly
19 incorporated herein in all respects. The Releases are effective as of the Effective Date.

20 8. Upon the Effective Date, each of the Releasing Plaintiff Parties will be forever
21 barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute
22 any action or other proceeding in any court of law or equity, arbitration tribunal, or
23 administrative forum, asserting the Released Claims against any of the Released Persons.
24 Claims to enforce the terms of the Stipulation are not released.

25 9. Upon the Effective Date, Lead Plaintiffs shall, and each and every Releasing
26 Plaintiff Party shall be deemed to have, and by operation of this Judgment shall have, fully,
27 finally, and forever waived, released, relinquished, discharged and dismissed each and every
28 one of the Released Claims (including Unknown Claims) against each and every one of the

1 Released Persons and shall forever be barred and enjoined from commencing, instituting,
2 prosecuting, or maintaining any and all of the Released Claims against any and all of the
3 Released Persons, whether or not such Releasing Plaintiff Party executes and delivers the
4 Proof of Claim and Release or shares in the Net Settlement Fund. Lead Plaintiffs and each
5 Releasing Plaintiff Party are bound by this Judgment, including, without limitation, the
6 release of claims as set forth in the Stipulation. The Released Claims are hereby
7 compromised, settled, released, discharged, and dismissed as against the Released Persons
8 on the merits and with prejudice by virtue of the proceedings herein and this Order and Final
9 Judgment. Claims to enforce the terms of the Settlement are not released.

10 10. Upon the Effective Date, each of the Released Persons shall be deemed to
11 have, and by operation of this Judgment shall have, fully, finally, and forever released,
12 relinquished, and discharged Lead Plaintiffs, the Class and Plaintiffs' Counsel from all
13 Released Defendants' Claims (including Unknown Claims). Claims to enforce the terms of
14 the Stipulation are not released.

15 11. Upon the Effective Date, to the fullest extent permitted by law, (i) all Persons
16 shall be permanently enjoined, barred and restrained from commencing, instituting,
17 prosecuting, or maintaining any claims, actions, or causes of action for contribution,
18 indemnity or otherwise against any of the Released Persons seeking as damages or otherwise
19 the recovery of all or part of any liability, judgment or settlement which they pay or are
20 obligated to pay or agree to pay to the Releasing Plaintiff Parties arising out of, relating to or
21 concerning any acts, facts, statements or omissions that were or could have been alleged in
22 the Litigation, both known and Unknown Claims, whether arising under state, federal or
23 foreign law, as claims, cross-claims, counterclaims, third-party claims or otherwise, in the
24 Court or any other federal, state, or foreign court, or in any arbitration proceeding,
25 administrative agency proceeding, tribunal, or any other proceeding or forum; and (ii) all
26 Released Persons shall be permanently enjoined, barred and restrained from commencing,
27 instituting, prosecuting, or maintaining any claims, actions, or causes of action for
28 contribution, indemnity or otherwise against any Persons seeking as damages or otherwise

1 the recovery of all or any part of any liability, judgment or settlement which they pay or are
2 obligated to pay or agree to pay to the Releasing Plaintiff Parties arising out of, relating to, or
3 concerning any acts, facts, statements or omissions that were or could have been alleged in
4 the Litigation, both known and Unknown Claims, whether arising under state, federal or
5 foreign law, as claims, cross-claims, counterclaims, third-party claims or otherwise, in the
6 Court or any other federal, state, or foreign court, or in any arbitration proceeding,
7 administrative agency proceeding, tribunal, or any other proceeding or forum; ***provided that***
8 clauses (i) and (ii) of this Paragraph shall not be construed to modify, amend, or supersede
9 any agreements between or among the Released Persons with respect to claims between or
10 among those Released Persons.

11 12. Defendants have denied, and continue to deny, any and all allegations and
12 claims asserted in the Litigation, and Defendants have represented that they entered into the
13 Settlement because it would be beneficial to avoid the burden, inconvenience, and expense
14 associated with continuing the Litigation and the uncertainty and risks inherent in any
15 litigation. Neither this Order and Final Judgment, the Stipulation, nor any of their respective
16 terms and provisions, nor any of the negotiations, discussions, or proceedings connected with
17 them, nor any act performed or document executed pursuant to or in furtherance of the
18 Stipulation or the Settlement, nor any of the documents or statements referred to therein, nor
19 any payment or consideration provided for therein, shall be:

20 (a) offered or received against any of the Released Persons as evidence of,
21 or construed as evidence of, any presumption, concession, or admission by any of the
22 Released Persons with respect to the truth of any of the allegations in the Litigation or the
23 validity of any claim that has been or could have been asserted against any of the Released
24 Persons in the Litigation or in any other litigation, action, or proceeding, whether civil,
25 criminal, or administrative, in any court, administrative agency, or other tribunal, or the
26 deficiency of any defense that has been or could have been asserted in the Litigation or in
27 any other litigation, action, or proceeding, whether civil, criminal, or administrative in any
28

1 court, administrative agency, or other tribunal, or of any liability, negligence, fault, or other
2 wrongdoing of any kind by any of the Released Persons;

3 (b) offered or received against any of the Released Persons as evidence of,
4 or construed as evidence of, any presumption, concession, or admission of any fault,
5 misrepresentation, or omission with respect to any statement or written document approved
6 or made by any of the Released Persons, or against Lead Plaintiffs or any Member of the
7 Class as evidence of, or construed as evidence of, any infirmity of the claims alleged by Lead
8 Plaintiffs;

9 (c) offered or received against the Released Persons, Lead Plaintiffs, or any
10 Member of the Class as evidence of, or construed as evidence of, any presumption,
11 concession, or admission by any of the Released Persons, Lead Plaintiffs, or any Member of
12 the Class with respect to any liability, negligence, fault, or wrongdoing as against any of the
13 Released Persons, Lead Plaintiffs, or any Member of the Class in any other litigation, action,
14 or proceeding, whether civil, criminal, or administrative, in any court, administrative agency,
15 or other tribunal, other than such proceedings as may be necessary to effectuate the
16 provisions of the Stipulation or this Order and Final Judgment; provided, however, that the
17 Released Persons, Lead Plaintiffs, and any Member of the Class may refer to them to
18 effectuate the liability protection granted them hereunder;

19 (d) offered or received against any of the Released Persons as evidence of,
20 or construed as evidence of, any presumption, concession, or admission by any of the
21 Released Persons that the Settlement Amount represents the amount which could or would
22 have been recovered after trial; or

23 (e) offered or received against Lead Plaintiffs or any Member of the Class
24 as evidence of, or construed as evidence of, any presumption, concession, or admission by
25 Lead Plaintiffs or any Member of the Class that any of their claims are without merit, or that
26 any defenses asserted by the Defendants in the Litigation have any merit, or that damages
27 recoverable in the Litigation would not have exceeded the Settlement Fund.

28

1 13. The Released Persons may file the Stipulation and/or this Judgment in any
2 action in order to support a defense, claim, or counterclaim based on principles of *res*
3 *judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
4 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

5 14. The Court finds that Defendants have satisfied their financial obligations under
6 the Stipulation by paying or causing to be paid \$350,000,000.00 to the Settlement Fund, in
7 accordance with ¶2.2 of the Stipulation.

8 15. The Court finds and concludes that the Lead Plaintiffs, Plaintiffs' Counsel,
9 Defendants and Defendants' Counsel have complied with each requirement of Rule 11(b) of
10 the Federal Rules of Civil Procedure as to any complaint, responsive pleading, dispositive
11 motion, or other filing.

12 16. Any Plan of Allocation submitted by Lead Counsel or any order entered
13 regarding any attorneys' fee and expense application or awards to Lead Plaintiffs shall in no
14 way disturb or affect this Judgment and shall be considered separate from this Judgment.
15 Separate orders shall be entered regarding approval of a plan of allocation and Lead
16 Counsel's application for an award of attorneys' fees and expenses, and awards to Lead
17 Plaintiffs.

18 17. The Settling Parties are hereby authorized, without further approval of the
19 Court, to unanimously agree to and adopt in writing amendments, modifications, and
20 expansions of the Stipulation, provided that such amendments, modifications, and
21 expansions of the Stipulation are not materially inconsistent with this Judgment, and do not
22 materially limit the rights of the Members of the Class under the Stipulation.

23 18. Any appeal or any challenge affecting the approval of (a) the Plan of
24 Allocation submitted by Lead Counsel and/or (b) this Court's approval regarding any
25 attorneys' fee and expense applications, including any awards to Lead Plaintiffs, shall in no
26 way disturb or affect the finality of the other provisions of this Order and Final Judgment nor
27 the Effective Date of the Settlement.

28

1 19. Without affecting the finality of this Judgment in any way, jurisdiction is
2 hereby retained over Defendants, Lead Plaintiffs and Class Members for all matters relating
3 to the administration, interpretation, effectuation or enforcement of the Stipulation and this
4 Order and Final Judgment, including administering and distributing the settlement proceeds
5 to the Members of the Class.

6 20. In the event that the Effective Date does not occur in accordance with the terms
7 of the Stipulation, or is terminated pursuant to ¶2.16 of the Stipulation, ¶¶7.4, 7.5 and 7.6 of
8 the Stipulation shall apply and this Order and Final Judgment shall be rendered null and void
9 to the extent provided by and in accordance with the Stipulation and shall be vacated and
10 may not be introduced as evidence or reflected in any action or proceeding by any person or
11 entity, and each party shall be restored to his, her or its respective position as it existed prior
12 to January 5, 2020.

13 21. Without further order of the Court, the parties may agree to reasonable
14 extensions of time to carry out any of the provisions of the Stipulation.

15 22. Defendants have provided notification to all appropriate federal and state
16 officials regarding the Settlement as required by 28 U.S.C. §1715.

17 23. This Litigation and all Released Claims are dismissed with prejudice. The
18 parties are to bear their own costs, except as otherwise agreed to in writing by the Settling
19 Parties or as otherwise provided in the Stipulation or this Order and Final Judgment.

20 24. There is no just reason for delay in the entry of this Order and Final Judgment
21 and immediate entry by the Clerk of the Court is expressly directed.

22
23
24
25
26
27
28

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 1:05 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: [701](#)

Docket Text:

STIPULATION re: [700] MOTION Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement *Stipulation of Settlement* by British Coal Staff Superannuation Scheme, Mineworkers' Pension Scheme. (Attachments: # (1) Exhibit A - Proposed Order Granting Preliminary Approval of Settlement, # (2) Exhibit A-1 - Notice of Proposed Settlement, # (3) Exhibit A-2 - Proof of Claim and Release, # (4) Exhibit A-3 - Summary Notice, # (5) Exhibit B - Proposed Order and Final Judgment)(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 brobbs@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@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@robbinsaroyo.com, notice@robbinsaroyo.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@robbinsaroyo.com

Jeffrey Dale Gardner jgardner@jsslw.com, eblackmountain@jsslw.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=20359858-0] [26348912632e9c3a7fce7811b922078f58b762ae172ceef246850969f8c7ab3db8baf14675afd48bdc4283053e888a3ccda8592bdb934eef57df6b68297e8072]]

Document description:Exhibit A - Proposed Order Granting Preliminary Approval of Settlement

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359858-

1] [5597ef6b7acc395c88c3a4679ed165151f54095ad67df5a15a3677616ed690d53a8104241c8cfb9ec5e94963de90682949910c3bc093ee62149cac5c82738ea9]]

Document description:Exhibit A-1 - Notice of Proposed Settlement

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359858-2] [78e759c24262c9c27c1086c039256a283c1f54ae277b20d93b2ed6d8a93a69b0e12439f199a27cc61c67dee26dd4e23a425e0ad72a3a0f032202b674ce18226a]]

Document description:Exhibit A-2 - Proof of Claim and Release

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359858-3] [81143959d3e689b301a2e0b820783c68f0941307a0f8813621708b96e7bdc461828c0dee0ad4db1d7e817a5811dc3f1368c071541e40e1fcd555a3e7462422d7]]

Document description:Exhibit A-3 - Summary Notice

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359858-4] [a9b2d046486bd9e3fc55ef79e47aa87f0ac664e5fbb5b928a91035bbf0a146be32df3611efaa2ab62f12c872d76ebbbb72b5a8693dbcc0ccd2ba615a4d644404]]

Document description:Exhibit B - Proposed Order and Final Judgment

Original filename:CMECF.widgit.ProcessingWindowDestroy() STRONG>n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=2/14/2020] [FileNumber=20359858-5] [3cda92267f8189007c0f5f5f54ae2fc86f6714211d39a41a328c77f51e6eef77cf2022c898b92247d1e0b4caaf7b721ee20e6aa667b8133c62474fc0de2fc43]]