

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES
LITIGATION

Civil Action No. 1:16-md-2742-PKC

This Document Relates To:

Horowitz et al. v. SunEdison, Inc. et al.,
Case No. 1:16-cv-07917-PKC

**[PROPOSED] ORDER CERTIFYING THE CLASS AND APPROVING
NOTICE AND SUMMARY NOTICE OF PENDENCY OF CLASS ACTION**

WHEREAS, on June 13, 2018, Lead Plaintiff in the above-captioned action (“Action”) moved this Court to certify a class consisting of all persons and entities who (i) purchased or otherwise acquired SunEdison, Inc. (“SunEdison”) common stock between September 2, 2015 and April 4, 2016, and were damaged thereby; and/or (ii) purchased SunEdison preferred stock pursuant or traceable to the registered public offering on or about August 18, 2015, and were damaged thereby;

WHEREAS, by Opinion and Order dated January 7, 2019 the Court certified the Action to proceed as a class action on behalf of a modified class (the “Class”) consisting of two distinct subclasses, described below, one of all persons or entities who purchased shares of SunEdison preferred stock between August 18, 2015 and November 9, 2015, pursuant or traceable to the registered public offering on or about August 18, 2015 (the “Preferred Offering”), and were damaged thereby; and the other of all persons or entities who purchased or otherwise acquired SunEdison common stock between September 2, 2015 and April 4, 2016 and were damaged thereby;

WHEREAS, the Court’s January 7, 2019 Opinion and Order instructed Lead Plaintiff the Municipal Employees’ Retirement System of Michigan (“MERS”) and co-plaintiff the Arkansas

Teacher Retirement System (“ATRS,” and together with MERS, the “Class Representatives”) to submit a proposed Order on or before January 28, 2019 certifying the two subclasses and proposing a notice to the Class and means of dissemination consistent with Rule 23;

WHEREAS, the Class Representatives are timely submitting this [Proposed] Order Certifying the Class and Approving Notice and Summary Notice of Pendency of Class Action;

WHEREAS, in light of the Court’s January 7, 2019 Opinion and Order, Defendants do not oppose the proposed form of order but reserve all rights; and

WHEREAS, the Court has reviewed the proposed notices submitted by the Class Representatives, and has found good cause for entering the following Order;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The certified Class shall comprise two certified subclasses, which shall consist of:
 - (1) all persons and entities who purchased or otherwise acquired shares of SunEdison common stock between September 2, 2015 and April 4, 2016 (the “Exchange Act Class Period”), and were damaged thereby (the “Exchange Act Subclass”); and
 - (2) all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock pursuant or traceable to the Preferred Offering between August 18, 2015 and November 9, 2015, inclusive (the “Securities Act Class Period”), and were damaged thereby (the “Securities Act Subclass”).

Excluded from the Class are (i) Defendants; (ii) members of the immediate families of Defendants; (iii) any directors and officers of Defendants during the Class Period and members of their immediate families; (iv) the subsidiaries, parents, and affiliates of SunEdison; (v) any firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest; and (vi) the legal representatives, heirs, successors and assigns of any such excluded party. For purposes of clarification, any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Underwriter Defendant has or may have a direct or indirect interest, or as to which its affiliates

may act as an investment advisor but of which any Underwriter Defendant or any of its respective affiliates is not a majority owner or does not hold a majority beneficial interest (“Investment Vehicles”) shall not be deemed an excluded person or entity; provided, however, that the definition of Investment Vehicles shall not bring into the Class any of the Underwriter Defendants themselves.

2. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action (the “Notice”) and the Summary Notice of Pendency of Class Action (the “Summary Notice” and together with the Notice, the “Class Notices”), attached hereto as Exhibits 1 and 2, respectively.

3. The proposed form and content of the Notice meet the requirements of Rule 23(c)(2)(B), as the Notice clearly and concisely states in plain and easily understood language the nature of the Action; the definition of the Class certified; the Class’s claims, issues or defenses; that a Class Member may enter an appearance through an attorney if the member so desires; Class Members’ right to request exclusion from the entire Class or just one of the subclasses; the time and manner for requesting exclusion; and the binding effect of a judgment on Class Members under Federal Rule of Civil Procedure 23(c)(3). The Class Notices and the method and schedule set forth below for notifying the Class of the pendency of the Action as a class action meet the requirements of Rule 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

4. The Court approves the retention of Analytics Consulting, LLC as the Administrator.

5. Class Counsel will confer with counsel for Defendants and counsel for non-party SunEdison and will, no later than twenty-one (21) calendar days after entry of this Order, submit for the Court's consideration a proposed method for identifying record holders of SunEdison common stock during the Exchange Act Class Period and record holders of SunEdison preferred stock during the Securities Act Class Period.

6. Once the Court has approved a method for identifying Class Members as discussed in Paragraph 5 above, the Administrator shall cause the Notice, substantially in the form attached hereto as Exhibit 1, to be mailed, by first-class mail, postage prepaid, or by electronic mail, no later than twenty (20) business days from the Court's approval of the method for identifying Class Members (the "Notice Date"), to potential Class Members at the addresses set forth in the records identified pursuant to the Court-approved method, or who may otherwise be identified with reasonable effort. The Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons and entities who purchased or otherwise acquired SunEdison common stock during the Exchange Act Class Period or SunEdison preferred stock during the Securities Act Class Period. Such nominees shall either (i) within ten (10) business days of receipt of the Notice, request from the Administrator sufficient copies of the Notice to forward to all such beneficial owners and within ten (10) business days of receipt of those Notices forward them to all such beneficial owners; or (ii) within ten (10) business days of receipt of the Notice, provide a list of the names, addresses, and, if available, email addresses, of all such beneficial owners to the Administrator and the Administrator shall within ten (10) business days of receipt of the list, mail or email the Notice to such identified beneficial owners. Nominees who elect to send the Notice to their beneficial owners shall send a statement to the Administrator confirming that the mailing was made and shall retain their mailing records for use in connection

with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Administrator with proper documentation supporting the expenses for which reimbursement is sought.

7. Contemporaneously with the mailing of the Notice, the Administrator shall cause a copy of the Notice to be posted on a website designated for the Action, from which Class Members may download copies of the Notice.

8. The Administrator shall cause a copy of the Summary Notice, substantially in the form attached hereto as Exhibit 2, to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire*, no later than ten (10) business days after the Notice Date.

9. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons or entities request exclusion from the Class or one of the subclasses in a timely and proper manner, as hereinafter provided. A Class Member wishing to make such a request shall mail the request in written form by first-class mail, postmarked no later than sixty (60) calendar days after the Notice Date (the "Exclusion Date"), to the address designated in the Notice. Such request for exclusion shall clearly state that the Class Member "requests exclusion from the Exchange Act Subclass, the Securities Act Subclass, or the entire Class in *In re SunEdison, Inc., Securities Litigation*, No. 1:16-^(md)~~md~~-07917-^(PKC)~~PKC~~," as applicable, and must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and, in the case of entities, the name and telephone number of the appropriate contact person, and specify if you request exclusion from the Exchange Act Subclass, the Securities Act Subclass, or the entire Class (i.e., both subclasses); (ii) state the number of shares of SunEdison preferred stock that the person or entity requesting exclusion purchased/acquired

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and/or sold during the Securities Act Class Period (i.e., between August 18, 2015 and November 9, 2015, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale; (iii) state the number of shares of SunEdison common stock that the person or entity requesting exclusion (A) owned as of the close of trading on September 2, 2015 and (B) purchased/acquired and/or sold during the Exchange Act Class Period (i.e., between September 2, 2015 and April 4, 2016), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative, accompanied by proof of authorization. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. If a Class Member does not specify whether he, she, or it requests exclusion from the entire Class or just one of the subclasses, the Class Member will be excluded from the entire Class.

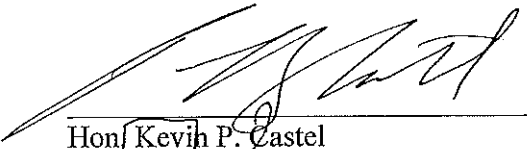
10. Any Class Member who retains separate counsel in connection with this matter must enter an appearance pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, as set out in the Notice, no later than the Exclusion Date.

11. No later than fifteen (15) business days after the Exclusion Date, Class Counsel shall file an affidavit or declaration with the Court providing proof of mailing of the Notice and publication of the Summary Notice and setting forth a list of all persons and entities who have requested exclusion from the Class.

12. This Order may be modified by the Court upon motion by either or both Plaintiffs and Defendants, for good cause shown.

IT IS SO ORDERED.

DATED: February 11, 2019



Hon. Kevin P. Castel
United States District Judge

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ATTORNEYS AT LAW

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March 20, 2019

BY ECF

Hon. P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

At face value and on a preliminary basis, the proposed method appears reasonable and the best notice practicable.

SO ORDERED.

Dated: 3/21/2019



P. Kevin Castel
United States District Judge

Re: *In re SunEdison, Inc., Securities Litigation*, 1:16-md-2742 (PKC) (AJP)
(S.D.N.Y.); *Horowitz v. SunEdison, Inc.*, 1:16-cv-7917 (PKC)

Dear Judge Castel:

We represent Plaintiffs in *Horowitz v. SunEdison, Inc.*, Case No. 1:16-cv-07917-PKC (the “Action”), and are writing pursuant to the Court’s February 11, 2019 Order Certifying the Class and Approving Notice and Summary Notice of Pendency of Class Action (ECF No. 295), and the Court’s subsequent March 5, 2019 order (ECF No. 302) (the “Orders”) concerning the process for providing notice to potential Class Members.

As we previously wrote to the Court on March 4, 2019 (ECF No. 300), Plaintiffs issued a subpoena to SunEdison’s former transfer agent, Computershare, for SunEdison’s Class Period shareholder records. Computershare has since produced those records. Specifically, Computershare has produced spreadsheets including identifying and contact information for record holders of SunEdison common stock during the Exchange Act Class Period and SunEdison preferred stock during the Securities Act Class Period.

Consistent with Plaintiffs’ counsel’s practice in securities class actions in which the company is a defendant with possession, custody, and/or control over its shareholder records, Plaintiffs propose that the approved form of Notice of Pendency of the Class Action (*see* ECF No. 295) be provided by the Administrator to those potential Class Members identified in the shareholder records that Computershare provided, including to beneficial owners whose shares were/are held by nominee purchasers. Plaintiffs also propose providing notice to a number of large broker-dealers and other institutions that, in Plaintiffs’ counsel’s experience, frequently hold securities for beneficial owners. Notice will then go out to the beneficial owners that those institutions identify to the Administrator, or for whom those institutions request notice packets from the Administrator.

Plaintiffs have met and conferred with Defendants and with counsel for SunEdison, all of whom agree to the method for providing notice of potential Class Members discussed herein.

Hon. P. Kevin Castel
March 20, 2019
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We thank the Court for its attention to this matter, and are available to discuss it at the Court's convenience.

Respectfully Submitted,

/s/ Salvatore J. Graziano

Salvatore J. Graziano

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