UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF SALVATORE J. GRAZIANO IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

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I, Salvatore J. Graziano, hereby declare under penalty of perjury as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or "Lead Counsel"). BLB&G is counsel for the Court-appointed lead plaintiff the Municipal Employees' Retirement System of Michigan ("MERS" or "Lead Plaintiff") and Named Plaintiff the Arkansas Teacher Retirement System ("ATRS," and together with MERS, "Plaintiffs") in this consolidated securities class action (the "Action"). I have personal knowledge of the matters stated herein based on my active participation in all aspects of the prosecution and settlement of the Action, and, if called upon, could and would testify thereto.[1]

2. I respectfully submit this Declaration in support of Plaintiffs' motion for: (i) final approval of the proposed settlement resolving all of the Class's claims in the Action in exchange for $74 million in cash, with a potential additional $2 million payment to the Class (the "Settlement"); and (ii) approval of the proposed plan of allocation (the "Plan of Allocation") of the proceeds of the Settlement. I also submit this Declaration in support of Lead Counsel's motion for an award of attorneys' fees on behalf of all Plaintiffs' Counsel[2] in the amount of 21%

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[1] Unless otherwise noted, capitalized terms used herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated July 11, 2019 (ECF No. 316-1) (the "Stipulation of Settlement" or "Stipulation"). References to "ECF No. __" are to docket entries in this Action, *Horowitz v. SunEdison, Inc.*, Case No. 16-cv-7917-PKC (S.D.N.Y.). References to "MDL ECF No. __" are to docket entries in the multi-district litigation before this Court concerning SunEdison, *In re SunEdison, Inc. Securities Litigation*, Case No. 16-md-2742-PKC (S.D.N.Y), and references to "JPML ECF No. __" are to docket entries in proceedings before the Judicial Panel on Multidistrict Litigation, *In re SunEdison, Inc. Securities Litigation*, Case No. MDL 2742 (J.P.M.L.).

[2] Plaintiffs' Counsel consists of (i) Lead Counsel BLB&G; (ii) Cole Schotz P.C. ("Cole Schotz"), counsel specializing in bankruptcy litigation that was retained to monitor SunEdison's bankruptcy proceedings and assist Lead Counsel in protecting the interests of class members in light of SunEdison's complex bankruptcy; and (iii) Scott+Scott Attorneys at Law LLP ("Scott+Scott"), which acted as counsel for the plaintiffs who filed the initial securities class action related to purchases of SunEdison preferred stock.

of the Settlement Fund, payment of Plaintiffs' Counsel's expenses in the amount of $1,525,355.53, and awards under the Private Securities Litigation Reform Act of 1995 ("PSLRA") in the total amount of $15,418.15 for costs and expenses incurred by Plaintiffs in connection with their representation of the Class (the "Fee and Expense Application").[3]

I. INTRODUCTION AND OVERVIEW

3. After over three years of hard-fought litigation, Plaintiffs have secured a recovery for shareholders of bankrupt company SunEdison, Inc. ("SunEdison") of $74 million (with a possible additional $2 million). This Settlement will resolve all claims in this Action against all Defendants,[4] on behalf of the Court-certified Class, which consists of (i) 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 (ii) all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock between August 18, 2015 and November 9, 2015, inclusive (the "Securities Act Class Period"), pursuant or traceable to the registered public Preferred Offering on or about August 18, 2015, and were damaged thereby (the "Securities Act Subclass"). As described in detail herein, the Settlement is the product of a comprehensive

[3] Plaintiffs and Lead Counsel are concurrently submitting the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (the "Settlement Memorandum") and the Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (the "Fee Memorandum").

[4] The "Defendants" consist of defendants Ahmad Chatila, Brian Wuebbels, Antonio Alvarez, Clayton Daley, Randy Zwirn, James Williams, Georganne Proctor, Steven Tesoriere, Peter Blackmore, and Emmanuel Hernandez (collectively, the "SunEdison Defendants" or "Individual Defendants") and defendants Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), Merrill Lynch, Pierce, Fenner & Smith Inc., Deutsche Bank Securities Inc., Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC, Macquarie Capital (USA), Inc., and MCS Capital Markets LLC (collectively, the "Underwriter Defendants").

investigation, extensive litigation and discovery efforts, protracted arm's-length negotiations by experienced counsel, and the parties' acceptance of a final mediator's recommendation.

4. Lead Counsel negotiated the Settlement with a thorough understanding of the strengths and weaknesses of the claims asserted against each of the Defendants. This understanding was based on Lead Counsel's prosecution of the Action, which included, *inter alia*, (i) an extensive factual investigation, including interviews with numerous former employees of SunEdison and related entities, consultation with experts, and a detailed review and analysis of the voluminous public information relating to SunEdison's collapse (including SEC filings, press releases and other public statements, media and news reports, analyst reports, and documents from SunEdison's Chapter 11 bankruptcy proceeding and whistleblower actions brought against Defendants); (ii) researching the law relevant to Plaintiffs' claims against each Defendant and the potential defenses available to Defendants; (iii) preparing and filing two extensive amended complaints (ECF Nos. 69 & 138), including the operative Second Amended Consolidated Securities Class Action Complaint (the "Complaint") (ECF No. 138); (iv) extensive briefing in opposition to motions to dismiss the Complaint filed by the SunEdison Defendants and the Underwriter Defendants (ECF Nos. 153-56); (v) conducting a targeted review and analysis of the approximately 2,260,000 pages of documents produced to Plaintiffs by Defendants and third parties; (vi) taking, defending, or actively participating in 22 depositions, including depositions in California, Florida, Chicago, Washington D.C., and Spain; (vii) retaining and consulting with experts regarding damages, liquidity, accounting, the due-diligence obligations of underwriters of public offerings of securities, and the due-diligence obligations of independent directors of companies in connection with such offerings, and with bankruptcy counsel; (viii) drafting and filing a motion for class certification and an accompanying expert

report on market efficiency and class-wide damages (ECF Nos. 193-95); (ix) exchanging expert reports; and (x) responding to pre-motion letters concerning Defendants' anticipated summary-judgment motions (ECF Nos. 307-08).

5. Lead Counsel also engaged in extensive arm's-length settlement negotiations with Defendants for an extended period of time throughout these substantial litigation efforts. These negotiations included mediation with former U.S. District Court Judge Layn Phillips, and his colleague Gregory P. Lindstrom, that spanned numerous in-person mediation sessions and other communications over the course of approximately two years. *See* Declaration of Layn R. Phillips in Support of Motion for Final Approval of Class Action Settlement (the "Phillips Decl."), attached as Exhibit 1, at ¶¶ 3-6.

6. As a result of these extensive litigation efforts, Plaintiffs and Lead Counsel were fully informed regarding the strengths and weaknesses of the case against each of the Defendants before agreeing to the Settlement.

7. Plaintiffs and the Class faced substantial risks in litigating the Action, concerning both Defendants' ability to pay and Plaintiffs' ability to prove Defendants' liability. First, throughout Plaintiffs' prosecution of the Action, SunEdison was neither solvent nor a party to the case, in light of the Company's April 2016 bankruptcy. In addition, throughout the litigation, the limited pool of insurance funds potentially available to the Company's former directors and officers was steadily depleting, as those funds were used not just to defend against Plaintiffs' claims in the Action but also to defend against and resolve several related governmental investigations and private actions. And, in the Court's March 2018 ruling on Defendants' motions to dismiss, Plaintiffs' Section 10(b) claims were sustained against only one Defendant—former CEO Defendant Chatila—based on one alleged false statement. Chatila has no substantial

personal wealth to fund any judgment. Any potential recovery to Exchange Act Subclass members arising from Plaintiffs' Exchange Act claims was accordingly limited to the ever-diminishing available insurance funds, and Plaintiffs and Lead Counsel faced the real possibility that, even if Plaintiffs ultimately succeeded in proving liability and damages at trial, there would be no remaining assets to compensate the members of the Exchange Act Subclass.

8. Second, Plaintiffs faced substantial risk in proving both their Exchange Act and Securities Act claims. With regard to Plaintiffs' Exchange Act claim against Defendant Chatila, Chatila consistently contended that the key evidence included financial metrics that, when properly understood, demonstrated that his September 2, 2015 alleged false statement about the timing of SunEdison's future cash flows was neither false nor made with the requisite scienter. Plaintiffs faced the risk that a jury would credit Chatila's explanations of that evidence. Plaintiffs further faced the substantial risk that, even if they proved Chatila's liability, the Court (at summary judgment) or a jury (after trial) would conclude that the alleged false statement was fully corrected by November 2015, when SunEdison alerted investors that the Company did not expect to be cash-flow positive until a later point than Chatila had claimed. In that event, Plaintiffs would not have been able to prove that declines in the value of SunEdison common stock after November 2015 were caused by Chatila's alleged fraud, which would have substantially limited the amount of damages recoverable by the Exchange Act Subclass.

9. Similarly, with regard to Plaintiffs' Securities Act claims, Defendants repeatedly argued that the three alleged materially false and misleading statements and omissions in the Offering Documents for SunEdison's August 2015 Preferred Offering that the Court sustained in its March 2018 Order were not actionable at the time of the Offering or were fully corrected by November 2015. Indeed, in the Court's January 2019 ruling certifying the Class, the Court

limited membership in the Securities Act Subclass to investors who purchased SunEdison's preferred stock on or before November 9, 2015. ECF No. 287 at 2. Plaintiffs faced a substantial risk that the Court (at summary judgment) or a jury (after trial) would conclude that losses suffered by the Securities Act Subclass after that date could not have been attributable to the alleged misstatements, which would have significantly limited the amount of damages recoverable by the Securities Act Subclass. Plaintiffs also faced the risk that the Court or a jury would credit the Underwriter Defendants' and independent directors' due-diligence defenses based on evidence, among other things, that the Underwriter Defendants and the SunEdison Board retained counsel and consulted with management in connection with their review of the Offering Documents for the Preferred Offering.

10. In sum, Plaintiffs and Lead Counsel believe that the Settlement is fair, reasonable, and adequate in light of the substantial financial recovery and the significant risks to establishing liability and damages against each Defendant and to recovering any substantial judgment against the Individual Defendants. *See* Declaration of Brian Lavictoire, Deputy General Counsel of Municipal Employees' Retirement System of Michigan, in Support of: (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (the "LaVictoire Decl."), attached as Exhibit 2, at ¶ 7; Declaration of Rod Graves, Deputy Director of Arkansas Teacher Retirement System, in Support of: (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (the "Graves Decl."), attached as Exhibit 3, at ¶ 9.

11. Plaintiffs also seek approval of the proposed Plan of Allocation for the proceeds of the Settlement, which is set forth in the Settlement Notice mailed to Class Members. *See*

Exhibit A to the Declaration of Richard W. Simmons Regarding (A) Mailing of Settlement Notice and Claim Form and (B) Publication of Summary Settlement Notice (the "Simmons Declaration" or "Simmons Decl."), attached as Exhibit 4, at pp. 11-16. As discussed in further detail below, the Plan of Allocation was developed by Lead Counsel in consultation with Plaintiffs' experienced damages expert, Dr. Steven Feinstein, PhD, CFA, and provides for a reasonable method for allocating the net proceeds of the Settlement among Class Members who submit valid Claim Forms based on damages they allegedly suffered on purchases of SunEdison Securities during the relevant time periods. Class Members who submit valid Claim Forms will be eligible to receive a *pro rata* share of the net Settlement proceeds based on their calculated Recognized Loss Amounts under the Plan of Allocation.

12. Lead Counsel, on behalf of all Plaintiffs' Counsel, are applying for an award of attorneys' fees in the amount of 21% of the Settlement Fund, an award of $1,525,355.53 for litigation expenses incurred by Plaintiffs' Counsel, and awards of $13,598.65 to MERS and $1,819.50 to ATRS for their costs and expenses directly related to their representation of the Class, as authorized by the PSLRA. The requested fee is well within the range of percentage awards granted by courts in this Circuit and across the country in securities class actions. Indeed, the requested fee results in a "negative" multiplier of approximately 0.86 on Plaintiffs' Counsel's total lodestar—which is far below the range of multipliers routinely awarded by courts in this Circuit and across the country where similar settlements have been achieved. Finally, the fee request has been endorsed by both Plaintiffs and falls within the terms authorized under the written fee agreement entered into between Lead Counsel and MERS at the outset of the litigation.

13. For all of the reasons discussed in this Declaration and in the accompanying memoranda of law, Plaintiffs and Lead Counsel respectfully submit that the proposed Settlement and Plan of Allocation are fair, reasonable, and adequate and should be approved. Lead Counsel also respectfully submits that the request for attorneys' fees and payment of expenses is fair and reasonable, and should be approved.

II. PROSECUTION OF THE ACTION

A. Factual Background of the Action

14. This case arises out of the collapse of SunEdison, which was one of the world's largest renewable energy developers. Plaintiffs allege that SunEdison conducted an offering of preferred stock on August 18, 2015 (the "Preferred Offering"), and in the offering documents for the Preferred Offering, Defendants omitted the material facts of (i) a second-lien loan that SunEdison had recently taken from Goldman Sachs (the "Second-Lien Loan") and the burdensome terms of that loan, (ii) a margin call (the "Margin Call") on a margin loan (the "Margin Loan"); and (iii) that Defendants materially misrepresented the Margin Loan as non-recourse to SunEdison, when it was in fact recourse to SunEdison. Plaintiffs brought claims under the Securities Act of 1933 (the "Securities Act") related to allegations concerning the Preferred Offering.

15. Plaintiffs further allege that during a September 2, 2015 *Bloomberg* interview, former SunEdison CEO Ahmad Chatila ("Chatila") falsely stated that SunEdison would be "generating cash for a living" by the first quarter of 2016, when he knew or was materially reckless in not knowing that SunEdison's internal forecasts did not project that SunEdison would

be cash flow positive by the first quarter of 2016. Plaintiffs brought claims under the Exchange Act of 1934 (the "Exchange Act") related to Chatila's September 2015 statement.[5]

B. The Initial Complaints in Missouri

16. On November 30, 2015, an individual plaintiff, Dina Horowitz ("Horowitz"), filed the first securities class action complaint against SunEdison, which was filed in the Eastern District of Missouri, captioned *Horowitz v. SunEdison, Inc., et al.*, No. 4:15-cv-1769 (E.D. Mo.). Then, on December 9, 2015, another individual plaintiff, Kenneth J. Moodie, filed the second securities class action complaint against SunEdison, which was again filed in the Eastern District of Missouri, captioned *Moodie v. SunEdison, Inc., et al.*, No. 4:15-cv-1809 (E.D. Mo.). Finally, on January 28, 2016, another individual plaintiff, Robert Kunz, filed the third securities class action complaint against SunEdison, which again was filed in the Eastern District of Missouri, captioned *Kunz v. SunEdison, Inc., et al.*, No. 4:16-cv-113 (E.D. Mo.).

17. On January 19, 2016, plaintiff Horowitz amended her complaint, which, among other things, broadened the alleged class period to August 7, 2014 through November 9, 2015, inclusive, from the class period of June 16, 2015 through October 6, 2015, inclusive, that she initially alleged. ECF No. 10.

III. APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL, LEAD COUNSEL'S EXTENSIVE INVESTIGATION AND FILING OF TWO COMPLAINTS, AND DEFEATING DEFENDANTS' MOTION TO DISMISS

A. Consolidation and Appointment of Lead Plaintiff

18. On February 1, 2016, MERS moved to consolidate the *Horowitz*, *Moodie*, and *Kunz* actions and for appointment of MERS as Lead Plaintiff and BLB&G as Lead Counsel. ECF

[5] Plaintiffs also originally brought claims arising from SunEdison executives' statements concerning SunEdison's liquidity and internal controls over financial reporting. As discussed further in this Declaration, the Court dismissed those claims.

Nos. 17, 19, 22. At the same time, the following plaintiffs also moved for consolidation and appointment as lead plaintiff: (i) plaintiff Andrew C. Newman, Scott Kroeker, and Steve Wiegele (collectively, the "Investor Group") (ECF Nos. 11-16); (ii) Ankur Dadoo, Kim Kyung Boum, Cameron Braithwaite, Jerome Thissen, and Victoriano V. Fernandez (collectively, the "SunEdison Investor Group") (ECF Nos. 20, 23-24); (iii) Al Zecher and Richard Zecher on behalf of Zech Capital LLC and the Richard N. Zecher 2010 Family Trust (collectively, "the Zecher Family Group") (ECF Nos. 25-27); and (iv) Erste-Sparinvest Kapitalanlagegesellschaft mbH and KBC Asset Management NV (collectively, the "Institutional Investor Group") (ECF Nos. 18, 21).

19. On February 2, 2016, Judge Sippel of the Eastern District of Missouri denied all of these motions on the basis that the motions did not provide adequate legal authority to support consolidation. ECF No. 28. Judge Sippel further stated that he would not decide motions for lead plaintiff appointment until after the issue of consolidation was decided.

20. On February 8, 2016, all movants jointly filed an unopposed motion to consolidate (ECF No. 29-32), which Judge Sippel granted on February 16, 2016 (ECF No. 33). Judge Sippel also ordered that renewed motions for appointment as lead plaintiff be filed on February 29, 2016.

21. On February 29, 2016, MERS and the Zecher Family Group each moved for appointment as lead plaintiff and to appoint their counsel as lead counsel for the putative class. ECF Nos. 37-42. On March 7, 2016, MERS and the Zecher Family Group filed reply briefs in further support of their respective lead-plaintiff motions. ECF Nos. 43-44.

22. On March 24, 2016, Judge Sippel appointed MERS as Lead Plaintiff and BLB&G as Lead Counsel for the Class. Judge Sippel further ordered MERS to file an amended consolidated complaint within 60 days. ECF No. 53.

B. Judge Sippel Orders This Entire Action Stayed Following SunEdison's Bankruptcy

23. On April 21, 2016, SunEdison filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). *See* ECF No. 58.

24. On April 25, 2016, SunEdison filed in this Action a Notice of Automatic Stay and Suggestion of Bankruptcy For SunEdison, Inc. ECF No. 58. SunEdison noted that, as a result of its bankruptcy filing, any further action against SunEdison was stayed under Bankruptcy Code Section 262(a).

25. On April 26, 2016, Judge Sippel issued a *sua sponte* order stating that, in light of SunEdison's bankruptcy and the "resulting automatic stay of this action," this entire Action—including as against non-bankrupt defendants—would be administratively closed until such time as the bankruptcy proceedings were concluded.[6]

26. On April 28, 2016, MERS filed a motion to reopen this Action. ECF Nos. 60-61.[7] In that motion, MERS explained that the automatic bankruptcy did not, by its terms, apply to non-debtors such as Defendants Chatila and Wuebbels (the Underwriter Defendants and KPMG

[6] At the same time, Judge Sippel also administratively closed an ERISA putative class action that had been filed against SunEdison's Board of Directors, among others, captioned *Usenko v. SunEdison, Inc. et al.*, 16-00076-RWS (E.D. Mo.) ("*Usenko*"), ECF No. 52.

[7] On April 27, the *Usenko* plaintiffs also filed a Motion to Clarify Judge Sippel's administrative closure order in that action to request clarification as to whether the Court's order applied to non-debtor defendants. *Usenko*, ECF No. 53.

were not yet named as defendants at the time). *Id*. MERS further explained that under controlling Eighth Circuit law, the bankruptcy stay should not be extended to non-debtors absent unusual circumstances that did not exist with respect to Chatila and Wuebbels. *Id*. MERS requested that, at a minimum, it be allowed to file an amended complaint in order to toll the statute of limitations as to claims arising from the August 2015 Preferred Offering.

27. On May 13, 2016, Defendants Chatila, Wuebbels, and the Board of Directors of SunEdison filed a consolidated opposition to MERS's motion to reopen and the *Usenko* plaintiffs' motion to clarify. ECF No. 65. Defendants argued that Judge Sippel had the "inherent authority" to close these Actions derived from his authority to manage his docket. *Id*. Defendants further argued that Plaintiffs would suffer "limited, if any, prejudice" by the closure. *Id*.

28. On May 20, 2016, MERS filed a reply memorandum in support of their request to reopen the Action. ECF No. 66. Among other things, MERS explained that even a temporary stay would significantly prejudice the plaintiffs in this Action, because there were by that time eleven separate federal securities cases pending against SunEdison, its subsidiaries, and the non-debtor defendants in the Northern District of California.[8] MERS explained that those actions

[8] *Bloom et al. v. Chatila et al.*, No. 3:16-cv-02265 (N. D. Cal. Apr. 26, 2016) (putative class action on behalf of SunEdison investors arising from the August 2015 Preferred Stock Offering); *Cobalt Partners, LP et al. v. SunEdison, Inc. et al.*, No. 3:16-cv-02263 (N. D. Cal. Apr. 26, 2016) (individual action arising from the August 2015 Preferred Stock Offering); *Glenview Capital Partners, LP et al. v. SunEdison, Inc. et al*., No. 3:16-cv-02264 (N. D. Cal. Apr. 26, 2016) (same); *Omega Capital Investors, L.P. et al v. SunEdison, Inc. et al*., No. 4:16-cv-02268 (N. D. Cal. Apr. 26, 2016) (same); *Beltran v. Terraform Global, Inc. et al*, No. 5:15-cv-04981 (N. D. Cal. Oct. 29, 2015) (class action arising from TerraForm Global IPO); *Pyramid Holdings, Inc. v. Terraform Global, Inc. et al*, No. 5:15-cv-05068 (N. D. Cal. Nov. 5, 2015) (same); *Badri v. Terraform Global, Inc. et al.*, No. 5:16-cv-02269 (N. D. Cal. Apr. 26, 2016) (same); *Iron Workers Mid-South Pension Fund v. Terraform Global, Inc. et al.*, No. 5:16-cv-02270 (N. D. Cal. Apr. 26, 2016) (same); *Patel et al. v. Terraform Global, Inc. et al.*, No. 5:16-cv-02272 (N. D. Cal. Apr. 26, 2016) (same); *Fraser et al. v. Terraform Global, Inc. et al.*, No. 5:16-cv-02273 (N. D. Cal. Apr. 26, 2016) (same); *Oklahoma Firefighters Pension and Retirement System v.*

would be moving forward during the stay of this Action, potentially depleting any viable source of recovery for the Class's claims. MERS also again asked for permission to file an amended complaint to assert and protect the claims of investors in the August 2015 Preferred Offering. Finally, MERS requested that Judge Sippel transfer the Action to the Southern District of New York for further proceedings, since "the center of gravity of this Action has now shifted to New York" in light of the bankruptcy proceedings.

29. On July 18, 2016, MERS filed a request with Judge Sippel for a telephone conference in order to obtain guidance on the pending motion to reopen and concerning MERS' request to file an amended complaint. ECF No. 67.

30. On July 19, 2016 Judge Sippel denied MERS' motion to reopen this Action without prejudice. ECF No. 68. Judge Sippel did permit plaintiffs to file and serve an amended consolidated complaint. *Id*.

C. The Amended Complaint

31. On July 22, 2016, MERS filed the 213-page Amended Consolidated Securities Class Action Complaint (the "Amended Complaint"). ECF No. 69. In addition to MERS, the Amended Complaint included ATRS as a named plaintiff to represent investors in the August 2015 Preferred Offering. The Amended Complaint alleged Exchange Act claims against Chatila and Wuebbels and Securities Act claims against Chatila, Wuebbels, the other Individual Defendants, the Underwriter Defendants, and KPMG. The Amended Complaint alleged a wide-ranging fraud perpetrated by SunEdison's executives in order to conceal SunEdison's significant liquidity shortages—challenges that led directly to SunEdison's bankruptcy in April 2016. The

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SunEdison, Inc. et al., No. 5:16-cv-02267 (N. D. Cal. Apr. 26, 2016) (individual action concerning TerraForm Global's IPO) (collectively, the "California Cases").

Amended Complaint further alleged Defendants' misrepresentations concerning SunEdison's liquidity and internal controls over financial reporting, as well as allegations concerning the non-disclosure of the Second-Lien Loan and margin calls.

32. Before the Amended Complaint was filed, Lead Counsel conducted a comprehensive factual investigation and detailed analysis of the potential claims that could be asserted on behalf of investors in SunEdison securities. This investigation included, among other things, a detailed review and analysis of voluminous amounts of information relating to SunEdison, its August 2015 Preferred Offering, and its collapse. Lead Counsel reviewed, among other things:

- SunEdison's SEC filings;
- Transcripts of SunEdison's investor conference calls, press releases, and publicly available presentations;
- An enormous volume of media, news, and analyst reports relating to SunEdison; and
- Documents and information produced in SunEdison's bankruptcy proceeding, which included detailed filings concerning the Company's financial status and the events that led to its collapse.

33. Lead Counsel and their investigators also located and interviewed dozens of former employees of SunEdison and its subsidiaries, who provided substantial information to Lead Counsel. The Amended Complaint contained information provided by thirteen such former employees, who provided behind-the-scenes details concerning SunEdison's disastrous financial condition that no other source had uncovered to date.

D. Lead Plaintiff's Motion to Transfer and Consolidate All SunEdison-Related Proceedings To This Court

34. Throughout the spring of 2016, numerous actions were filed nationwide against SunEdison, its two controlled subsidiaries (Terraform Power and Terraform Global), and by the

shareholders of a third corporation (Vivint Solar), who were allegedly impacted by the alleged fraud at SunEdison. These actions include three class actions pending in the Eastern District of Missouri (including this Action); eleven class and direct actions pending in the Northern District of California (where SunEdison's global headquarters were located) (*see supra* n.8 defining the "California Cases"); and one class action on behalf of TerraForm Power shareholders pending in the District of Maryland. Given that a single set of wasting insurance policies would cover SunEdison's executives and its subsidiary companies together and would be drawn on to resolve all of these fifteen actions, Lead Plaintiff believed that placing one District Court judge in charge of all of these cases would be the most efficient and desirable outcome for all of the parties in these cases.

35. Accordingly, on July 27, 2016, Lead Plaintiff filed a motion before the United States Judicial Panel on Multidistrict Litigation (the "MDL Panel") for transfer of all of the SunEdison-related actions to the Southern District of New York for coordinated or consolidated proceedings. JPML ECF No. 1. Lead Plaintiff argued that each of these actions involved common questions of fact and that centralization in a single district court would promote the efficient resolution of each action. Lead Plaintiff further pointed out that Defendants had already moved to transfer the California Cases to New York for coordination with the bankruptcy proceedings.

36. In response, Defendants supported Lead Plaintiff's motion (ECF No. 59), while several plaintiffs in related actions opposed the motion (JPML ECF Nos. 55, 57-58, 63-65, 67, 69). On September 1, 2016, Lead Plaintiff filed a brief in further support of the motion to transfer. JPML ECF No. 73.

37. On September 29, 2016, Lead Counsel attended and argued the motion to transfer before the MDL Panel in Washington, D.C.

38. On October 4, 2016, the MDL Panel granted Lead Plaintiff's request to transfer all SunEdison-related federal actions to this Court. ECF No. 94-96. The MDL Panel agreed that centralization of these related actions would "conserve the resources of the parties, their counsel, and the judiciary." *Id*. at 2.

E. SunEdison's Bankruptcy

39. After SunEdison declared bankruptcy in April 2016, Lead Counsel immediately moved to protect the interests of Plaintiffs and the Class in the bankruptcy proceedings. Lead Counsel retained special bankruptcy counsel at Cole Schotz P.C. to protect these interests. As set forth in detail in the accompanying Declaration of John H. Drucker in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, Filed on Behalf of Cole Schotz P.C., Cole Schotz worked closely and extensively with Lead Counsel to, among other things, protect the Class's rights to the relevant directors and officers insurance policies (the "D&O Insurance"), prepare and file proofs of claim, and protect the rights and interests of the Plaintiffs and the Class under the various iterations of SunEdison's proposed Chapter 11 plan of reorganization. *See* Ex. 5-B.

F. Litigation Continues in the Southern District of New York

1. Plaintiffs' Efforts to Ensure that the Litigation Proceeded Promptly and Efficiently

40. On October 26, 2016, this Court issued an Order to "all cases that have been or are subsequently transferred or conditionally transferred to the [Court] by the Judicial Panel on Multidistrict Litigation," as well as to the *Bloom* and *Omega Capital Investors* actions. ECF No. 98 (the "October 26 Order"). In the October 26 Order, the Court directed, among other things,

that (i) interested parties should make written submissions to the Court concerning why "any judicially imposed stay of any action should not be vacated in whole or in part"; (ii) "Counsel for any plaintiff who has brought a putative class action under any provision of the federal securities laws" should meet and confer, and submit a proposed schedule to the Court concerning the filing of a Consolidated Class Action Complaint ("CCAC") and any pre-motion letters by defendants "addressed to the face of the CCAC"; and (iii) counsel for plaintiffs in the federal securities actions should submit a letter concerning the status of their case(s). *Id*. at ¶¶ 3, 5, 9.

41. On November 17, 2016, Plaintiffs, along with plaintiffs in the other securities and ERISA class actions then pending before the Court as part of the MDL, filed a letter in response to the Court's October 26 Order. ECF No. 107 (the "November 17 Letter"). In the November 17 Letter, Plaintiffs informed the Court that Lead Plaintiff MERS had moved the MDL Panel to transfer and consolidate the related actions in this Court "in order to preserve the wasting insurance policies that unfortunately cover the defense of all SunEdison Directors and Officers ('D&Os') as well as the D&Os of SunEdison's two spun-off, separately-traded 'yieldco' companies, TerraForm Power, Inc., and TerraForm Global, Inc., in all of these pending cases." *Id*. at 1. As Plaintiffs further noted, "Plaintiffs . . . have requested Defendants to consider early mediation for all of these actions in the hopes of reaching a global settlement before these insurance policies are exhausted by litigation." *Id*. Plaintiffs additionally stated their position that Plaintiffs opposed any stay of proceedings in this Action, because "the pressure of ongoing proceedings, litigation deadlines and possible court rulings is helpful, if not necessary, to get the parties to work toward promptly resolving these cases." *Id*. at 1-2.

42. In the November 17 Letter, Plaintiffs further informed the Court that they did not at that point intend to further amend the then-operative Amended Complaint, which was filed

July 22, 2016 (*see* ECF No. 69), and proposed that "Defendants in the SunEdison Securities Class Action file any pre-motion letters addressed to the face of the SunEdison Complaint no later than twenty-one days after the date of entry of an order requiring Defendants' response," with Plaintiffs to respond to any such letter fourteen days later. *Id*. at 2.

43. On December 12, 2016, Defendants Alvarez, Chatila, Daley, Hernandez, Proctor, Tesoriere, Williams, Wuebbels, and Zwirn, as well as the Company and other individuals and entities, filed a letter with the Court requesting an order compelling all parties to the MDL litigation to participate in mediation and for a stay pending the outcome of that mediation. MDL ECF No. 71 (the "Dec. 12 Letter"). In that letter, Defendants stated that granting their request "would preserve as much as possible of the proceeds of the Insurance Policies—which otherwise would be spent on defense costs—for distribution to the SunEdison creditors and investor plaintiffs." *Id*. at 2.

44. Plaintiffs, along with plaintiffs in the other then-pending securities and ERISA class actions, responded to the Dec. 12 Letter on December 14, 2016. *See* ECF No. 125. Plaintiffs informed the Court that they favored an early mediation, reiterating that Lead Plaintiff MERS initiated its petition before the MDL Panel "in order to preserve the wasting insurance policies" and stressing that they would "gladly participate in settlement negotiations in good faith." *Id*. at 1. Plaintiffs opposed Defendants' request for a stay, however, and argued that "[a] global stay while a mediation is just getting started would create, in our experience, more delays and waste of the insurance policies, without any serious hope for a global resolution," including because "the parties will take more extreme and rigid positions at the outset . . . that would be counterproductive to the settlement process." *Id*. The *Cobalt*, *Omega*, *Canyon*, and *Kearny* plaintiffs filed letters and briefing likewise agreeing to participate in mediation but opposing

Defendants' requested stay (MDL ECF Nos. 83, 90-91), while the Underwriter Defendants and YieldCos filed letters supporting both mediation and the stay (MDL ECF Nos. 84, 89, 92).

45. On December 19, 2016, the Court held a Case Management Conference to discuss, among other things, Defendants' request for a stay and an order directing the parties to engage in a global mediation. The Court issued an Order that day directing the parties to participate in a mediation session, "includ[ing] non-parties such as Sun Edison's Creditor's Committee," and instructing that, "[t]o preserve the available coverage, there will be a one-time, limited stay of all actions that are part of this MDL, which will expire on March 31, 2017," and requiring the parties to submit a status report by March 17, 2017. ECF No. 94. In its Order, the Court recognized that "[t]here is a limited pool of directors and officers liability insurance available," and that SunEdison "has noted that the costs incurred by directors and officers in defending these actions will erode coverage limits." The Court also ordered that "[f]or all actions, the contemplated grounds for any proposed motion to dismiss shall be set forth in a pre-motion letter to be filed no later than February 6, 2017, with any response due February 20, 2017."

2. Defendants File Extensive Pre-Motion-to-Dismiss Letters

46. Defendants subsequently filed pre-motion-to-dismiss letters on February 6, 2017, raising numerous arguments in support of dismissal of Plaintiffs' claims. ECF Nos. 129-30. In an 11-page single-spaced omnibus joint letter, the Underwriter Defendants and the Individual Defendants argued that Plaintiffs' claims should be dismissed in their entirety.

47. First, Defendants argued that Plaintiffs' Exchange Act claims should be dismissed because (i) Plaintiffs' then-pending allegations that Defendants were liable for false statements about the Company's liquidity disregarded purportedly accurate public disclosures of the Company's liquidity position during the Class Period; (ii) the alleged Class Period, which went

from August 2014 to April 2016, was overbroad because the reasons Plaintiffs asserted that many of Defendants' allegedly false statements were false had not come to pass until late in the Class Period; (iii) Plaintiffs alleged only "fraud by hindsight," as their "theory of fraud depends on the flawed position that Defendants could have foreseen and are ultimately responsible for market forces over which they had no control"; and (iv) Defendants' allegedly false statements purportedly included inactionable forward-looking statements, statements of opinion, and statements of general corporate optimism. Defendants specifically argued that allegations that SunEdison's August 6, 2015 Form 10-Q for the second quarter of 2015 failed to disclose (a) the August 7, 2015 Margin Call the Company received on its outstanding $410 million Margin Loan, and (b) the $169 million Second-Lien Loan that the Company borrowed from Goldman Sachs on August 11, 2015, should be dismissed because the events had not happened by the date of the filing. Defendants further argued that they had no duty to disclose those facts before the August 18, 2015 Preferred Offering, the prospectus supplement for which incorporated by reference the August 6, 2015 10-Q.

48. Defendants also argued that Plaintiffs' Exchange Act claims should be dismissed because:

- Plaintiffs' allegations that Defendants made materially false and misleading statements about SunEdison's liquidity failed because those statements were mostly factually accurate and were inactionable statements of opinion;
- Plaintiffs' allegations that Defendants breached their duty under Item 303 of SEC Regulation S-K to report their "trend" of paying vendors late failed because Item 303 ostensibly does not impose an obligation to report "internal business strategies," and any late payments did not materially impact the Company;
- Plaintiffs' allegations that Defendants misrepresented and concealed material weaknesses in SunEdison's internal controls over financial reporting failed because Plaintiffs purportedly did not identify any factual inaccuracies in the Company's financial reporting;

- Plaintiffs' allegations that the Company failed to properly report the $410 million Margin Loan as recourse to the Company, and instead characterized the loan as non-recourse, failed because certain public disclosures accurately described the loan as recourse;

- Plaintiffs failed to plead loss causation in connection with a December 2015 alleged false statement about the Company's future revenues because that statement was never corrected;

- Plaintiffs failed to plead loss causation in connection with alleged false statements on October 7, 2015 concerning SunEdison's failure to consummate its planned acquisition of Latin American Power ("LAP") because Plaintiffs' alleged reasons for falsity had purportedly been known to investors at the time of the alleged false statements; and

- Plaintiffs failed to adequately plead scienter, including because Plaintiffs relied on two *Wall Street Journal* articles that in turn relied on confidential sources who were supposedly not described with the necessary level of detail to credit their accounts; there was no evidence that Defendant Chatila's September 2, 2015 alleged false statement about when the Company would begin "generating cash for a living" was deliberately false; confidential former employees cited in Plaintiffs' complaint were undermined by "hyperbole" and "flippancies"; and Defendants Chatila and Wuebbels increased their SunEdison holdings during 2015.

49. Second, Defendants argued that Plaintiffs' Securities Act claims should be dismissed because, for the same reasons discussed above, Plaintiffs' claims concerning alleged false statements in the Offering Documents for the August 2015 Preferred Offering concerning the Company's Martin Loan, Second-Lien Loan, liquidity, "trends" under Item 303, internal controls, and debt classification failed.

50. KPMG filed a six-page, single-spaced pre-motion-to-dismiss letter, arguing for dismissal of Plaintiffs' Section 11 claim against KPMG alleging that the auditor failed to comply with Generally Accepted Accounting Standards ("GAAS") in conducting its 2014 year-end audit of SunEdison's financial statements and internal controls, the audit report of which was incorporated by reference into the Offering Documents for the August 2015 Preferred Offering. KPMG argued that the claim against it should be dismissed because Plaintiffs did not allege that

KPMG prepared or certified any portion of the applicable registration statement for the Preferred Offering, that it was aware of material facts in August 2015 that required the auditor to change its prior audit report, or that its alleged false audit report—which KPMG characterized as containing inactionable opinions—was not a statement of KPMG's honest belief when made.

3. The Parties Participate (Unsuccessfully) in the First Mediation

51. The parties subsequently commenced a global mediation session before retired U.S. District Court Judge Layn R. Phillips, as well as his colleague Gregory P. Lindstrom. Specifically, on February 10, 2017, the parties met for the first of four separate days (which included February 27 and March 2-3, 2017) that constituted the first mediation of this case (the "First Mediation").

52. In advance of the First Mediation, Plaintiffs, Defendants, and numerous other related parties in the MDL exchanged detailed mediation statements setting forth their positions on relevant issues. In total, thirty-eight mediation statements were exchanged and submitted to the mediators. On February 6, 2017, the parties exchanged reply mediation statements. The parties were not able to reach a resolution during the First Mediation.

53. On February 20, 2017, Plaintiffs filed their 17-page, single-spaced response to Defendants' pre-motion letters. ECF No. 131. Plaintiffs argued that Defendants did not identify any pleading deficiencies in the Amended Complaint, and that the Amended Complaint adequately pleaded claims under the Securities Act and the Exchange Act.

54. First, with regard to Plaintiffs' Securities Act claims, Plaintiffs argued that the Amended Complaint adequately alleged numerous materially false statements and omissions in the Offering Documents for the Company's August 2015 Preferred Offering about SunEdison's liquidity, the purported effectiveness of SunEdison's internal controls over financial reporting, the misclassification of the Margin Loan as non-recourse debt; the Margin Call on the Margin

Loan, the emergency Second-Lien Loan from Goldman Sachs, and the material trends that Plaintiffs alleged Defendants were required to disclose under Item 303. Plaintiffs discussed each of those categories of misstatements in detail, including that:

- Defendants' Class Period statements that the Company's liquidity was sufficient to support its operations for the ensuing 12 months (from the time of each such statement) were false, as the Company did not have sufficient liquidity to do so and indeed was so cash-poor that it systematically failed to pay critical vendors and was improperly shuffling funds and thereby jeopardizing projects;

- Defendants' alleged misstatements about liquidity also were materially false and misleading because the Company suffered from material flaws in its "cash forecasting and liquidity management" systems, rendering it impossible for the Company to accurately assess its own cash levels, and Defendants materially overstated the amount of cash the Company had that was truly available, as evidenced by the Company's need to take out the emergency $169 million Second-Lien Loan from Goldman Sachs at exorbitant rates just before the Preferred Offering;

- Defendants' alleged false statements about liquidity were not opinions, but rather were factual statements concerning specific amounts of cash on hand;

- The Offering Documents expressly incorporated material misstatements and omissions, which Defendants Chatila and Wuebbels certified, that SunEdison had effective internal controls over its financial reporting, when in truth the Company's internal controls were ineffectual and illusory;

- The Offering Documents and the periodic filings incorporated therein included materially false and misleading statements and omissions about the Margin Loan and the Second-Lien Loan, including because Defendants failed to disclose the Margin Call (which further taxed SunEdison's liquidity), the emergency Second-Lien Loan (which would have informed investors of SunEdison's true cash-strapped position), and Goldman Sachs's role as both the Second-Lien Loan lender and the lead underwriter for the Preferred Offering;

- Defendants' false statements and omissions about the Margin Loan and Second-Lien Loan were material, as evidenced by the market's severe reaction upon learning about those items, and in any event questions of materiality could not be decided at the pleading stage;

- Defendants misleadingly and falsely characterized the Margin Loan as non-recourse debt, when in fact it was recourse debt to the Company, and given Defendants' contradictory disclosures, the Court could not determine that investors were not misled as a matter of law at the pleading stage; and

- Defendants were required under Item 303 to disclose the trend of SunEdison failing to timely pay critical vendors, which was likely to materially impact the Company's revenues.

55. Second, Plaintiffs argued that their Exchange Act claims should be sustained. In addition to claims arising from the alleged false statements made or incorporated in the Offering Documents for the Preferred Offering, which Plaintiffs contended should be sustained for the same reasons as Plaintiffs' Securities Act claims, Plaintiffs argued that the Amended Complaint adequately alleged Exchange Act claims arising from actionable misstatements and omissions by Defendants Chatila and Wubbels that falsely represented to investors that the Company's financial condition was secure, and concealed SunEdison's true, dire financial condition. Those statements included Chatila's September 2, 2015 statement that the Company would be "generating cash for a living" by the first quarter of 2016—contrary to a late-August 2015 presentation by SunEdison management to the Board that showed the Company would not have positive cash flows until the second quarter of 2016 at the earliest. Plaintiffs also argued that, towards the end of the Class Period, Defendants made materially false and misleading statements concerning SunEdison's reasons for failing to consummate the acquisition of LAP.

56. In addition, Plaintiffs' pre-motion letter argued that the Amended Complaint adequately pleaded Defendants Chatila's and Wuebbels's scienter because, among other reasons, numerous internal whistleblower complaints were raised to Chatila and Wuebbels concerning the accuracy of their public statements about SunEdison's liquidity and the Company's failure to timely pay its vendors, Chatila and Wuebbels were directly involved in negotiating and agreeing to the Second-Lien Loan from Goldman Sachs, and Chatila and Wuebbels were directly involved in the "Friday Night Massacre" in which SunEdison management seized control of the YieldCos' boards and fired key YieldCo management members so that SunEdison could repurpose funds held by TerraForm Global. Plaintiffs defended the credibility of their allegations based on

interviews with former employees and sources discussed in *Wall Street Journal* articles. Plaintiffs additionally argued that the Amended Complaint alleged loss causation under the applicable Rule 8 pleading standard, and that Defendants' loss-causation arguments raised factual questions that could not properly be resolved at the pleading stage.

57. Third, Plaintiffs argued that KPMG's opinion certifying SunEdison's internal controls, incorporated by reference into the Offering Documents for the Preferred Offering, was materially untrue and misleading. Plaintiffs contended that KPMG "disregarded SunEdison's numerous, substantial, blatant internal-control deficiencies" and, "[i]f KPMG had performed a GAAS-compliant audit, the only reasonable conclusion KPMG could have reached was that SunEdison's internal controls were ineffective and materially inadequate at the end of fiscal year 2014 and throughout the Class Period." Plaintiffs argued that KPMG's audit report contained actionable statements of fact, not opinion, and that even if it contained statements of opinion, those statements were nevertheless actionable because they lacked any reasonable basis.

G. Plaintiffs File the Operative Complaint

58. At all points, including during the duration of the Court-ordered stay, the mediation process, and the drafting and filing of pre-motion-to-dismiss letters, Plaintiffs' investigation continued, including by monitoring news reports and filings in related litigation. On February 21, 2017, two whistleblowers—former senior executives of SunEdison and its YieldCos Carlos Domenech Zornoza ("Domenech") and Francisco Perez Gundin ("Gundin")—filed complaints in the District of Maryland (the "Whistleblower Actions") against Defendants Chatila and Wuebbels, among others, alleging that Chatila and Wuebbels made materially false and misleading statements to cover up the Company's true, cash-strapped financial condition. *See Domenech v. TerraForm Power Inc.*, Case No. 17-cv-515 (D. Md.); *Perez v. TerraForm Power Inc.*, Case No. 17-cv-516 (D. Md.).

59. The Whistleblower Actions strongly corroborated Plaintiffs' existing allegations, and provided specific facts and evidence directly refuting the arguments in Defendants' pre-motion letters. For example, the Whistleblower Actions corroborated allegations based on an investigatory article in the *Wall Street Journal* that certain Class Period cash amounts publicly reported by SunEdison were substantially overstated, by as much as a billion dollars. Plaintiffs promptly moved the Court for leave to amend their complaint in order to incorporate allegations derived from the Whistleblower Actions. *See* ECF No. 134. On March 1, 2017, The Court granted Plaintiffs' request, and instructed Plaintiffs to file their first amended complaint on or before March 17, 2017. ECF No. 135 at 3. On March 17, 2017, Plaintiffs filed the Second Amended Consolidated Securities Class Action Complaint. ECF No. 138 (the "Complaint"). The Complaint closely tracked Plaintiffs' then-existing allegations, and added allegations based on and derived from information publicly set forth for the first time in the Whistleblower Actions.

60. On March 17, 2017, Plaintiffs, along with plaintiffs in the other securities class actions then pending before the Court in the MDL, provided a status report informing the Court that the First Mediation did not reach a successful resolution. ECF No. 136. Plaintiffs expressed their willingness to continue to engage in settlement discussions, as well as their belief "that resuming active litigation is the best way to proceed" and would "help the parties further crystallize the relevant disputes and reach agreement on the likely success of the different claims." *Id*. at 1. Plaintiffs accordingly requested "that the Court not continue the limited stay past March 31, 2017, when it [wa]s currently set to expire." *Id*.

61. Defendants filed their own status report on March 17, 2017. ECF No. 162. Defendants represented that they "believe[d] that settlement in some or all of the MDL Litigation [wa]s still achievable and that preservation of the insurance asset [wa]s important to such

settlements," and were also "mindful of the Court's admonition that the stay entered in December would have a limited duration and acknowledge that it may be beneficial to settlement to begin to test certain of the pleadings." *Id*. at 2. Defendants requested that the Court consider staggering briefing on Defendants' various motions to dismiss in the constituent MDL actions, including "staggering the briefing schedule so that the motions to dismiss in the *Horowitz* class action are briefed after the Court's ruling on the *In re TerraForm Global IPO* motion(s), which Defendants suggested would "reduce further depletion of the insurance proceeds." *Id*. at 3.

62. Plaintiffs responded to Defendants' March 17 status report on March 21, 2017, stating in a letter to the Court that the relief Defendants sought "would be inefficient and prejudicial, result in a very lengthy further stay of this lead class action case, and would needlessly waste the limited D&O insurance available." ECF No. 139 at 1. Plaintiffs requested that the Court deny Defendants' request and order motion-to-dismiss briefing to commence by April 17, 2017, or 30 days after Plaintiffs filed the operative Complaint. *Id*.

H. Active Litigation Resumes and the Parties Brief Motions to Dismiss

63. Under the terms of the Court's prior order entering the stay pending the First Mediation, the stay ended in March 2017, and the Action returned to active litigation.

64. On April 13, 2017, the Court held a pretrial conference. The Court subsequently issued an Order directing Defendants in this Action and certain other actions in the MDL to file motions to dismiss by June 9, 2017, with Plaintiffs' oppositions due July 14, 2017, and Defendants' reply briefs due August 4, 2017. MDL ECF No. 186.

65. On June 9, 2017, Defendants filed three motions to dismiss and accompanying briefing: (i) a 25-page brief by the Individual Defendants and the Underwriter Defendants in support of dismissing Plaintiffs' Securities Act claims (ECF Nos. 145-46), (ii) a 40-page brief by Defendants Chatila and Wuebbels in support of dismissing Plaintiffs' Exchange Act claims,

which attached 44 exhibits totaling more than 3,600 pages (ECF Nos. 149-51), and (iii) a 25-page brief by KPMG in support of dismissing Plaintiffs' claim against KPMG (ECF Nos. 147-48).

66. Defendants' motions to dismiss made and expanded on the arguments presented in their pre-motion letters. With respect to the Securities Act claims, Defendants argued that Plaintiffs failed to adequately allege any material misstatements or omissions. In addition to the arguments presented in their pre-motion letters, Defendants argued that:

- Defendants' alleged false statements concerning SunEdison's liquidity were nonactionable, forward-looking statements protected under the PSLRA's "Safe Harbor" and the "bespeaks caution" doctrine, and further protected as expressions of opinion that Defendants purportedly honestly believed true when made;

- SunEdison's alleged missed and late payments to vendors were "not indicative of a liquidity crisis" but rather an acceptable practice of "managing the timing of payments to one's vendors";

- Defendants' omission of the August 7 Margin Call on the Company's $410 million Margin Loan from the Offering Documents for the August 2015 Preferred Offering was nonactionable because "investors could readily ascertain when a margin call might be triggered" by using publicly disclosed information about the number of TERP shares that served as collateral for the Margin Loan and the loan-to-value ratio that the loan agreement required SunEdison to maintain;

- Defendants' omission from the Offering Documents of the $169 million August 11 Second-Lien Loan from Goldman Sachs was nonactionable and both "quantitative[ly]" and "qualitative[ly]" immaterial because "it amounted to less than 1.5 percent of SunEdison's nearly $11 billion of disclosed indebtedness" and the loan's interest rate and fees would not have "altered the total mix of information already available to investors regarding SunEdison's substantial indebtedness and continuing need to borrow money";

- Defendants' alleged false Sarbanes-Oxley ("SOX") certifications of the effectiveness of SunEdison's internal controls over financial reporting were "quintessential statements of opinion" that were genuinely believed when made, as the certifying officers were not aware of alleged internal-control deficiencies until after the Preferred Offering took place"; and

- Defendants' alleged false statements concerning the use of proceeds from the August 2015 Preferred Offering, which Plaintiffs alleged concealed that those proceeds would be used to pay down margin calls on the Margin Loan, were not false because those purposes were included in disclosures that the funds would be used for "general corporate purposes" and "funding working capital" and allocated in management's "broad discretion."

67. With respect to Plaintiffs' Exchange Act claims, Defendants incorporated by reference the arguments made in the motion to dismiss the Securities Act claims. In addition, along with arguments previously raised in Defendants' pre-motion letters, Defendants argued that the Complaint should be dismissed because:

- Defendant Chatila's alleged false September 2, 2015 statement about when SunEdison would "start generating cash for a living" was a forward-looking statement protected by the PSLRA "Safe Harbor" and, in any event, was consistent with the August 2015 presentation to the Company's Board that Plaintiffs alleged demonstrated the statement's falsity;

- Plaintiffs purportedly failed to allege scienter for alleged false statements concerning SunEdison's financial condition because Plaintiffs did not challenge the accuracy of specific items in the Company's financial statements;

- Plaintiffs did not plead scienter for Defendants' alleged false statements and omissions concerning their internal controls over financial reporting because risk disclosures and Defendants' purportedly accurate and complete disclosures about internal-control failures, when Defendants learned of those failures," were "inconsistent with the inference that Defendants intended to deceive investors";

- Plaintiffs did not allege that Defendants' stated reason that SunEdison failed to consummate its acquisition of LAP—that LAP "had failed to satisfy a condition precedent for the deal"—was not true, and the Company accurately disclosed reasons the deal was terminated in its November 9, 2015 Form 10-Q for the third quarter of 2015;

- Defendants' alleged false disclosure in the Company's third-quarter 2015 Form 10-Q of $1.4 billion in cash was not actually false, because the Company had that amount on hand even if portions of it were restricted, and disclosures about the accessibility of $500 million in "warehouse" financing were ostensibly accurate and proper;

- Plaintiffs did not state a claim based on alleged misstatements and omissions concerning SunEdison's November 20, 2015 replacement of the YieldCos' boards and management, as the Company's disclosures were accurate and any information that was not disclosed was purportedly irrelevant to Plaintiffs'

claims; and

- Plaintiffs failed to plead scienter because: (i) Chatila and Wuebbels purchased SunEdison stock during the Class Period; and (ii) allegations derived from the Whistleblower Actions showed only disagreements among management, not any intent to deceive investors.

68. In KPMG's brief, the auditor argued that KPMG's 2014 audit report (on which Plaintiffs' claim against KPMG was based) was a statement of opinion, and that Plaintiffs did not and could not allege that the statement was not one of honestly held belief when made, and that the audit report could not have been false for failing to identify or disclose events that occurred after it was issued (albeit before the Company incorporated the 2014 audit report into the Offering Documents for the August 2015 Preferred Offering). ECF No. 148.

69. Plaintiffs filed briefs in opposition to Defendants' motions to dismiss on July 14, 2017. ECF Nos. 153-56.

70. In their 29-page opposition to Defendants' motion to dismiss the Securities Act claims (ECF No. 153), Plaintiffs addressed each of the arguments raised by Defendants, and detailed the asserted factual and legal bases for their claims. Plaintiffs argued that their Securities Act claims should be sustained because:

- the Offering Documents failed to disclose the severe liquidity crisis that was at the time already underway at SunEdison and that ultimately led to the Company's collapse, and which required SunEdison to take out the Second-Lien Loan from Goldman Sachs at "distressed company" rates;

- Defendants' statements concerning the amount of cash and cash equivalents at the Company were false because very little of that cash was actually accessible, as evidenced by the need to take out the Second-Lien Loan in order to make $152 million in Margin Call payments in August 2015;

- Defendants' liquidity statements were not protected by the "Safe Harbor" or "bespeaks caution" doctrine because the Company's generalized risk warnings failed to disclose that those risks had already come to bear;

- Defendants' liquidity statements were not opinions but rather failed to disclose then-existing facts and, even if they were opinions, Defendants were still liable for failing to disclose known, contrary facts;

- Defendants' failures to disclose missed payment to vendors were material because, rather than "[m]anaging the timing of payments," the missed payments "threatened the loss of critical services";

- Whether investors were misled by Defendants' inconsistent disclosures of the recourse nature of the Margin Loan was a fact question not appropriate for resolution on the pleadings;

- Contrary to Defendants' claim, investors could not calculate when a Margin Call would be triggered based on prior disclosures because key metrics and loan terms were not publicly known;

- Defendants' failure to disclose the Second-Lien Loan from Goldman Sachs was material because it would have informed investors of the Company's increasing inability to access the capital markets at commercially reasonable rates;

- Second Circuit case law required disclosure of the Margin Call and the Second-Lien Loan at the time of the Preferred Offering, even if they occurred in the middle of a reporting period;

- With regard to statements about the Company's internal controls, rather than opinions, the statements were alleged to be misstatements of present fact when made due to the numerous alleged widespread deficiencies at the time of the Preferred Offering; and

- Defendants violated Item 303 by failing to disclose ever-worsening liquidity problems, evidenced by facts including the Margin Call and the Second-Lien Loan.

71. Plaintiffs also filed a 36-page opposition to Defendants' motion to dismiss Plaintiffs' Exchange Act claims. ECF No. 156. In addition to the falsity-related arguments that Plaintiffs made in their Securities Act brief and incorporated by reference, Plaintiffs argued that their Exchange Act claims should be sustained because:

- Defendants' alleged false statements about SunEdison's cash balance were false and misleading because investors understood the disclosed figures to be the Company's available cash, as separate from the aggregate figures the Company had reported for SunEdison and its YieldCos;

- Defendants' risk disclosures did not shield them from liability for false statements about the Company's liquidity because they did not warn about risks that had already materialized;

- Defendants' statements about having "strong" and "robust" liquidity were not inactionable puffery because they misrepresented then-present facts;

- Wuebbels's alleged false statement on August 6, 2015 that SunEdison did not need "additional financings" to achieve forecasted growth was false because, at the time, Defendants were finalizing the onerous terms of the Second-Lien Loan, which was the type of financing Wuebbels represented as being unnecessary;

- Chatila's September 2, 2015 statement that SunEdison would "start generating cash for a living" by the first quarter of 2016 was not protected as forward-looking because it was contradicted by the presentation that Chatila himself made to SunEdison's Board in late-August 2015;

- Under controlling law, Defendants' Item 303 disclosures gave rise to liability under Section 10(b);

- When Defendants disclosed certain terms of the Margin Loan on August 6, 2015, they failed to disclose that the Margin Call was imminent, which was an actionable half-truth, and later statements by the Company failed to disclose additional margin calls on the Margin Loan or that YieldCo directors and management were replaced in order to secure necessary cash to meet SunEdison's Margin Call;

- Defendants failed to disclose that the LAP deal was not consummated because SunEdison failed to make required payments after undisclosed machinations to disguise its failing financial condition;

- Plaintiffs' internal-controls-related allegations should be sustained because, as evidenced by accounts of former employees, Defendants knew of SunEdison's flawed internal controls at the time of their allegedly false certifications; and

- Plaintiffs adequately alleged Defendants' scienter under the governing legal standard set forth in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007), especially because (a) Defendants knew about the Second-Lien Loan and the Margin Call, and (b) whistleblowers informed SunEdison's senior management of misstatements in the Company's public disclosures.

72. In their 24-page opposition to KPMG's motion to dismiss (ECF No. 154), Plaintiffs argued that KPMG's 2014 year-end audit of SunEdison failed to comply with GAAS, and there was no reasonable basis to conclude that SunEdison had effective internal controls, as

evidenced by the Company's 2016 admissions of ineffective internal controls and the accounts of numerous former SunEdison employees who described "a cluster of different accounting systems that made it a nightmare for any sort of internal controls to be functional"—which KPMG disregarded in its audit report, in violation of applicable standards. Plaintiffs argued, among other things, that KPMG's conclusions were not inactionable opinions or protected as forward-looking, but rather were false statements of fact when made.

73. Defendants filed replies in further support of their motions to dismiss on August 4, 2017. ECF Nos. 157-60. Defendants' replies reiterated the arguments set forth in their opening briefs.

I. Plaintiffs Continue to Aggressively Litigate as the Parties Hold the (Unsuccessful) Second Mediation

74. After briefing closed on Defendants' motions to dismiss the Complaint and while those motions were pending, Plaintiffs continued to aggressively litigate the Action, while also engaging in another mediation session with Defendants.

75. On October 6, 2017, the parties held a second mediation session (the "Second Mediation") before Judge Phillips and Mr. Lindstrom. All of the parties to this Action participated in the Second Mediation. The Second Mediation was unsuccessful, and the parties remained in active litigation.

76. While Defendants' motions to dismiss were pending, Plaintiffs raised relevant legal developments to the Court that Plaintiffs believed would inform the Court's consideration of Defendants' motions. On October 23, 2017, Plaintiffs wrote to the Court to notify it of recent developments in a case that Defendants had suggested supported dismissal of Plaintiffs' claims concerning Defendants' disclosure obligations under Item 303. ECF No. 162. In their briefing, Defendants had argued that their alleged Item 303 violations did not give rise to securities-fraud

liability because "the Supreme Court has granted certiorari in a Second Circuit case" and might overturn controlling Second Circuit precedent allowing liability under Section 10(b) for Item 303 violations. ECF No. 150 at 22-23 (discussing the grant of certiorari in *Leidos, Inc. v. Ind. Pub. Ret. Sys.*, 2016 WL 7011426 (U.S. Nov. 30, 2016)). Plaintiffs notified the Court on October 23 that, on October 6, 2017, the parties in *Leidos* had informed the Supreme Court that they settled their dispute, and the Supreme Court issued an order on October 17, 2017 holding any further proceedings in abeyance and removing the case from its argument calendar. Plaintiffs contended that, in light of the *Leidos* settlement, there was no basis to depart from Second Circuit precedent holding that Item 303 violations give rise to Section 10(b) liability.

77. On December 7, 2017, Plaintiffs again wrote to the Court to notify it of pertinent case-law developments. Specifically, Plaintiffs notified the Court of the Second Circuit's decision in *Christine Asia Co. Ltd. v. Ma*, 2017 WL 6003340 (2d Cir. Dec. 5, 2017), which reaffirmed that Item 303 violations give rise to Section 10(b) liability. ECF No. 163.

J. The Court Denies in Part and Grants in Part Defendants' Motions to Dismiss and the Parties Initiate Discovery

78. On March 6, 2018, the Court issued a thorough, 85-page Memorandum and Order in which it denied in part and granted in part Defendants' motions to dismiss the Complaint. ECF No. 167.

79. In its Order, the Court dismissed all of Plaintiffs' Section 10(b) and 20(a) claims against Chatila and Wuebbels except for a claim under Section 10(b) against Chatila concerning his September 2, 2015 alleged false statement concerning the timing of SunEdison's cash flows. The Court sustained Plaintiffs' Securities Act claims relating to Defendants' alleged misstatements and omissions in connection with SunEdison's August 18, 2015 Preferred Offering—specifically, its classification of the Margin Loan as non-recourse, and the omission

from the Offering Documents of information regarding the Margin Call and the Second-Lien Loan. The Court also sustained Plaintiffs' Section 15 claims against Chatila, Wuebbels, and the other Individual Defendants. The Court granted KPMG's motion to dismiss.

80. After the Court ruled on Defendants' motions to dismiss and allowed Plaintiffs' case to proceed, Plaintiffs proposed and fought for a fast-moving schedule that would allow adequate time for discovery and motions practice while preserving as much of the D&O Insurance proceeds as reasonably possible. The parties held multiple phone conferences and other communications, but were unable to reach an agreement on a case schedule, including the time for Defendants to answer the Complaint.

81. On March 14, 2018, Defendants submitted a letter to the Court raising their position that the due date for their answers to the Complaint was not subject to the 14-day time limit (running from the Court's denial of the motions to dismiss) in Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure, and requesting in any event that the Court set May 18, 2018 as Defendants deadline to answer the Complaint. ECF No. 168. Plaintiffs responded that same day. ECF No. 169. In their letter, Plaintiffs argued that Defendants' requested extension was "unnecessary," "threaten[ed] to consume scarce and depleting insurance funds, and would impede an efficient discovery process." *Id*. at 1. Plaintiffs further explained that they "have emphasized the need for the parties to agree on an overall schedule, including Defendants' deadline to answer, in order to move the Action forward." *Id*. at 2.

82. On March 15, 2018, the Court granted Defendants' request to set May 18, 2018 as their deadline to answer the Complaint. ECF No. 170.

83. Also on March 15, 2018, the parties began their Rule 26(f) planning conference. That day, and during subsequent calls that continued that conference, Plaintiffs argued that

discovery should commence promptly and that a fast-moving schedule was appropriate. Defendants suggested that they would not agree to a case schedule that did not coordinate discovery with the *Cobalt*, *Omega*, *Canyon*, and *Kearny* opt-out actions. Plaintiffs did not oppose coordinated discovery, but—after the opt-out plaintiffs refused to coordinate discovery with this class action—opposed Defendants' request in an attempt to preserve the scarce and depleting D&O Insurance. In a March 23, 2018 letter, Plaintiffs requested that the Court enter Plaintiffs' proposed schedule. ECF No. 171.

84. On March 26, 2018, Defendants responded to Plaintiffs' March 23 letter. ECF No. 172. Defendants argued that coordinating discovery with the opt-out plaintiffs was necessary to ensure fairness and efficiency. *Id*. Defendants proposed that (i) Plaintiffs be designated lead plaintiffs for purposes of directing and coordinating discovery in this Action and the opt-out actions; (ii) Plaintiffs and the opt-out plaintiffs coordinate on discovery requests; (iii) the Court set a status conference for May or June 2018 in order to address "a full case schedule that encompasses all remaining securities actions in this MDL"; and (iv) no documents be produced until after a date set by the Court or after a ruling on motions to dismiss in the opt-out actions. *Id*. at 4.

85. The *Cobalt* and *Omega* opt-out plaintiffs then sent a letter to the Court on March 27, 2018. MDL ECF No. 320. In their letter, those opt-out plaintiffs objected to Defendants' proposal "that the *Horowitz* plaintiffs be designated lead plaintiffs for purposes of directing and coordinating discovery," and further argued that the PSLRA discovery stay in the opt-out actions should be lifted and they—and not the Court-appointed Lead Plaintiff MERS and Named Plaintiff ATRS—should lead discovery in connection with Plaintiffs' Securities Act claims. *Id*. at 2.

86. On March 28, 2018, Plaintiffs responded to the opt-out plaintiffs' letter. ECF No. 173. Plaintiffs opposed the opt-out plaintiffs' proposal to lead discovery on the Securities Act claims, arguing that "[i]t would be an absurd result for the RGRD Opt Outs to now step in to lead discovery of the very class claims from which they opted out, based on claims that the Class Plaintiffs asserted and vigorously litigated for the last year and a half while the RGRD Plaintiffs did nothing to prosecute these claims." *Id*. at 1. Plaintiffs again asked the Court to enter Plaintiffs' proposed schedule.

87. On March 29, 2018, Defendants submitted another letter to the Court concerning the case schedule. ECF No. 174. Defendants argued that the Court should not lift the PSLRA discovery stay in the opt-out actions, and reiterated their request that the Court grant Defendants' proposal set forth in their March 26 letter. The same day, the Court set a pretrial conference for April 17, 2018 in this Action and the opt-out actions. MDL ECF No. 324.

88. On April 17, 2018, the Court held a conference with the parties to this Action as well as the *Canyon*, *Kearny*, *Cobalt*, and *Omega* opt-out actions. During that conference, Plaintiffs stressed their interest in promptly entering discovery and litigating the Action, with the hope of a prompt resolution that would allow for the substantial preservation of D&O Insurance funds. The Court ordered the parties to exchange initial disclosures under Rule 26(a) within 21 days of the conference, fact discovery to close by October 5, 2018, interrogatories to be served by June 5, 2018, expert discovery to be completed by November 16, 2018, and class-certification briefing to be completed by August 31, 2018. The Court explained, "I should make it very plain for the record, why am I willing to go along with expedition here? The reason is I'm concerned that there will not be sufficient assets to satisfy anything close to a judgment. There may not

even be assets or insurance proceeds available to have any kind of a meaningful settlement. But I don't want to contribute to that problem of having them all dissipated." 4/17/18 Tr. 31:15-21.

IV. DEFENDANT CHATILA'S MOTION FOR JUDGMENT ON THE PLEADINGS

89. On May 29, 2018, Defendant Chatila filed a pre-motion letter with the Court seeking leave to file a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) with respect to the Section 10(b) claim against Defendant Chatila. ECF No. 182. Chatila principally argued that Plaintiffs' claim that Chatila's September 2, 2015 statement concerning the expected timing of SunEdison's future cash flows was false or misleading when made should be dismissed on the pleadings because there purportedly was no material issue of fact concerning the falsity of Chatila's September 2 statement.

90. More specifically, Chatila argued that when understood in the larger context of the additional comments Chatila made to *Bloomberg* on September 2, 2015, it was clear that Chatila was not projecting positive cash flows in the near term. *Id.* at 2-3. Instead, according to Chatila, his alleged false statement referred to the YieldCos' anticipated generation of operating cash flows from their long-term contracts, and to SunEdison's expected receipt of a portion of those cash flows. Chatila made similar arguments with respect to Plaintiffs' claims that he made the September 2 alleged false statement with scienter, and argued that there was no material issue of fact as to Chatila's scienter that would preclude dismissal. *Id.* at 5-7.

91. On June 4, 2018, Plaintiffs opposed Defendant Chatila's pre-motion letter regarding his anticipated 12(c) motion. ECF No. 184. Plaintiffs argued that Chatila's motion was futile in light of the Court's previous rulings, and that the request was merely Defendants' attempt to re-litigate issues that the Court had already decided when it ruled on Defendants' motions to dismiss. For that reason, Plaintiffs argued that Chatila's motion should more appropriately be treated as a motion for reconsideration, and that Chatila did not meet the

standard for the Court to reconsider its earlier decision. Plaintiffs further argued that Chatila's motion would fail on the merits because the Court had already considered and rejected his challenges to the Complaint's well-pled allegations concerning the September 2 statement. Plaintiffs countered Chatila's argument that the "context" in which his statement was made negated falsity and scienter by putting forth evidence that Defendants' interpretation of that statement was inconsistent with a plain reading of the statement, as well as the contemporaneous reaction of analysts and SunEdison's own executives. At bottom, Plaintiffs argued, the dispute demonstrated that discovery was necessary to resolve the underlying disputed factual issues.

92. On June 5, 2018, the Court denied Defendants' application to move for judgment on the pleadings. ECF No. 186.

93. On June 12, 2018, the parties held a third mediation session (the "Third Mediation") before Judge Phillips and Mr. Lindstrom. All of the parties to this Action participated in the Third Mediation. The Third Mediation was unsuccessful, and the parties remained in active litigation.

V. FACT DISCOVERY

94. As set forth further below, Lead Counsel's discovery efforts included:

- Negotiating an aggressive case schedule with the goal to conserve resources for the resolution of this Action;
- Pursuing extensive document and deposition discovery from Defendants;
- Pursuing extensive document and deposition discovery from several third parties;
- Litigating various discovery disputes;
- Responding to requests for production of documents;
- Drafting and responding to requests for admission and interrogatories; and
- Receiving and reviewing over 2.2 million pages of documents.

A. The Pursuit of Extensive Document Discovery from Defendants and Third Parties, Including the Company

95. Over the course of the litigation, Plaintiffs vigorously pursued the production of documents by Defendants, including numerous disputes concerning the scope of Defendants' document production, several of which required Court intervention to resolve.

96. On March 23, 2018, Plaintiffs served requests for the production of documents on Defendants as well as on third party SunEdison. Plaintiffs requested that both SunEdison and Defendants produce documents concerning, among other things, the Preferred Offering and other capital raises by the Company, the Second-Lien Loan, the Margin Loan (including margin calls on the Margin Loan), due diligence conducted in connection with the Preferred Offering, Chatila's September 2, 2015 alleged false statement, SunEdison's cash flows, investigations (internal and/or governmental) into the Company's liquidity and available cash, the Company's public disclosures on relevant topics, and changes in SunEdison's stock prices in response to certain Class Period events and disclosures, including communications between Company management, the Underwriter Defendants, and/or SunEdison's directors. On April 23, 2018, Defendants served their Objections and Responses to Lead Plaintiff's First Request for the Production of Documents Directed to the SunEdison Defendants on Plaintiffs. In the months that followed, Lead Counsel engaged in numerous meet-and-confers and extensive negotiations with Defendants' Counsel over the scope and adequacy of Defendants' discovery responses, including relating to search terms to be used and custodians whose documents should be searched.

97. In total, Lead Counsel received and reviewed approximately 1.3 million pages of documents produced by Defendants. Additionally, because SunEdison is a bankrupt entity, the Company was not a party to the Action, and Plaintiffs were forced to obtain documents from the Company as a nonparty. Moreover, SunEdison's access to its own documents was limited, as

were its resources and ability to perform any review of documents prior to production. Nevertheless, Plaintiffs received and reviewed approximately 82,000 documents totaling over 412,000 pages from SunEdison.

98. Plaintiffs also pursued discovery from numerous third parties in addition to SunEdison, including by serving subpoenas on 23 third parties. Lead Counsel met and conferred with counsel for many of these third parties multiple times before receiving document productions. The chart below identifies the recipients of the subpoenas issued by Plaintiffs, the dates of the subpoenas, and the role of the subpoenaed entity in the case:

Subpoenaed Entity	**Date**	**Role in Case**
SunEdison Inc.	March 23, 2018	Former corporate defendant
TerraForm Global	March 23, 2018	SunEdison YieldCo
TerraForm Power	March 23, 2018	SunEdison YieldCo
DNV GL USA, Inc.	April 25, 2018	SunEdison due diligence vendor
KPMG LLP	April 25, 2018 September 4, 2018	SunEdison's outside auditor
UBS Securities LLC	April 25, 2018	Securities analyst covering SunEdison
Vivint Solar, Inc.	April 25, 2018	Potential SunEdison acquisition prior to the class period
Francisco Perez Gundin	April 25, 2018	Chief Operating Officer of SunEdison
Carlos Domenech Zornoza	April 25, 2018	Chief Executive Officer of YieldCos
Kearney Investors	May 22, 2018	Opt-out plaintiff
Canyon Group	May 22, 2018	Opt-out plaintiff
KKR Funds	May 22, 2018	Opt-out plaintiff
Skadden Arps Meager & Flom LLP	July 31, 2018	SunEdison's counsel in Preferred Offering

Subpoenaed Entity	Date	Role in Case
Latham & Watkins LLP	July 31, 2018	Underwriter's counsel in Preferred Offering
Alejandro Hernandez	September 4, 2018	Chief Financial Officer of YieldCos
FTI Consulting, Inc.	September 4, 2018	Assisted Paul Hastings and SunEdison Audit Committee in internal investigation
Paul Hastings LLP	September 4, 2018	Assisted SunEdison Audit Committee in internal investigation
Paul Gaynor	September 4, 2018	Co-founder of First Wind, acquired by SunEdison in January 2015
Patrick Cook	September 19, 2018	Former SunEdison finance employee
Zach Groves	September 19, 2018	Former SunEdison finance employee
Manavendra Sial	September 19, 2018	SunEdison's former VP of Finance
Diligent Corporation	September 20, 2018	SunEdison Board document hosting platform
Computershare Investor Services LLC	February 20, 2019	SunEdison's transfer agent

99. In total, Defendants and third parties produced more than 303,000 documents, totaling more than 2,200,000 pages, to Plaintiffs.

100. As Lead Counsel received documents in response to Plaintiffs' document requests, it reviewed and analyzed those documents through regular team meetings, running targeted searches aimed at locating and prioritizing the review of the most relevant documents, and putting together analyses on discrete issues and timelines germane to the case. The magnitude and complexity of the documents was substantial—totaling more than 2.2 million pages from a far-ranging period of time, and including, among other things, emails, loan

documentation, internal finance memoranda, financial statements, interview summaries, project finance documents, and board materials.

101. Throughout, Lead Counsel ensured that the review and analysis of documents was conducted efficiently. At the outset, Lead Counsel solicited proposals from vendors to provide document-management services. After receiving bids from three well-regarded firms, Lead Counsel ultimately selected the e-discovery vendor Precision. At a price that matched the lowest bid received, Precision provided document-review support, including algorithm-based "technology-assisted review" ("TAR") (also known as "predictive coding"). The TAR software enabled Lead Counsel to efficiently streamline the review by "learning" the coding of documents as they were reviewed. While Lead Counsel could not rely on this machine algorithm to identify all of the necessary documents to prosecute this Action, it did use the algorithm to assist Lead Counsel in efficiently prioritizing the review of documents most likely to be relevant.

102. Using the TAR predictive coding to prioritize those documents most likely to provide meaningful information, attorneys from Lead Counsel reviewed, analyzed, and categorized the documents in Precision's electronic database. Before beginning, Lead Counsel developed a search protocol, issue "tags," and guidelines for identifying "hot" documents, as well as a manual and guidelines for the review and "coding" of documents. Using these tools, Lead Counsel tasked its attorneys with reviewing documents, with the documents most likely to be "hot" put into prioritized batches for review. Lead Counsel's review and analysis of those documents included substantive analytical determinations as to the importance and relevance of each document—including whether each document was "hot," "highly relevant," "relevant," or "irrelevant." For documents identified as "hot," attorneys typically documented their substantive analysis of the documents' importance by making notations on the document review system,

explaining what portions of the documents were hot, how they related to the issues in the case, and why the attorney believed that information to be significant. Attorneys also "tagged" the specific issues that documents related to, such as the classification of the Margin Loan, margin calls on the Margin Loan, and the terms of the Second-Lien Loan and changes to those terms, which enabled Lead Counsel to effectively and efficiently collect documents in preparation for depositions. Given the dynamic, evolving nature of discovery, Lead Counsel frequently revised and refined its tools, techniques, and "tags" as it developed its understanding of the issues.

103. Throughout its review, Lead Counsel analyzed the adequacy and scope of the document productions by Defendants and third parties. For example, attorneys reviewed all privilege redactions and entries in Defendants' privilege logs to assess whether Defendants redacted or withheld potentially non-privileged information. Lead Counsel also reviewed the productions to determine whether they substantively tracked what had been agreed to be produced in response to document requests.

104. In addition to regular communications that occurred throughout the review process, attorneys who primarily focused on the document review participated in weekly meetings with the litigation team. In advance of these meetings, "hot" documents and documents that raised questions for discussion that had recently been reviewed and analyzed were compiled and circulated. At the meetings, Lead Counsel discussed those documents, including the reasons they identified them as "hot," and attorneys asked questions and discussed similar documents that had been reviewed. In connection with these meetings, the attorneys prepared a weekly memorandum summarizing the documents discussed. These efforts ensured that the entire litigation team learned of and understood the documentary evidence being developed, provided an opportunity for Lead Counsel to further refine its legal and factual theories, focused the

document-review team on developing other supporting evidence, and enabled Lead Counsel to ensure that documents were reviewed consistently. Lead Counsel also often conducted follow-up research and drafted memoranda concerning topics of interest that arose at these meetings.

105. In addition, Lead Counsel prepared chronologies of events and maintained a central repository of key documents organized by issue, which it continually updated and refined as the team's knowledge of issues expanded. This step enabled attorneys to quickly and efficiently access critical documents necessary for the preparation for depositions and drafting of evidentiary submissions to the Court.

B. Interrogatories and Requests for Admission

106. Interrogatories and requests for admission proved to be critical to Plaintiffs' discovery, including to their depositions. On June 5, 2018, Plaintiffs served their First Set of Interrogatories to the Underwriter Defendants on the Underwriter Defendants and their First Set of Interrogatories to Defendants on the Individual Defendants. Plaintiffs' interrogatories focused on margin calls SunEdison received, SunEdison's financial transactions, the process of drafting and reviewing the Offering Documents, the recourse nature of the Margin Loan, presentations to the SunEdison Board concerning the Company's cash position, and Chatila's September 2 *Bloomberg* interview.

107. On July 12, 2018, the Underwriter Defendants served their Responses and Objections to Plaintiffs' First Set of Interrogatories to the Underwriter Defendants and the Individual Defendants served separate responses and objections to Plaintiffs' First Set of Interrogatories to Defendants. Plaintiffs carefully reviewed the Underwriter Defendants' and each of the Individual Defendants' interrogatory responses to tailor their discovery efforts.

108. Thereafter, Plaintiffs on October 22, 2018 served their First Set of Requests for Admission Directed to Defendants ("Requests for Admission") on each of the Individual

Defendants. Specifically, Plaintiffs served a detailed set of 90 requests seeking the Individual Defendants' admission of critical facts in the Action concerning the Margin Loan, Margin Call, and Second-Lien Loan. Drafting the Requests for Admission was a labor-intensive process requiring careful review of key documents in the case and consideration of how certain facts aligned with Plaintiffs' overall case strategy.

109. Among other things, Plaintiffs' Requests for Admission asked that the Individual Defendants admit certain facts presented to the SunEdison Board concerning SunEdison's available cash prior to Defendant Chatila's September 2 alleged false statement, the terms of the Margin Loan, the terms of the Second-Lien Loan, modifications to the use of proceeds of the Second-Lien Loan, the Individual Defendants' knowledge of the Margin Call prior to the Preferred Offering, and the steps the Individual Defendants took to determine whether the alleged omissions from the Offering Documents should have been disclosed.

110. On December 19, 2018, each of the Individual Defendants served separate Objections and Responses to Plaintiffs' Requests for Admission, each of which cited to specific documents from the discovery record. Lead Counsel reviewed each document cited in the Individual Defendants' responses, and carefully analyzed which requests each defendant admitted or denied, and with what qualifications. This analysis enabled Lead Counsel to tailor certain parts of its deposition strategy to each Individual Defendant, and in many cases, Lead Counsel introduced the Individual Defendants' responses and objections in their depositions.

C. The Pursuit of Extensive Deposition Discovery

111. Lead Counsel took a total of 19 fact depositions, which further developed the evidentiary record and informed Lead Counsel's analysis of the claims and defenses in the Action. Those depositions were held at locations across the country, including California, New

York, Florida, Chicago, and Washington, D.C., as well as one in Spain. For Lead Counsel, these depositions required significant attorney time.

112. To construct an efficient and effective deposition plan, Lead Counsel constructed "key players" lists compiled from: (i) its investigation in connection with the Complaint; (ii) document searches, including analyses of hot documents; and (iii) corporate-organization charts produced by Defendants. This process involved considerable effort given the volume of Defendants' productions and the expansive nature of the alleged fraud.

113. Attorneys reviewed the documents produced by Defendants, SunEdison, and various third parties extensively and drafted numerous memoranda to assist in discovery, including: (i) memoranda in preparation for each deposition; and (ii) memoranda concerning numerous factual issues, such as the Margin Loan, Second-Lien Loan, and the Audit Committee's internal investigation.

114. Effectively preparing for, conducting, and participating in depositions required that Lead Counsel devote substantial time, effort, and resources. One of Lead Counsel's most significant projects in preparation for the depositions—both in terms of time and effort as well as substantive importance—was the preparation of detailed "deposition kits." These kits typically consisted of hundreds of documents with an index summary, as well as a detailed memorandum analyzing those documents. Lead Counsel prepared a deposition kit for each witness.

115. Preparing deposition kits required a comprehensive, deep dive into the witnesses, including their: (i) custodial documents, *i.e.*, documents the deponent drafted, received, or maintained in their files; (ii) role in the events at issue, including with respect to information in relevant documents they may not have personally reviewed; (iii) prior relevant testimony or interviews; and (iv) information gleaned from public searches. The preparation of each kit

required the analysis of myriad documents in the particular context of each witness, as well as the exercise of professional judgment in narrowing down which documents to present to that deponent. As the kits were prepared and refined, the attorneys taking the depositions worked closely with the attorneys tasked with creating the relevant kits.

116. Between September 2018 and February 2019, Plaintiffs deposed 19 fact witnesses, including nine former senior executives or high-ranking employees of SunEdison or related YieldCos TerraForm Power and TerraForm Global, four Defendants who served as independent directors of the Company, and six representatives of the Underwriter Defendants on the following dates:

(i) Emmanuel Hernandez (former Chairman of the Board of SunEdison): September 17, 2018 in Menlo Park, California;

(ii) Carlos Domenech (CEO of the YieldCos): October 11, 2018 in Washington, D.C.;

(iii) Matthew Gibson (Partner, Goldman Sachs): October 26, 2018 in Chicago, Illinois;

(iv) Jean-Pierre Boudrias (Managing Director, Goldman Sachs): November 2, 2018 in New York, New York;

(v) Riaz Ladhabhoy (Managing Director, Deutsche Bank): November 6, 2018 in San Francisco, California;

(vi) Massimo Frassinetti (Vice President, Credit Risk Management, Deutsche Bank): November 8, 2018 in New York, New York;

(vii) Raymond Wood (Managing Director, Investment Banking, Bank of America Merrill Lynch): November 8, 2018 in New York, New York;

(viii) Paul Gaynor (Executive V.P. of North America Utility, SunEdison): January 9, 2019 in New York, New York;

(ix) Patrick Cook (V.P. of Capital Markets and Corporate Finance, SunEdison): January 14, 2019 in New York, New York;

(x) Steven Tesoriere (Independent Director, SunEdison): January 15, 2019 in New York, New York;

(xi) Zach Groves (Senior Manager of Cash Planning, SunEdison): January 16, 2019 in New York, New York;

(xii) Francisco Perez (former COO of the YieldCos): January 17, 2019 in Madrid, Spain;

(xiii) Alejandro Hernandez (former CFO of the YieldCos): January 30, 2019 in New York, New York;

(xiv) Brian Wuebbels (former SunEdison CFO): February 1, 2019 in New York, New York;

(xv) Manavendra Sial (former Senior V.P. of Finance, SunEdison): February 5, 2019 in New York, New York

(xvi) Ahmad Chatila (former SunEdison CEO): February 7, 2019 in New York, New York

(xvii) Clayton Daley (Independent Director, SunEdison): February 12, 2019 in Tampa, Florida;

(xviii) Peter Blackmore (Independent Director, SunEdison): February 13, 2019 in Palo Alto, California; and

(xix) Daniel Josephs (Vice President, Goldman Sachs): February 21, 2019 in New York, New York.

117. Apart from deposition preparation carried out for each of its witnesses, given that one of Plaintiffs' witnesses—Francisco Perez, former COO of the YieldCos—resides (and during discovery resided) in Madrid, Spain, Plaintiffs could not subpoena him for deposition through U.S. courts. Instead, because Spain is a signatory to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Convention"), Plaintiffs filed with the Court on September 6, 2018 an Application for the Issuance of International Letter of Request (ECF No. 238), asking the Court to issue a "Letter of Request" to be delivered to the Central Authority of Spain to enable Plaintiffs to pursue Mr. Perez's deposition. In support of Plaintiffs' Application and to satisfy Spain's requirements under the Hague Convention, Plaintiffs compiled and submitted a lengthy exhibit explaining the history of the Action and the bases for seeking Mr. Perez's testimony, including a set of documents and sample questions to be used in

the deposition. The Court granted Plaintiffs' Application on September 7, 2018 (ECF No. 240), after which Plaintiffs sent their request to the Central Authority in Spain. While Plaintiffs' request was pending, Mr. Perez's counsel agreed to produce Mr. Perez for his deposition in Spain without the intervention of the Central Authority.

D. Discovery Disputes

118. Discovery in the Action was highly contested. Lead Counsel and Defendants' Counsel exchanged numerous letters and participated in numerous meet-and-confer sessions regarding discovery and document production and disputes over the scope of documents produced. While most disputes were resolved through negotiation between the parties and without the intervention of the Court, several required presentation of the issues to the Court through letters or motion papers. The principal disputes are highlighted below.

1. Initial Disputes Concerning the Protective Order and the Scope of Discovery

119. From the outset of discovery, the parties were unable to agree upon the relevant time period from which Defendants' liability and exposure to damages arose. This disagreement would continue in different forms throughout the litigation (including through document-discovery disputes, class-certification challenges, and pre-motion summary-judgment arguments). In the first instance, the parties were unable to agree upon the appropriate end date for which Defendants and SunEdison would produce documents responsive to Plaintiffs' requests for production and subpoenas (the "Discovery Cut-Off Date").

120. On May 9, 2018, after the parties met and conferred concerning Defendants' responses and objections to Plaintiffs' first request for production of documents, the Individual Defendants informed Plaintiffs that they intended to produce only certain "client documents" running through November 15, 2015 rather than through the end of the Class Period on April 4,

2016, or through the present as Plaintiffs requested because, among other reasons, it was their position that the statements and omissions that the Court sustained giving rise to Plaintiffs' Section 10(b) and 11 claims were fully corrected by November 2015, and documents after that date were not relevant to the Action.

121. On June 4, 2018, Plaintiffs filed a letter with the Court alerting the Court to various discovery disputes, seeking a discovery conference to resolve those disputes, and seeking clarity as to the appropriate Discovery Cut-Off Date. ECF No. 184. Specifically, Plaintiffs expressed their position that documents through the end of the Class Period were highly germane to the loss-causation issues, among other things, in Plaintiffs' case, and that Defendants should produce documents through that timeframe, particularly given Defendants' expressed intention to pursue a negative-causation defense that, if successful, would limit any statutory damages Plaintiffs would be entitled to under Section 11. Plaintiffs' letter argued that discovery from the time period between November 2015 and April 2016 was particularly relevant because, during that time, the market continued to learn and react to the truth about SunEdison's weak cash flows and rapidly deteriorating financial condition, and the risks concealed by Defendants' material omissions materialized, culminating in SunEdison's bankruptcy. Plaintiffs also argued that under Section 11, Defendants were liable for damages that class members suffered through the "date of suit," which would include damages suffered when risks that were misrepresented and concealed materialized. Plaintiffs further argued that the Court should not credit Defendants' position that they should not be required to produce documents after November 2015 because the alleged material misstatements and omissions underlying Plaintiffs' Section 10(b) and 11 claims were all fully "corrected" by November 2015.

122. Plaintiffs' June 4 letter also informed the Court that the parties had not been able to agree on the terms of a protective order to govern the production of confidential material in the Action.

123. On June 8, 2018, Defendants filed a response to Plaintiffs' letter motion and put forth their position on the appropriate Discovery Cut-Off Date. ECF Nos. 188-89. Specifically, Defendants argued that their proposed November 15, 2015 cut-off date was appropriate in light of the Court's ruling on Defendants' motion to dismiss, because the truth was supposedly disclosed with respect to Defendants' alleged misstatements and omissions underlying Plaintiffs' sustained claims by no later than November 10, 2015. Specifically, for the Exchange Act claim, there was one false statement remaining in the Action concerning the timing for SunEdison becoming cash-flow positive that Defendants argued was fully corrected by November 10, 2015, when Chatila stated in a press release that SunEdison's recent activities "should position the development business to generate positive cash flow in mid 2016." For the Securities Act claims, Defendants argued that the alleged misstatements and omissions concerning the Margin Loan, Margin Call, and Second-Lien Loan were fully corrected by November 9, 2015 when SunEdison released its third-quarter Form 10-Q disclosing the Margin Call and Second-Lien Loan, and correctly identifying the Margin Loan as non-recourse. Defendants argued that, because (in their view) all misstatements and omissions were corrected by November 10, 2015, documents sent, received, or created after that date were not relevant and were not properly subject to discovery, because any stock-price declines could not have been caused by Defendants' alleged false statements.

124. On June 12, 2018, after both parties submitted their respective positions on the issue, the Court ordered that the date for document production should extend through the date of filing the complaint. ECF No. 190.

125. After the Court issued its June 12, 2018 order, the parties disagreed as to the correct date for "the date of filing the complaint" per the Court's order. Accordingly, on June 13, 2018, the parties held an in-person meet-and-confer to discuss their differing positions, and to attempt to resolve their dispute concerning the protective order. The parties reached agreement on the protective order, and submitted a Stipulation and Protective Order for the Court's approval that day. ECF No. 192. The Court entered the protective order the same day.

126. The parties were unable, however, to agree on the proper interpretation of the Court's order that the Discovery Cut-Off Date should be "the date of filing the complaint." Accordingly, Plaintiffs and the Individual Defendants filed a joint letter with the Court requesting clarification regarding the date the Court intended by reference to "the date of filing the complaint." ECF No. 191. Plaintiffs' position was that the Court intended July 22, 2016, the date the Amended Complaint was filed in this Action, which was the first complaint to raise Securities Act claims on behalf of a class of investors in the Preferred Offering. The Individual Defendants' position was that the Court intended December 2, 2015, the date the first class action complaint was filed asserting claims under the securities laws against SunEdison.

127. On July 13, 2018, the Court issued an order that Plaintiffs' interpretation of the Court's June 12, 2018 order was correct, and ordered that documents should be produced through the date of the filing of the Amended Complaint, July 22, 2016. ECF No. 213.

128. Thereafter, given the Court's order concerning the appropriate Discovery Cut-Off Date and that the relevant time period for which documents were to be produced included several

months of documents that Defendants were not yet prepared to produce, Defendants represented that they would be unable to meet the previously ordered substantial completion of document production deadline of July 7, 2018.

129. Accordingly, on July 30, 2018, the parties submitted a Stipulation and Proposed Order Governing Class Certification Briefing and Document Production Schedule extending the deadline for the parties to substantially complete the production of documents until August 31, 2018. The Court entered the parties' proposed order on August 8, 2018. ECF No. 218.

2. Dispute Concerning Defendants' Production of Documents Concerning the Governmental Investigations

130. Throughout the course of discovery, beginning after Defendants and SunEdison served their objections and responses to Plaintiffs' document requests, Plaintiffs and Defendants had numerous meet-and-confers and exchanged numerous letters concerning documents addressing investigations of SunEdison by the Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ") (together, the "Governmental Investigations"), and an internal investigation conducted by SunEdison's Audit Committee (the "Internal Investigation") into allegations of misconduct and improper accounting practices by SunEdison executives that Plaintiffs argued was relevant to Plaintiffs' claims. Plaintiffs' position was that documents concerning the Governmental Investigations and the Internal Investigation were highly relevant to the Action because the investigations directly concerned Defendants' alleged false and misleading statements and omissions about SunEdison's cash flow and financial condition. Defendants' position was that these documents were irrelevant to the Action in light of the Court's motion-to-dismiss opinion, and because the investigations post-dated the challenged statements and the purported corrective disclosures in the case.

131. On June 4, 2018, in addition to the discovery disputes discussed above, Plaintiffs informed the Court that Defendants were refusing to produce documents concerning the Governmental Investigations and the Internal Investigation, which Plaintiffs believed were relevant and responsive to Plaintiffs' requests for production. ECF No. 185. It was Plaintiffs' position that the investigations directly concerned the facts underlying the Action, and that documents concerning those investigations would likely include relevant information.

132. On June 8, 2018, the Individual Defendants responded to Plaintiffs' June 4 letter. ECF No. 188. Among other things, the Individual Defendants argued that Plaintiffs' request for documents concerning the Governmental Investigations did not target documents relevant to the issues in the Action. Defendants argued that the subject of the SEC investigation was SunEdison's liquidity, which Defendants contended was no longer relevant to the Action following the Court's motion-to-dismiss decision. Defendants argued similarly that the DOJ investigation did not address active issues in the case. Defendants maintained that the Court's resolution of the appropriate Discovery Cut-Off Date bore directly upon whether Defendants should produce documents concerning the Governmental Investigations, because those materials would be dated after the Discovery Cut-Off Date.

133. In the Court's June 12, 2018 order discussed above, the Court ordered that "[d]ocuments concerning governmental investigations into any misconduct overlapping the pending claims in this action should be produced." ECF No. 190 at 1. Plaintiffs then wrote to Defendants and SunEdison and requested that Defendants and SunEdison produce documents concerning the relevant Governmental Investigations, including any correspondence or productions made to those agencies or non-privileged materials discussing those investigations. In response, Defendants again refused to produce documents concerning the Governmental

Investigations that Plaintiffs maintained were relevant to the issues in the Action. SunEdison also refused to produce correspondence and other documents concerning the Governmental Investigations, except to the extent that it could identify specific portions of that correspondence that, in SunEdison's opinion, related to the issues in the Action.

134. On August 7, 2018, Plaintiffs submitted a letter asking the Court to compel the Individual Defendants and SunEdison to produce documents concerning the Governmental Investigations and the Internal Investigation, which Plaintiffs argued were directly relevant and related to the claims in the Action. ECF No. 217. Specifically, Plaintiffs highlighted for the Court their allegations that the disclosure of the Governmental Investigations and Internal Investigations in SunEdison's public filings led to drops in SunEdison's stock price, and that correspondence concerning the scope of the investigations was directly relevant to Plaintiffs' claims.

135. On August 10, 2018, SunEdison filed a letter in opposition to Plaintiffs' motion to compel. MDL ECF No. 427. SunEdison argued that although it was withholding documents it considered irrelevant to the claims in the Action, it had produced other documents produced in the Governmental Investigations and Internal Investigation, including documents responsive to Plaintiffs' search terms. Like Defendants, SunEdison argued that the scope of the investigations and the nature of SunEdison's document productions to the government were not relevant to Plaintiffs' claims in the Action.

136. On August 13, 2018, the Individual Defendants responded to Plaintiffs' letter, and argued that, contrary to Plaintiffs' position, they had agreed to produce relevant documents, and that the documents Plaintiffs were seeking were overbroad and irrelevant because they related to

numerous topics including, for example, certain project financings, which the Individual Defendants argued were not relevant to the Action. ECF No. 220.

137. On August 22, 2018, after reviewing the parties' letter briefing, the Court scheduled a pretrial conference for August 29, 2018. ECF No. 223. During the August 29, 2018 conference, the Court reminded the parties about its June order providing that documents concerning governmental investigations into any misconduct overlapping the pending claims in the action should be produced, which, the Court explained, "required a nexus to the pending claims." The Court reviewed with the Individual Defendants the focus and scope of the Governmental Investigations to identify areas of overlap with the Action. The Individual Defendants argued that they were unsure of the precise scope of the Governmental Investigations and they thus made best efforts to produce all relevant documents subject to the Court's June order. The Court disagreed that the Individual Defendants had satisfied that order, and required that they identify precisely what documents concerning the investigations needed to be produced to Plaintiffs. The Court also ordered that as to subpoenas sent to the Company by governmental entities and correspondence concerning those subpoenas, SunEdison's counsel should coordinate with counsel who represented the Company in the Governmental Investigations to ensure that any relevant subpoenas were produced to Plaintiffs to the extent the topics of those subpoenas overlapped with the claims underlying the Action.

3. Dispute Concerning Defendants' Production of Documents Concerning the Internal Investigation

138. As discussed above, SunEdison's Audit Committee conducted an Internal Investigation beginning in the fall of 2015 as a result of concerns raised to the SunEdison Board by certain SunEdison executives and employees. The Internal Investigation addressed, among other things, SunEdison's cash flow and liquidity, and SunEdison's financial condition and the

accuracy of its financial disclosures. SunEdison retained the law firm of Paul Hastings LLP ("Paul Hastings") and financial consulting firm FTI Consulting ("FTI") to assist with the investigation and to analyze SunEdison's public statements concerning its liquidity and cash flow, and both Paul Hastings and FTI produced reports to the SunEdison Board in connection with their work on the Internal Investigation. Plaintiffs met and conferred with the Individual Defendants concerning the production of documents related to the Internal Investigation, including the final reports from Paul Hastings and FTI, and expressed their position that the documents were directly relevant to Plaintiffs' claims. The Individual Defendants disagreed and refused to produce documents concerning the Internal Investigation.

139. On September 13, 2018, Plaintiffs filed a letter motion with the Court requesting a discovery conference to resolve the dispute concerning documents related to the Internal Investigation. ECF No. 244. Specifically, Plaintiffs sought the production of the reports by Paul Hastings and FTI, and all documents and communications concerning the reports, arguing that the investigation was both initiated because of, and directly concerned the truth of, Defendant Chatila's September 2 alleged false statement. Plaintiffs cited to documents produced in discovery that they argued demonstrated the relevance of the Internal Investigation and the work of Paul Hastings and FTI, along with emails from members of the SunEdison Board discussing the FTI and Paul Hastings reports, which Plaintiffs again argued were directly relevant to the Action.

140. On September 19, 2018, the Individual Defendants opposed Plaintiffs' request for a discovery conference, arguing that the documents Plaintiffs were seeking concerning the Internal Investigation were irrelevant to Plaintiffs' claims, and that the Individual Defendants had already complied with their discovery obligations. ECF No. 247. The Individual Defendants also

disagreed that the Internal Investigation concerned Defendant Chatila's September 2 alleged false statement.

141. On October 3, 2018, the Court scheduled a conference regarding the parties' discovery dispute for October 22, 2018. ECF No. 258.

142. On October 18, 2018, in advance of the October 22 conference, Plaintiffs filed a letter to apprise the Court of certain relevant evidentiary developments relevant to Plaintiffs' September 13 motion to compel and Plaintiffs' then-pending motion for class certification. ECF No. 266. Plaintiffs excerpted portions of recent deposition testimony from Carlos Domenech Zornoza ("Domenech"), former SunEdison Executive Vice President and CEO of SunEdison's YieldCos, and from Emmanuel Hernandez ("Hernandez"), SunEdison's Class Period Board Chairman and a former member of the Company's Audit Committee, contending that their testimony undermined Defendants' claim that Domenech's and other YieldCos' executives' concerns about the truth of the September 2 statement did not lead to the Internal Investigation.

143. In their letter, Plaintiffs also responded to Defendants' arguments in their sur-reply in opposition to Plaintiffs' Class Certification Motion that, prior to the Preferred Offering, investors "were able to and likely did determine" that a margin call had occurred and that the Margin Loan was a recourse loan based on then-publicly available information. Among other things, Plaintiffs submitted testimony from Hernandez that even he, SunEdison's Chairman of the Board, was not aware of the Margin Call or the recourse nature of the Margin Loan.

144. On October 19, 2018, the Individual Defendants responded to Plaintiffs' October 18 letter, arguing that the evidentiary landscape had not changed as a result of the recent discovery, and that the recent testimony did not demonstrate that the Internal Investigation was relevant to Plaintiffs' claims. ECF No. 268. The Individual Defendants pointed to the language in

the Court's June 12, 2018 order that they were required to produce documents related to the investigations only insofar as those investigations "overlapped" with the issues remaining the Action, and contended that the Audit Committee's final report concerning the Internal Investigation did not overlap with the remaining issues in the case. The Individual Defendants further argued that the report also had no connection or relevance to Defendant Chatila's September 2 alleged false statement.

145. Thereafter, during the October 22, 2018 conference with the Court, the Individual Defendants argued that the final report was irrelevant to the issues in the Action because it was focused on internal cash flow reporting and did not relate to Defendant Chatila's September 2 alleged false statement. The Court determined that what the Internal Investigation was focused on—"trying to figure out what the facts were relating to the health of the company"—was "remarkably similar to what the plaintiffs" were focused on, including Defendant Chatila's September 2 statement. The Court ordered Defendants to produce "any and all documents concerning the Paul Hastings, LLP and FTI Consulting internal investigation and report to the audit committee in the fall of 2015, and any followup that may have occurred in 2016. That's a broad sweep, it's any and all, that relates to the investigation, including any internal discussions, any interview notes that may exist." The Court also ordered "the production of any communications between KPMG and anyone acting on behalf of the company, including the audit committee or otherwise that pertain to the company's internal forecasts on cash flow and liquidity."

146. The Individual Defendants subsequently produced to Plaintiffs the final Audit Committee report on the Internal Investigation, as well as the final reports from FTI and Paul Hastings, and a number of documents and communications concerning and underlying those

reports. Plaintiffs reviewed those documents promptly, and the reports and other, related documents significantly informed Plaintiffs' further prosecution of the Action, including the remaining depositions. Indeed, the Paul Hastings and FTI reports were used as exhibits in nine depositions that followed their production to Plaintiffs.

4. Dispute with Third Parties Paul Hastings and FTI Concerning Documents Related to the Internal Investigation

147. As discussed above, the SunEdison Audit Committee engaged Paul Hastings and FTI to aid in the internal investigation it conducted in response to concerns raised by certain whistleblowers. On September 4, 2018, Plaintiffs subpoenaed Paul Hastings's and FTI's documents concerning the Internal Investigation.

148. Lead Counsel and counsel for FTI engaged in multiple meet-and-confers and exchanged numerous letters in an effort to resolve the parties' disputes about whether FTI should produce responsive documents. Following this correspondence, Lead Counsel determined that FTI likely did not have any documents not otherwise in Paul Hastings's possession relevant to Plaintiffs.

149. Plaintiffs continued, however, to seek all documents concerning the work that Paul Hastings performed in connection with the Internal Investigation, including notes and interview memoranda from interviews that Paul Hastings conducted in connection with the investigation. During Lead Counsel's negotiations with counsel for Paul Hastings concerning Plaintiffs' subpoena to Paul Hastings, Paul Hastings asserted work-product protection over all documents in its possession related to the Internal Investigation.

150. After multiple meet-and-confers between Lead Counsel and counsel for Paul Hastings, as well as the exchange of multiple letters concerning whether and to what extent Paul Hastings's documents were protected work product, Plaintiffs filed a motion to compel Paul

Hastings's production of documents on December 20, 2018. ECF No. 282. Specifically, Plaintiffs' motion sought documents concerning the Internal Investigation, including notes and memoranda of interviews of key witnesses about the same underlying events at issue in the Action. Plaintiffs informed the Court that, save for a narrow subset of documents previously produced to the government, Paul Hastings refused to even identify the quantity or categories of responsive documents in its possession, let alone produce them. Plaintiffs argued in their motion that work-product protection did not apply to Paul Hastings's documents concerning the Internal Investigation because those documents were not prepared in anticipation of litigation, and instead were prepared in the ordinary course of SunEdison's business in response to internal concerns about cash flow and liquidity. Plaintiffs further argued that even if such privilege did apply, it was waived when Paul Hastings disclosed the documents to SunEdison's outside auditor KPMG, governmental entities, and other third parties. Plaintiffs specifically argued that by the time of Paul Hasting's investigatory work in 2016, SunEdison was in a sufficiently adversarial position relative to KPMG such that disclosure to KPMG waived any otherwise applicable protections.

151. On December 28, 2018, Paul Hastings opposed Plaintiffs' motion to compel. ECF Nos. 283-85. Paul Hastings argued that Plaintiffs' subpoena was overbroad and sought documents that were protected as work product and by the attorney-client privilege. Paul Hastings argued that its documents were shielded from production under the work-product doctrine because they were prepared in anticipation of litigation, and that Plaintiffs failed to put forth any evidence suggesting that the documents would have been created in substantially similar form absent the imminent threat of litigation. Paul Hastings further responded to Plaintiffs' waiver arguments, and disputed Plaintiffs' position that interview notes and

memoranda were shared with third parties. Paul Hastings also responded to Plaintiffs' argument that SunEdison and KPMG were in an adversarial relationship by arguing that the allegedly adversarial correspondence between SunEdison and KPMG was "the typical back-and-forth" between auditor and auditee.

152. On January 22, 2019, Plaintiffs filed a reply in support of their motion to compel. ECF Nos. 289-90.

153. On February 8, 2019, Plaintiffs filed a letter to inform the Court of relevant developments that it believed supported its motion to compel. ECF No. 294. Specifically, Plaintiffs had recently deposed former SunEdison executives Defendants Chatila and Wuebbels, as well as SunEdison's former Vice President of Finance, Manavendra Sial, all of whom failed to recall important details about the Internal Investigation. Plaintiffs argued that this lack of recollection by key witnesses supported their substantial need for Paul Hastings's documents.

154. On February 22, 2019, Paul Hastings agreed to produce to Plaintiffs interview memoranda created in connection with the Internal Investigation. As Plaintiffs informed the Court during that day's conference, Paul Hastings's agreement to produce those interview memoranda resolved the dispute.

5. Dispute Concerning Goldman Sachs's Production of a Witness to Testify about the Underwriter Defendants' Purported Due Diligence

155. By February 2019, Plaintiffs had completed the majority of their fact depositions, including two witnesses from Goldman Sachs—the lead underwriter on the Preferred Offering—as well as representatives from Underwriter Defendants Deutsche Bank and Bank of America Merrill Lynch. Given the previous Goldman Sachs witnesses' inability to testify as to specifics of the due diligence that Goldman Sachs purportedly performed in connection with the Preferred Offering, Plaintiffs first requested that Goldman Sachs produce a designated witness under Rule

30(b)(6) to testify about Goldman Sachs's ostensible due diligence and related topics. In response, Goldman Sachs offered to produce a third witness who would likely be able to testify as to an agreed-upon list of topics that Plaintiffs provided to the Underwriter Defendants for the purpose of identifying an appropriate witness. Goldman further agreed that, if during that third deposition the witness was not able to substantially answer Plaintiffs' questions on these topics but identified another specific Goldman witness who could, Goldman would consider in good faith reasonable requests for an additional fact witness deposition.

156. On February 21, 2019, Defendants filed a letter with the Court on behalf of all parties notifying the Court that the parties agreed to hold three depositions after the scheduled close of fact discovery, with all depositions to be complete by February 21. ECF No. 297. The parties requested an extension of the deadline for the parties to submit pre-motion summary-judgment letters under the Court's Individual Practices.

157. That same day, Plaintiffs deposed a third representative from Goldman Sachs—Daniel Josephs—per its agreement with the Underwriter Defendants. The Underwriter Defendants specifically identified Josephs as the appropriate witness to substantially answer questions concerning Goldman Sachs' due diligence, among other topics. During the deposition, Josephs testified that he had no recollection of specific due diligence that Goldman Sachs purportedly conducted in connection with the Preferred Offering, and was otherwise unable to answer questions about core issues in the case.

158. At the close of Josephs's deposition, Plaintiffs submitted a letter in response to the joint letter submitted earlier that day, alerting the Court as to the issues with the latest deposition and requesting either that the Underwriter Defendants be compelled to produce another witness who would be able to provide testimony on the relevant topics, or that they be barred from

introducing testimony or other evidence outside of the discovery record to support a due-diligence affirmative defense. ECF No. 298. Plaintiffs discussed Josephs's inability to recall or provide substantive answers concerning Goldman's due diligence on a number of key items. Plaintiffs thought it necessary to inform the Court of these developments given the parties' earlier representation that, as of that day, fact discovery would be completed.

159. The following day, on February 22, 2019, the Underwriter Defendants responded to Plaintiffs' letter concerning the prior day's deposition. ECF No. 299. The Underwriter Defendants argued that the relief Plaintiffs sought in their letter from the prior day was "extraordinary," and that Plaintiffs mischaracterized the agreement between the parties concerning Goldman's obligation to produce an additional witness. The Underwriter Defendants further argued that Josephs answered Plaintiffs' questions sufficiently during his deposition, and that the fact that he was unable to recall specific discussions about discrete disclosure issues did not render him an insufficient witness.

160. During the Court's previously scheduled February 22, 2019 conference, the Court addressed the issue concerning the Goldman Sachs deponents. After Plaintiffs provided the Court with brief context concerning the issue, the Court suggested, and the parties agreed, that the parties attempt to negotiate a resolution following the conference. Subsequently, the Underwriter Defendants agreed not to introduce evidence in support of their due-diligence defense that had not been produced during fact discovery, including for example a declaration from a representative of the Underwriter Defendants attesting to details of their purported due diligence about which deponents had been unable to answer questions.

VI. CLASS CERTIFICATION

161. On June 13, 2018, Plaintiffs filed their Motion for Class Certification and Appointment of Class Representatives and Class Counsel ("Class Certification Motion") (ECF

Nos. 193-95), requesting that the Court certify a class comprising (i) all persons and entities who purchased or otherwise acquired shares of SunEdison common stock between September 2, 2015 and April 4, 2016, inclusive, and (ii) all persons and entities who purchased shares of SunEdison preferred stock pursuant or traceable to the August 18, 2015 Preferred Offering, and were damaged thereby.

162. Plaintiffs' motion attached and was supported by the expert report of Dr. Steven Feinstein, who opined that the market for SunEdison common stock was efficient throughout the class period, and that damages for investors in SunEdison common stock could be calculated through a common methodology. Dr. Feinstein also opined regarding SunEdison preferred stock that under the Securities Act, damages for purchasers of the preferred stock could be computed under the formula set forth in the statute, and that in the absence of a showing by Defendants of negative causation, the full measure of damages would be applied concerning all purchases traceable to the August 2015 Preferred Offering.

163. Before Plaintiffs filed their Class Certification Motion and after, the parties engaged in discovery in connection with the motion. Defendants served their First Set of Document Requests to Plaintiffs, comprising 62 document requests, on May 11, 2018. Plaintiffs responded and objected to those Requests on June 11, 2018, and thereafter engaged in extensive meet-and-confers with Defendants to discuss the scope of Plaintiffs' responsive document production.

164. In response to Defendants' document requests, Lead Counsel worked with Plaintiffs to gather potentially relevant and responsive materials. Lead Counsel then reviewed those documents, and subsequently produced the relevant, responsive, nonprivileged documents in Plaintiffs' possession. Plaintiffs made their first production of documents to Defendants on

June 28, 2018, and their second production on July 7, 2018. In total, Plaintiffs produced over 19,000 documents and close to 40,000 pages of documents to Defendants.

165. Lead Counsel also worked with its clients to prepare them for their depositions on class-certification issues, and defended those depositions: (i) Rodney Graves, Deputy Director of Operations, Investments at ATRS on July 24, 2018; and (ii) Brian LaVictoire, Deputy General Counsel for Investments and Compliance at MERS on July 27, 2018.

166. In addition to their document requests to Plaintiffs, on July 11, 2018, Defendants served a subpoena to testify at a deposition and for the production of documents on Plaintiffs' expert Dr. Feinstein. On July 20, 2018, Lead Counsel served responses and objections to that subpoena on behalf of Dr. Feinstein. In response, Plaintiffs produced over 500 documents on behalf of Dr. Feinstein, totaling more than 22,000 pages. On July 31, 2018, Defendants deposed Dr. Feinstein in connection with Plaintiffs' Class Certification Motion, which deposition Lead Counsel defended.

167. In connection with class certification, Defendants also served subpoenas for the production of documents on Plaintiffs' third-party investment advisors: Hellman, Jordan Management Company, Inc., investment advisor for MERS's transactions in SunEdison common stock, and Nicholas-Applegate Capital Management LLC, investment manager for ATRS's investments in SunEdison preferred stock. In response to those subpoenas, Hellman Jordan produced over 800 pages of documents, and Nicholas-Applegate produced 459. Lead Counsel reviewed those advisors' documents closely in preparation for Plaintiffs' depositions.

168. On August 6, 2018, the Underwriter Defendants and the Individual Defendants opposed Plaintiffs' motion for class certification in two separate opposition briefs, totaling 44

pages. ECF Nos. 215-16, MDL ECF Nos. 421-23. The Underwriter Defendants argued, among other things:

(i) That the court should not certify a class including both common-stock investors raising Exchange Act claims and preferred-stock investors raising Securities Act claims, and with regard to the preferred-stock investors, that they could not alone meet the numerosity requirement of Rule 23(a) because the Preferred Offering was subscribed to by 22 affiliated investment funds or investment managers, which the Underwriter Defendants argued was insufficient;

(ii) Plaintiffs could not satisfy the typicality requirement for preferred-stock investors because certain investors in the Preferred Offering purchased stock after relevant disclosures concerning the alleged misstatements and omissions that raised factual and legal issues defeating typicality, and specifically that ATRS—the only Plaintiff that purchased preferred stock, and which purchased all of its shares on August 18, 2015, the date of the Preferred Offering—are atypical of aftermarket purchasers' claims, constituting an independent ground to deny certification; and

(iii) That individual questions of knowledge would predominate over common issues with respect to purchasers of SunEdison preferred stock because investors who purchased after the Preferred Offering, unlike ATRS, had varying degrees of knowledge regarding the alleged misstatements and omissions depending on when they purchased given that according to the Underwriter Defendants many were "wall-crossed," a process by which they gained individualized access to financial and operational information about SunEdison.

169. In support of their class-certification-opposition brief, the Underwriter Defendants filed a declaration from analyst Kevin Gold ("Gold Declaration"), who Defendants relied on for their arguments that a class of preferred stock investors would fail to satisfy Rule 23's numerosity requirement. Specifically, the Gold Declaration grouped 81 investment funds that purchased SunEdison preferred stock in the Preferred Offering into 22 "investor families" to support the Underwriter Defendants' argument that standing alone, a class of investors in SunEdison preferred stock could not satisfy Rule 23's numerosity requirement.

170. In their opposition, the Individual Defendants argued, among other things:

(i) That the proposed class was in reality two separate classes, neither of which would be entitled to certification treated separately, because the proposed class members consisted of those with claims raised under the Exchange Act on behalf of investors in SunEdison common stock and those with claims raised under the Securities Act on behalf of investors in the Preferred Offering, thereby defeating the typicality requirement of Rule 23;

(ii) That the Class Period should end on November 10, 2015, when SunEdison filed its third-quarter 2015 Form 10-Q which provided, among other things, that the Company did not expect to be cash-positive until the second quarter of 2016. Defendants argued that this disclosure fully corrected Defendant Chatila's alleged false statement on September 2, 2015, and there was thus no price impact following that date; and

(iii) That the class should be separated into separate Exchange Act and Securities Act classes, and numerosity was not satisfied for putative class members asserting Securities Act claims.

171. In connection with their class-certification-opposition brief and in support of their argument that the truth was fully disclosed by November 9, 2015 and that there was no price impact on SunEdison common stock after that date, the Individual Defendants filed an expert report from Dr. Steven Grenadier, opining that given Plaintiffs' contention that SunEdison's common stock traded on an efficient market, any corrective information release on November 10, 2015 was fully absorbed into the stock price on that date.

172. On August 30, 2018, Plaintiffs filed their reply brief in further support of their Class Certification Motion. ECF Nos. 236-37. Plaintiffs' rely brief included a declaration from James Miller ("Miller Declaration") to respond to the Gold Declaration filed in support of Defendants' opposition, and a declaration from Alexander Villanova ("Villanova Declaration"), a Project Manager and claims administrator at Epiq System, Inc., in support of Plaintiffs' numerosity arguments. Specifically, the Miller Declaration stated that the trading data compiled by Mr. Gold was incomplete and unreliable because he did not describe the parameters of the data underlying his declaration, and further that his analysis was unavailing because while shares

may only be held by a certain number of record holders, they are generally held on behalf of several beneficial owners, the number of which far exceeds the number of holders of record. The Miller Declaration stated further that the Gold Declaration did not accurately or completely include aftermarket purchasers of SunEdison preferred stock, and that Mr. Gold's discussion of "investor families" was vague and not an industry-accepted term. Similarly, the Villanova Declaration stated that broker-dealers typically hold securities in a brokerage's "street name" rather than beneficial owners' individual names, and that the Underwriter Defendants' internal records would thus not reflect the hundreds or thousands of entities or individuals who actually purchased SunEdison preferred stock. In their reply brief in support of their motion for class certification, Plaintiffs argued again that the Court should certify a single class of investors in both SunEdison common and preferred stock, and that even if the Court were to consider the two groups of proposed class members separately, each would independently satisfy the Rule 23 requirements.

173. On September 21, 2018, the Underwriter Defendants moved for leave to file a sur-reply in response to Plaintiffs' reply in support of their Class Certification Motion, and attached their proposed sur-reply as an exhibit. ECF No. 248. The Underwriter Defendants argued that they should be given an opportunity to respond to the declarations and arguments that they contended were presented for the first time in Plaintiffs' reply brief.

174. On September 24, 2018, the Court granted the Underwriter Defendants' request for leave to file a sur-reply, which was considered filed as of that date. ECF No. 249. The Underwriter Defendants argued in their sur-reply that the Court should not consider the arguments in Plaintiffs' reply because, in Defendants' view, they were new arguments not included in Plaintiffs' opening class-certification brief concerning typicality and numerosity. The

Underwriter Defendants argued further that Plaintiffs' arguments failed in any case, and that the Court should not certify a single class of investors consisting of investors in both SunEdison common stock and preferred stock.

175. On September 25, 2018, Plaintiffs filed a short letter informing the Court that "barring any specific arguments to which the Court would like Plaintiffs to respond, Plaintiffs do not intend to file a response to Defendants' Sur-Rebuttal in Opposition to Motion for Class Certification of Securities Act Claims, ECF Nos. 250-52." ECF No. 253.

176. On November 26, 2018, Plaintiffs filed a letter to apprise the Court of evidentiary developments relevant to Plaintiffs' then-pending Class Certification Motion. ECF No. 276. Specifically, Plaintiffs submitted documents that they contended undermined Defendants' argument that disclosures following Defendant Chatila's September 2, 2015 alleged false statement and SunEdison's August 2015 Preferred Offering defeated predominance and typicality, and limited class members' damages to those suffered on or before November 9, 2015. Plaintiffs submitted documents that they argued supported their position that investors remained unaware of SunEdison's true financial condition throughout the entire class period, and that SunEdison's cash position continued to worsen through the first quarter of 2016. For example, Plaintiffs submitted documents related to an investigation by SunEdison's Audit Committee initiated at the end of 2015 and continuing through the beginning of 2016 into SunEdison's liquidity position and cash forecasts, which Plaintiffs argued further confirmed that Defendants' allege false statements to investors were not fully corrected by November 2015. Plaintiffs argued that these documents (among others) bolstered their claims that investors remained unaware of SunEdison's true financial condition throughout the entire proposed class period.

177. On November 29, 2018, the Underwriter Defendants and the Individual Defendants filed separate letters in response to Plaintiffs' November 26 letter. ECF Nos. 277-78. The Underwriter Defendants argued in response that their numerosity argument was unaffected by the documents described in Plaintiffs' letter and that Plaintiffs' numerosity argument was contingent upon investors raising claims under the Exchange Act and Securities Act claims being treated as one class. The Individual Defendants similarly argued that information disclosed in SunEdison's third-quarter Form 10-Q in November 2015 fully corrected the purported fraud because "SunEdison disclosed exactly the information that Plaintiffs claim was suppressed in the September 2, 2015 *Bloomberg* article—that the company did not expect to be cash-positive until the second quarter of 2016." The Individual Defendants argued that the fact that SunEdison's Audit Committee was conducting an investigation did not change this calculus.

178. On January 7, 2019, the Court granted Plaintiffs' Class Certification Motion, and certified a modified Class consisting of a Securities Act Subclass and an Exchange Act Subclass. ECF No. 287 ("Class Certification Order"). In so doing, the Court found that there was "little to no factual overlap between Chatila's statement to *Bloomberg* on September 2, 2015 and the alleged omissions and misstatements of the Offering Documents." The Court thus ordered that the Securities Act Subclass should include all persons or entities who purchased or acquired shares traceable to SunEdison's preferred offering between August 18, 2015 and November 9, 2015. In limiting the period for the Securities Act Subclass, the Court found that SunEdison's Form 10-Q filed on November 9, 2015 disclosed all previously concealed facts concerning the Margin Call, Margin Loan, and Second-Lien Loan in a "clear, unambiguous" way. The Court also certified an Exchange Act Subclass including all persons or entities who purchased or

acquired shares of SunEdison common stock between September 2, 2015 and April 4, 2016, Plaintiffs' proposed class period.

179. In its Class Certification Order, the Court discussed certain significant risks to Plaintiffs in establishing Defendants' liability and damages to the Class. For example, in limiting the Securities Act Subclass to purchasers of shares traceable to the Preferred Offering, the Court noted that "[a] class that included purchasers who acquired shares after November 9 would be unlikely to satisfy the predominance requirement of Rule 23(b)(3), given the individual issues of purchaser knowledge and reliance that would arise." However, in declining to limit the Exchange Act Subclass to November 9, 2015, the Court noted that "[t]he issue of whether 'the [truth] credibly entered the market and dissipated the effects of [prior] misstatements' based on the November 10 statement is appropriately left to trial or a motion for summary judgment." *Id.* (quoting *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 481-82 (2013)).

180. In the Class Certification Order, the Court further directed that notice of the pendency of the Action be sent to potential members of the certified Class. Specifically, the Court ordered that Lead Counsel submit a proposed order within 21 days of certifying the two subclasses and proposing a notice to the Class and means of dissemination consistent with Rule 23. Because SunEdison was a bankrupt company and a nonparty to this Action, Plaintiffs were unable to obtain a list of record holders from the Company as they would have done had the Company been solvent and a party. Accordingly, Plantiffs contacted both Defendants and the Company in order to ascertain the best way and/or compile a list of potential Class Members. SunEdison directed Plaintiffs to its transfer agent, Computershare Investor Services LLC ("Computershare"). Plaintiffs attempted to contact Computershare informally, but were unable to obtain the necessary records. Plaintiffs then filed a letter with the Court informing the Court of

those efforts, and requested additional time to obtain the necessary shareholder records. Thereafter, Lead Counsel served a subpoena on Computershare requesting the relevant records. Plaintiffs also drafted and circulated a notice of pendency of the class action, and met and conferred with Defendants on the specific language to be used in the notice.

181. On March 20, 2019, Plaintiffs filed the proposed notice of pendency. ECF No. 309. Specifically, Plaintiffs proposed that the approved form of Notice of Pendency of the Class Action (the "Class Notice") be provided by the Administrator to those potential Class Members identified in shareholder records that Computershare provided in response to Plaintiffs' subpoena, including to beneficial owners whose shares were held by nominee purchasers. Plaintiffs also proposed providing notice to a number of large broker-dealers and other institutions that frequently hold securities for beneficial owners. Notice would then go out to the beneficial owners that those institutions identified to the Administrator or for whom those institutions requested notice packets from the Administrator. On March 21, 2019, the Court granted Plaintiffs' motion and approved both the proposed Class Notice and the method for providing that notice to potential Class Members. ECF No. 310.

182. Beginning on April 18, 2019, the Class Notice was sent to potential Class Members. More than 176,800 copies of the Class Notice were disseminated to potential Class Members. *See* ECF No. 319. In addition, the Summary Notice of Pendency of Class Action was published in the *Wall Street Journal* and transmitted over the *PR Newswire* on April 30, 2019. *See id*.

VII. EXPERT DISCOVERY

183. Given the complex nature of this Action, it was critical for Plaintiffs to retain highly qualified experts to assist the parties and the Court in understanding the factual record and its relevance to Plaintiffs' claims. For example, given Plaintiffs' allegation that Defendant

Chatila's statement concerning cash flow on September 2 was false and was made with scienter, and Defendants' argument in response that Chatila was not referring to "total cash flow," Plaintiffs retained an expert to analyze the various ways that SunEdison accounted for and reported its cash flow and available cash, including how the Company presented those metrics to investors and what each metric conveyed to investors. Further, the parties each made complex arguments on loss causation and damages, requiring experts to opine as to issues such as price impact and damages calculations. Plaintiffs retained the following experts to opine on the following topics:

(i) Dr. Steven Feinstein, PhD, CFA: market efficiency; loss causation and damages;

(ii) Robert Mudge: project finance in the energy sector; cash flow;

(iii) James Miller: underwriter due diligence; and

(iv) Steve Pully: director due diligence.

184. On March 1, 2019, the date the parties were due to produce reports concerning subjects about which the party had the burden of proof, Plaintiffs served on Defendants expert reports by Dr. Feinstein, totaling 154 pages, and by Mr. Mudge, totaling 34 pages.

185. Dr. Feinstein opined that investors who purchased SunEdison common stock during the Exchange Act Class Period suffered losses as a result of Defendants' alleged misrepresentations and omissions. In his report, Dr. Feinstein also quantified the damages sustained on a per-share basis for members of the Exchange Act Subclass, and explained the methodology for computing damages under Section 11 of the Securities Act for investors in SunEdison's August 2015 Preferred Offering.

186. Plaintiffs retained Mr. Mudge to assess the context of and support for Defendant Chatila's September 2, 2015 alleged false statement concerning SunEdison's cash flow

expectations, and the consistency of Chatila's statement with the circumstances of SunEdison's business at the time as reflected in contemporaneous financial reports to the SunEdison Board, internal SunEdison documents, and communications among SunEdison executives.

187. Also on March 1, 2019, Defendants served four expert reports on Plaintiffs addressing materiality, loss causation and damages, and both the Underwriter Defendants' and independent directors' purported due diligence.

188. The Underwriter Defendants retained Jeffrey Bodington to opine on whether the alleged misstatements and omissions in the Offering Documents would have been material to investors in the Preferred Offering. Bodington opined that, among other things, the alleged misstatements and omissions would not have been important to a reasonable investor in the Preferred Offering.

189. The Individual Defendants retained Brian Cartwright to opine on whether SunEdison's outside director defendants took reasonable steps, consistent with generally accepted practices for independent directors, to satisfy themselves that the disclosures made by SunEdison in connection with the Preferred Offering were true and free of material omissions. Among other things, Cartwright opined that the independent-director defendants were not on notice of any "red flags" that should have caused them to raise concerns about the process that management and its advisers were following with respect to the Preferred Offering.

190. In connection with Cartwright's report concerning director due diligence, Defendants served a total of nine declarations from each of the independent directors, each attaching numerous exhibits. In total, the declarations and exhibits in support of the directors' due diligence defenses totaled 7,421 pages. The declarations generally stated that each director

and the SunEdison Board as a unit conducted appropriate diligence leading up to the Preferred Offering and took steps to investigate any concerns raised to the Board.

191. The Underwriter Defendants engaged Gary Lawrence to opine as to the industry custom and practice for due diligence by lead underwriters and participating underwriters in a shelf takedown of equity securities, and whether the due diligence of the lead underwriters and other underwriters for the Preferred Offering was consistent with that custom and practice. Lawrence opined that the Underwriter Defendants' due diligence was consistent with industry custom and practice, and that the Underwriter Defendants encountered no "red flags" suggesting any material misstatements or omissions in the Offering documents.

192. The Individual Defendants retained Walter Torous to evaluate what portion of the decline in the price of SunEdison preferred stock was caused by factors other than Plaintiffs' allegations concerning the misstatements and omissions made by Chatila and in the documents for the Preferred Offering. Torous opined that:

(i) The price of SunEdison preferred stock was not affected by the alleged misstatements and omissions in the Offering Materials, and none of the decline in the per share price of the preferred stock during the Securities Act Class Period was attributable to the alleged misstatements and omissions. The decline in the share price was caused by factors other than Plaintiffs' allegations, specifically, the realization of previously disclosed risks unrelated to Plaintiffs' allegations; and

(ii) Because the price of the preferred stock at the time of the Offering and afterwards would not have been affected by the alleged misstatements and omissions, and all of the decline in the price of the preferred stock was attributable to factors unrelated to Plaintiffs' allegations, Plaintiffs were not entitled to damages under the Securities Act.

Defendants' expert reports, exhibits, and declarations totaled 537 pages.

193. In response to Defendants' expert reports and declarations, Plaintiffs served their experts' rebuttal reports on Defendants on March 29, 2019. Plaintiffs served reports from Dr. Feinstein, Steve Pully, and James Miller on the following topics:

(i) Dr. Feinstein submitted a rebuttal report in response to Torous's report, and opined that Torous failed to establish that factors unrelated to the alleged misrepresentations and omissions caused any of the decline in SunEdison's preferred stock price, and that Torous erroneously concluded that recoverable damages were $0. Dr. Feinstein further opined that Torous failed to establish the efficiency of the market for SunEdison preferred stock, and by extension that his conclusion that the decline in preferred stock was attributable to information unrelated to Plaintiffs' allegations was untenable. Dr. Feinstein also responded to Bodington's report and opined that the Bodington report lacked any basis or reliable evidence that suggested anything other than the statutory Section 11 damages formula should be used to calculate damages for members of the Securities Act Subclass.

(ii) Steve Pully submitted a rebuttal report in response to Cartwright's report, and further opined that the independent-director Defendants did not take reasonable steps, consistent with industry practices and standards, to ensure that the disclosures made by SunEdison in connection with the Preferred Offering were true and free of material omissions.

(iii) James Miller submitted a rebuttal report in response to Lawrence's report concerning underwriter due diligence, and opined that the Underwriter Defendants ignored numerous red flags and did not conduct adequate due diligence in connection with the Preferred Offering.

194. Defendants also served on March 29, 2019 a rebuttal report from Dr. Rene Stulz in response to Dr. Feinstein's report. Dr. Stulz opined that Dr. Feinstein's analysis of recoverable damages on Plaintiffs' Section 10(b) claim was flawed because it failed to account for intervening events that superseded the allegedly false and misleading information in Chatila's September 2 statement. Dr. Stulz opined that Dr. Feinstein could not establish that the stock price declines on the alleged corrective disclosure days would have been different in the absence of the alleged misrepresentation.

195. On April 12, 2019, the Court entered a stipulated proposed order extending the deadline for completion of expert discovery, including expert depositions, to May 31, 2019. ECF No. 312.

196. The parties continued settlement discussions while scheduling and preparing for expert depositions. Lead Counsel spent a significant amount of time and resources preparing to

depose Defendants' experts, and were prepared to take the depositions had the case not settled when it did.

VIII. SUMMARY JUDGMENT LETTERS

A. Defendants' Summary-Judgment Letters

197. On March 7, 2019, pursuant to the Court's individual rules of practice, Defendants filed with the Court pre-motion letters concerning their anticipated motions for summary judgment. ECF Nos. 303-06. Defendants filed a total of four pre-motion letters: one on behalf of the Independent Directors, one on behalf of Chatila, one on behalf of Chatila and Wuebbels jointly, and another on behalf of the Underwriter Defendants.

198. In addition to joining in the Underwriter Defendants' materiality arguments (discussed below), the Independent Directors argued that they were entitled to summary judgment on their affirmative defenses under Section 11 and Section 15 of the Securities Act—that they conducted adequate due diligence and acted in good faith with respect to the Preferred Offering, and that their diligence was consistent with generally accepted best practices for independent directors. The Independent Directors contended that, among other things, they were actively engaged in reviewing SunEdison's quarterly and annual filings, and based on that review were unaware of any "red flags" that indicated a need for further investigation by the Board. They argued further that they were never advised of the Margin Call or changes to the terms of the Second-Lien Loan, so they could not have been aware of the omissions from the Offering Documents. Additionally, prior to the Preferred Offering, they inquired into the recourse nature of the Margin Loan and received assurance SunEdison senior management that the classification was correct.

199. In a letter submitted solely on his behalf, Defendant Chatila argued that he was entitled to summary judgment on Plaintiffs' Section 10(b) claim because Chatila's September 2,

2015 statement that SunEdison would "start generating cash for a living" in "early 2016 or late 2015" was not a material misstatement, Chatila had no actual knowledge that the statement was false or misleading at the time he made it, the statement was accompanied by adequate cautionary language, and Plaintiffs could not establish loss causation on their Section 10(b) claim.

200. Defendant Chatila argued that discovery established that a presentation made to SunEdison's board on August 27, 2015 supported, rather than contradicted, his September 2 alleged false statement, because it showed positive cash generation when adding SunEdison's "total platform" with its "total GP distributions." Chatila argued that Plaintiffs' interpretation of the metric Chatila was referring to with "cash flow" was incorrect. Chatila argued further that, in any case, the statement was too vague to be actionable, and that there was no evidence that Chatila had actual knowledge of his statement's falsity when he made it. Defendant Chatila further argued that Plaintiffs failed to establish loss causation.

201. Defendant Chatila also submitted a letter jointly with Defendant Wuebbels, in which Chatila and Wuebbels joined in the Underwriter Defendants' arguments on materiality and negative causation (discussed below), and further argued that Chatila and Wuebbels were entitled to summary judgment on Plaintiffs' Section 11 and Section 15 claims based on Chatila's and Wuebbels's purported due diligence. Defendants Chatila and Wuebbels argued that they were exempt from liability under Section 11 of the Securities Act because discovery confirmed that they undertook a "reasonable investigation" regarding the accuracy of the statements in the Offering Documents, and believed at the time of the Offering that the statements in those documents were true. Specifically, Chatila and Wuebbels argued that SunEdison had a comprehensive set of internal controls in place that ensured that the Company's SEC filings were

reviewed by legal and accounting professionals. SunEdison also had a Disclosure Committee responsible for reviewing public filings, along with its Audit Committee, which worked in conjunction with its outside auditor, KPMG.

202. The Underwriter Defendants argued both that the alleged misstatements and omissions in the Offering Documents were proven immaterial through discovery, and that in any case, they were entitled to summary judgment on their affirmative defenses of negative causation and due diligence.

203. Regarding the omission of the Margin Call in the Offering Documents, the Underwriter Defendants argued that the fact of the Margin Call would not have signaled SunEdison's financial distress to investors because it was a result of typical movement in the Company's stock price. They argued further that investors could have ascertained the exact timing of the Margin Call based on public information and the information that had previously been disclosed in SunEdison's SEC filings, and there was thus no obligation to disclose the Margin Call.

204. The Underwriter Defendants argued that they were also entitled to summary judgment on Plaintiffs' claims concerning the omission of the $169 million Second-Lien Loan in the Offering Documents because the terms of that loan were not material to investors and did not signify that the Company was in financial distress. Specifically, the Underwriter Defendants argued that the discovery record supported finding that the interest rate on the Second-Lien Loan was not 9.25% as Plaintiffs alleged, but rather 8%, which was consistent with the rate on SunEdison's other debt obligations. The Underwriter Defendants also contended that the discovery record refuted Plaintiffs' argument that the Second-Lien Loan was used to meet the Margin Call.

205. The Underwriter Defendants further argued that SunEdison's misclassification of the Margin Loan as non-recourse was similarly immaterial to investors, and further, that the Margin Loan was technically non-recourse because it was secured by specific collateral that was required to have a market value of at least twice the outstanding balance of the loan, so there was no "shortfall between what lenders are owed and the value of the collateral[.]"

206. The Underwriter Defendants also argued that they were entitled to summary judgment on their due-diligence affirmative defense because, as they contended, the discovery record evidenced that the Underwriter Defendants conducted an adequate investigation, and relied on their lawyers, as well as SunEdison's independent auditor KPMG, in connection with the Preferred Offering and the disclosures in the Offering Documents.

207. Finally, the Underwriter Defendants argued that they were entitled to summary judgment on their negative-causation affirmative defense because all of Plaintiffs' claimed damages were caused by factors other than the alleged misstatements and omissions. The Underwriter Defendants relied on the fact that the Court determined in its Class Certification Order that all material facts about the Margin Call, the Second-Lien Loan, and the recourse nature of the Margin Loan were disclosed in November 2015, and that their expert's analyses confirmed that no investor losses after that date were attributable to the alleged misrepresentations.

B. Plaintiffs' Summary-Judgment-Opposition Letters

208. On March 14, 2019, Plaintiffs filed two letters in response to Defendants' four pre-motion summary judgment letters: one in response to Defendant Chatila's letter concerning the Section 10(b) claim, and another in response to the remaining letters from the independent directors, Chatila and Wuebbels, and the Underwriter Defendants concerning Plaintiffs' Securities Act claims. ECF Nos. 307-08. In support of their letters, Plaintiffs submitted a total of

107 exhibits, consisting primarily of documentary and testimonial evidence from the discovery record that supported their arguments.

209. In response to Defendant Chatila's letter concerning Plaintiffs' Section 10(b) claim, Plaintiffs argued that discovery had confirmed that Chatila's September 2, 2015 statement was material, false, and made with scienter, and that undisputed facts and disputed issues of material fact precluded granting Defendant Chatila summary judgment.

210. Specifically, in response to Chatila's argument that the "total platform" metric rendered his statement accurate when he made it, Plaintiffs put forth documentary and testimonial evidence to support their contrary interpretation of Chatila's alleged false statement. With respect to Chatila's scienter argument, Plaintiffs relied on documentary evidence to argue that there was no "objectively reasonable" basis for Chatila's statement. Plaintiffs also argued that the record included substantial evidence that Chatila's statement was made with actual knowledge that it was false, or at the very least that he was severely reckless in not knowing the falsity of his statements.

211. Plaintiffs also responded to Chatila's argument that his statement was protected from liability as a forward-looking statement accompanied by adequate risk disclosures, and the PSLRA Safe Harbor provision. Plaintiffs argued that the risk disclosures Chatila relied on were made in prior SEC filings that were not adequate for the statement made on September 2.

212. Plaintiffs further argued that, contrary to Chatila's argument that Plaintiffs could not establish loss causation, event-study analyses and contemporaneous market reaction demonstrated that SunEdison's stock price declined significantly in direct response to corrective events that revealed the falsity of Chatila's September 2 statement. Plaintiffs relied on their loss

causation expert, Dr. Feinstein, to argue that related disclosures after November 10, 2015 caused the value of SunEdison stock to further decline.

213. Plaintiffs also filed a lengthy letter addressing Defendants' arguments concerning Plaintiffs' Securities Act claims. Plaintiffs argued that the discovery record established that Defendants' failure to disclose the Margin Call was a material omission, including because meeting the Margin Call significantly impacted the SunEdison's cash position. Plaintiffs also argued that contrary to the Underwriter Defendants' arguments, investors could not determine the exact timing of the Margin Call because, among other things, the Margin Loan triggers were not disclosed to investors. Plaintiffs further argued that Defendants' failure to disclose the Second-Lien Loan was a material omission because it signaled a company in financial distress, and that the misclassification of the Margin Loan as non-recourse was similarly a material misstatement because, among other things, SunEdison's level of recourse debt was important to assess the Company's ability to meet its financial obligations while maintaining access to the capital markets.

214. Plaintiffs also responded to Defendants' arguments that they were entitled summary judgment on their due-diligence affirmative defenses. Plaintiffs argued that discovery had confirmed that the Underwriter Defendants, as well as Chatila and Wuebbels, were fully aware of the internal facts underlying to and demonstrating the materiality of the alleged misstatements and omissions. Plaintiffs argued that the independent directors were similarly not entitled to an affirmative due diligence defense because they were faced with numerous "red flags" at the time of the Preferred Offering that they failed to investigate, and had they done so, they would have been made aware of the misstatements and omissions in the Offering Documents.

215. Plaintiffs responded to Defendants' negative causation arguments by pointing out, among other things, that Defendants' expert's report did not support a finding of negative causation. Plaintiffs argued that Defendants failed to establish that the market for SunEdison preferred stock was efficient or that specific declines in the price of the preferred stock were not related to the alleged misstatements and omissions in the Offering Documents.

IX. THE PARTIES NEGOTIATE THE SETTLEMENT

216. In addition to the three unsuccessful in-person mediation sessions discussed above, throughout the litigation, the parties engaged in extensive conversations with and through the mediators in an attempt to resolve the Action while preserving available insurance money to fund a settlement. Counsel for the parties frequently discussed the case status with Judge Phillips and Mr. Lindstrom, including whether factual and legal issues in the case at various points created or bolstered opportunities to resolve the Action.

217. The parties' settlement discussions with and through the mediators continued into the spring of 2019, by which point (i) the Court had issued its ruling certifying the Class; (ii) fact discovery was completed; (iii) the parties had filed pre-motion letters concerning Defendants' anticipated motions for summary judgment; (iv) the parties had exchanged opening and rebuttal expert reports; and (v) the parties had scheduled and begun preparing for expert depositions. After exchanging rebuttal expert reports on March 29, 2019, the parties promptly met and conferred concerning the depositions of the nine experts who submitted reports, which were initially scheduled for April and early May 2019.

218. Plaintiffs at all times sought to schedule the expert depositions as soon as reasonably possible, in order to move the litigation forward and preserve remaining insurance funds by avoiding undue delay. As scheduling discussions and deposition preparations progressed, however, the parties continued to discuss potential resolution of the Action with the

mediators, including because the looming expert depositions, summary-judgment briefing, and pretrial submissions that the parties faced would all be resource-intensive endeavors that further threatened to deplete the insurance funds available to the Class.

219. In the spring of 2019 and until the Settlement was agreed to in principle in early-June 2019, the parties and the mediators continued to make progress through their informal discussions. During that period, at Defendants' request, the parties postponed and re-scheduled the expert depositions multiple times, and were prepared to move forward with the depositions if the parties could not resolve the Action.

220. On June 2, 2019, Judge Phillips and his colleague Mr. Lindstrom issued a formal mediators' recommendation that the Action settle for a total of $74 million, with an additional, potential supplemental payment of up to $2 million (the "Supplemental Payment"). Each of the parties accepted the mediators' recommendation, and on June 4, 2019, the mediators informed the parties of the agreement in principle to settle the case.

221. Over the course of the ensuing weeks, the parties continued to negotiate over the terms of the Settlement, including the terms of the potential Supplemental Payment that the mediators recommended and the parties agreed to as part of the Settlement. Plaintiffs at all points sought to ensure that the recovery to members of the Class would occur promptly, and that Plaintiffs maximized the ability for Class Members to receive the additional $2 million Supplemental Payment in a timely manner. On July 11, 2019, having reached agreement on the final terms and details of the Settlement, the parties executed the Stipulation of Settlement and related documents. *See* ECF No. 316-1.

222. Pursuant to the terms of the Stipulation (ECF No. 316-1), the potential Supplemental Payment of up to $2,000,000 will be paid on behalf of Defendant Chatila from

certain of SunEdison's directors and officers insurance policies, if those funds are not exhausted by costs of defending or settling other actions under those insurance policies. *See* Stipulation ¶ 9 and Exhibit C thereto. Specifically, the insurers responsible for SunEdison's Side A D&O Insurance Policies will be obligated to make the Supplemental Payment when certain specified cases have been fully resolved. *See id.* At that time, $2,000,000 or whatever lesser amount remains available under the Side A D&O Insurance Policies, if any, will be paid into the settlement escrow account for the benefit of the Class.

223. Also, under the terms of the Stipulation, the SunEdison Defendants and Underwriter Defendants have each made payment toward the $74 million Current Settlement Amount. *See* Stipulation ¶ 8. The portion of the Settlement paid by the Underwriter Defendants will be allocated exclusively for payment of claims submitted by members of the Securities Act Subclass. *See* Stipulation ¶ 10. As explained in Section XIII below, under the proposed Plan of Allocation for the proceeds of the Settlement, the portion of the Settlement paid by the SunEdison Defendants will be allocated between the Exchange Act Subclass and Securities Act Subclass in proportion to Plaintiffs' damages expert's estimate of the total damages incurred by each subclass. Based on the damages' expert's calculations, $19.5 million of the Current Settlement Amount (plus any payments made in connection with the Supplemental Payment) will be allocated to the Exchange Act Subclass and $54.5 million will be allocated to the Securities Act Subclass.

X. RISKS OF CONTINUED LITIGATION

224. The Settlement provides a payment of $74 million for the benefit of the Class, as well as a potential additional payment of up to $2 million. The Settlement is a favorable result for Class Members given the risks of continued litigation. Although Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit, they recognize the expense and

length of litigation through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages.

225. First, with respect to Plaintiffs' claim against Defendant Chatila under Section 10(b) of the Exchange Act, Plaintiffs faced significant risks that, at either the summary-judgment stage or after a trial, Chatila would prevail on the elements of falsity, scienter, and/or loss causation. Plaintiffs argued that Chatila's September 2, 2015 statement that the company would "generat[e] cash for a living" by "early 2016" was false in part because a late-August 2015 presentation by Company management to the Board projected positive total cash flows in the second quarter of 2016 at the earliest. That presentation also included certain financial metrics that were actually projected to be positive by the first quarter of 2016. Chatila argued that his September 2 statement referred to those metrics, and that his statement was therefore not false or made with the intent to deceive necessary to prove liability. If Chatila prevailed on either of those arguments, or in establishing that his statement was insulated from liability as a "forward looking" projection accompanied by adequate cautionary language, Plaintiffs would not have been able to obtain any recovery for common stock investors in this Action.

226. Plaintiffs also faced the risk of not proving loss causation—that Chatila's alleged September 2, 2015 misstatement was the cause of investors' losses—and in proving damages for the Exchange Act claims. Chatila would likely argue that many of the corrective disclosures for which Plaintiffs claimed damages did not relate to his alleged false statement concerning the timing of the Company's cash flows, particularly given a subsequent statement on November 10, 2015 indicating that SunEdison would not generate positive cash flows until mid-2016. If Chatila prevailed on his loss-causation arguments, recoverable damages would have declined significantly. Indeed, rather than over $1 billion in Exchange Act damages if the entire Exchange

Act Class Period were included, if Chatila's loss-causation arguments cutting off damages as of November 9, 2015 prevailed, maximum damages for the Exchange Act Subclass would have been limited to $206.4 million.

227. Second, Plaintiffs faced substantial risks of proving liability and damages on their Securities Act claims. As discussed above, the Securities Act claims arose from three alleged misstatements and omissions in connection with the August 18, 2015 Preferred Offering: (i) Defendants' failure to disclose the Margin Call that the Company received on its $410 million Margin Loan on August 7, 2015; (ii) Defendants' failure to disclose the $169 million Second-Lien Loan from Goldman Sachs that closed and was funded on August 11, 2015; and (iii) the Company's inaccurate characterization of the Margin Loan as non-recourse debt, when it was in fact recourse to the Company. Plaintiffs risked being unable to prove that each of those statements and omissions was materially false and misleading. For example, Defendants could have prevailed on the argument that investors knew or should have known when the Margin Call occurred based on SunEdison's prior disclosures that provided many, if not all, of the metrics used in the formula to calculate the triggers for any margin calls, including the amount of collateral posted for the Margin Loan (in the form of 32.2 million shares of TerraForm Power stock) and the loan-to-value ratio SunEdison was required to maintain on the Margin Loan. Defendants argued that investors could have monitored the share price of TerraForm Power and determined precisely when the value of the collateral dropped, triggering a margin call and requiring the Company to post additional collateral. Defendants may also have prevailed in arguing that the amount of the Margin Call was not material.

228. Regarding the Second-Lien Loan, Defendants may have prevailed on their arguments that the $169 million amount of the loan was not material, and that the terms of the

Second-Lien Loan (including the interest rate and fees that Goldman Sachs charged) would not have been material to investors. Defendants introduced and developed evidence to support those arguments, including testimony and documents suggesting that the Second-Lien Loan's interest rate as disclosed in a November 2015 filing was actually incorrect and overstated, and that the fees disclosed at that time were also incorrect and were substantially inflated by legal fees for unrelated work. Plaintiffs may not have proven liability if the jury determined that the interest rate and fees for the Second-Lien Loan were lower than Plaintiffs contended, and therefore did not indicate any underlying difficulty accessing the capital markets or other financial problems at SunEdison. Regarding the recourse nature of the Margin Loan, Plaintiffs risked Defendants prevailing on arguments that the amount of the loan was not material, and that, given other disclosures prior to the Preferred Offering that did accurately describe the Margin Loan, investors were not misled.

229. Plaintiffs also faced the significant risk that Defendants could prevail on "negative causation" arguments by establishing as a matter of law, or proving to a jury, that declines in the price of SunEdison preferred stock after November 9, 2015 were due to reasons other than the alleged misstatements and omissions underlying Plaintiffs' Securities Act claims. Specifically, Defendants would contend that the Company had fully disclosed and corrected the three items underlying the Securities Act claims (the Margin Call, the Second-Lien Loan, and the recourse nature of the Margin Loan) by the time that SunEdison's Form 10-Q was filed on November 9, 2015, and thus all subsequent stock price declines must be attributed to other, unrelated reasons. If the Court or a jury agreed and found that Defendants proved negative causation for declines in the value of SunEdison preferred stock after November 9, 2015, the maximum amount of recoverable damages at trial would have been only $159.2 million, rather than the $297 million

in theoretical maximum damages if Defendants did not prevail on their negative-causation defense.

230. Further, Plaintiffs faced the risk that the Underwriter Defendants and/or independent-director Defendants would prevail on summary judgment or at trial in proving their defense that they conducted adequate due diligence and thus could not be liable. The Underwriter Defendants could have proven that, among other things, they conducted due diligence through their retention of experienced counsel in connection with the Preferred Offering, as well as based on previous diligence conducted for SunEdison in connection with other offerings and at various points leading up to the Preferred Offering. Similarly, the independent-director Defendants could have prevailed on such a defense because the Audit Committee of the SunEdison Board reviewed the Company's quarterly and annual filings incorporated into the Prospectus Supplement for the Preferred Offering, those filings were also reviewed by counsel and the Company's outside auditors, and because, they would contend, they were not aware of any "red flags" prior to the Preferred Offering that triggered any additional or heightened due-diligence obligations.

231. On all of these issues, Plaintiffs would have to prevail at several stages—on a motion for summary judgment and at trial, and if it prevailed on those, on the appeals that would likely follow—which would have taken years. At each stage, there were very significant risks attendant to the continued prosecution of the Action, as well as considerable delay. The Settlement is desirable because it will provide a prompt and certain benefit to the Class rather than the mere possibility of a recovery after additional years of litigation and appeals.

232. Lastly, Plaintiffs faced the substantial risk that even if they were to secure a significant judgment at trial, many of the Defendants would be unable to satisfy such a judgment. Concerning Plaintiffs' Section 10(b) claim, Chatila is the only remaining Defendant; he does not

have any substantial personal assets to contribute to any settlement or post-trial judgment, including because he held his SunEdison stock until it completely declined in value. Further, SunEdison, as a bankrupt, liquidating entity, is not a Defendant. Accordingly, any judgment or settlement of Plaintiffs' Section 10(b) claim would be satisfied using only D&O Insurance funds. This risk is consistent with the Court's concern, expressed during a conference on April 17, 2018, "that there will not be sufficient assets to satisfy anything close to a judgment. There may not even be assets or insurance proceeds available to have any kind of a meaningful settlement." 4/17/18 Tr. at 31:17-20. Given that this case has been litigated over the course of over three years, however, available D&O Insurance money has significantly diminished, as it has been used both to defend against and resolve several governmental investigations and private actions, including class actions on behalf of TerraForm Power and TerraForm Global shareholders, a derivative action on behalf of TerraForm Global shareholders, individual actions by large institutions raising Securities Act claims concerning the August 2015 Preferred Offering, and one or more investigations by the DOJ. The available D&O Insurance would have continued to decline as Plaintiffs litigated the case through trial and appeals.

233. The Settlement is also reasonable when considered in relation to the range of potential recoveries that might be recovered if Plaintiffs prevailed at trial, which was far from certain for the reasons noted above. As noted above, the potential damages that could be established for the Securities Act Subclass ranged from $159.2 million, if Defendants' "negative causation" defense cutting off damages as of November 9, 2015 was successful, up to a maximum of $297 million. Accordingly, the $54.5 million that will be available for Securities Act claimants represents 18% to 34% of the maximum recoverable damages for that subclass. While the $19.5 million recovered for the Exchange Act Subclass under the Settlement

represents a much smaller percentage of the theoretical maximum damages for that subclass,[9] in light of Chatila's inability to pay a substantial judgment and the diminished and rapidly depleting amount of D&O Insurance remaining, any such maximum damages were entirely theoretical. Any analysis of the adequacy of the settlement of the Exchange Act Subclass claims must be considered in light of amounts that could actually be recovered. Plaintiffs believe that amounts recovered under the Settlement provide a favorable outcome for these claimants.

234. Moreover, the parties structured the $2 million contingent Supplemental Payment in an attempt to maximize the D&O Insurance carriers' contributions to the Settlement and to potentially provide additional recovery for the Class by creating an obligation for the insurers to pay an additional amount of up to $2 million if D&O Insurance funds are not exhausted by the insurers' other obligations (such as obligations to pay ongoing defense costs for certain officers and directors). Once all litigation for which D&O Insurance coverage requests have been made has been resolved, any remaining Side A insurance funds (those which cover claims against Chatila) up to $2 million will be paid to the Class. While Plaintiffs reasonably expect some payment will be received pursuant to the Supplemental Payment, no payment is guaranteed, and Plaintiffs submit the Current Settlement Amount is sufficient by itself to make the Settlement fair, reasonable, and adequate.

XI. THE COURT GRANTS PRELIMINARY APPROVAL OF THE SETTLEMENT

235. On July 12, 2019, Plaintiffs filed their motion for preliminary approval of the Settlement. ECF Nos. 316-320.

[9] As discussed above, theoretical maximum damages for the Exchange Act Subclass ranged from $206.4 million (if Defendants' loss causation arguments cutting off damages as of November 9, 2015 prevailed) to over $1 billion if damages for the entire Exchange Act Class Period were included.

236. On July 16, 2019, the Court entered the Order Preliminarily Approving Settlement and Providing for Settlement Notice (ECF No. 321) (the "Preliminary Approval Order"), which, among other things: (i) preliminarily approved the Settlement, as embodied in the Stipulation of Settlement, subject to further consideration at the Settlement Hearing; (ii) authorized Lead Counsel to retain Analytics Consulting, LLC ("Analytics") as the Claims Administrator for the Settlement;[10] (iii) directed that notice of the Settlement be provided to Class Members and published in the *Wall Street Journal* and over the *PR Newswire*; (iv) scheduled the Settlement Hearing for October 25, 2019 at 2:00 p.m.; (v) established the procedures and deadlines for Class Members to submit claims for participation in the Settlement and file objections to the proposed Settlement, the proposed Plan of Allocation, or the Fee and Expense Application; and (vi) set a schedule for the filing of opening papers and reply papers in support of the proposed Settlement, Plan of Allocation, and the Fee and Expense Application.

237. In addition, because of the extensive notice program undertaken in connection with class certification and the ample opportunity provided to Class Members to request exclusion from the Class or one of the subclasses at that time, the Court, in the Preliminary Approval Order, exercised its discretion to not require a second opportunity for Class Members to exclude themselves from the Exchange Act Subclass, the Securities Act Subclass, or the entire Class in connection with the Settlement proceedings. ECF No. 321 at ¶ 11.

[10] ECF No. 321 at ¶ 4. Analytics was previously approved by the Court to be the Administrator for the dissemination of Class Notice. ECF. No. 295 at ¶ 4.

XII. PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF SETTLEMENT NOTICE

238. The Court's Preliminary Approval Order directed that the Settlement Notice and Proof of Claim and Release Form ("Claim Form") be disseminated to the Class. The Preliminary Approval Order also set an October 4, 2019 deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, and set the Settlement Hearing for October 25, 2019 at 2:00 p.m.

239. In accordance with the Preliminary Approval Order, Analytics has: (i) disseminated the Court-approved Settlement Notice and Claim Form (together, the "Settlement Notice Packet") to those persons and entities who were previously mailed copies of the Class Notice and any other potential Class Members who were otherwise identified through reasonable effort; (ii) posted the Settlement Notice and Claim Form on the website previously developed for this Action, www.SunEdisonSecuritiesLitigation.com; and (iii) published the Summary Settlement Notice in the *Wall Street Journal* and transmitted it over the *PR Newswire*.[11]

240. The Settlement Notice sets forth a description of the terms of the Settlement and the proposed Plan of Allocation and provides potential Class Members with, among other things, an explanation of their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel's request for an award of attorneys' fees and payment of litigation expenses, and the manner for submitting a Claim Form in order to be eligible to receive a payment from the Settlement. *See generally* Ex. A to the Simmons Decl. The Settlement Notice also informs Class Members of Lead Counsel's intention to apply for an award of attorneys' fees in the amount not

[11] Analytics' efforts are detailed in the Simmons Declaration, attached as Exhibit 4.

to exceed 22% of the Settlement Fund, and for payment of litigation expenses incurred in connection with the Action (including PSLRA awards to Plaintiffs) in an amount not to exceed $2 million.[12]

241. As set forth in the Simmons Declaration, Analytics began mailing copies of the Settlement Notice Packet to potential Class Members and nominees on July 30, 2019. Simmons Decl. ¶ 6. Through September 19, 2019, a total of 287,016 Settlement Notice Packets have been mailed to potential Class Members and nominees. *Id.* ¶ 7. Analytics also caused, in accordance with the Preliminary Approval Order, the Summary Settlement Notice to be published in the *Wall Street Journal* and transmitted over the *PR Newswire* on August 13, 2019. *Id.* ¶ 8. Contemporaneously with the initial mailing of the Settlement Notice Packet, Analytics also updated the case website to provide Class Members and other interested parties with information concerning the Settlement and the important dates and deadlines in connection therewith, as well as access to downloadable copies of the Settlement Notice, Claim Form, Preliminary Approval Order, Stipulation, and Complaint. *Id.* ¶ 9. The Settlement Notice Packet has also been posted on Lead Counsel's firm website. As noted above, the Court-ordered deadline for Class Members to file objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application is October 4, 2019. To date, no objections to the Settlement, Plan of Allocation, or Lead Counsel's Fee and Expense Application have been received. Plaintiffs and Lead Counsel will

[12] As discussed above, the Class Notice previously sent to potential members of the Class notified them of their right to request to be excluded from exclusion from the Class or one of the subclasses, the effect of remaining in the Class or the subclasses or requesting exclusion, and the requirements for requesting exclusion. 28 requests for exclusion were received pursuant to the Class Notice. ECF No. 319. Pursuant to the Preliminary Approval Order, there was no second opportunity to seek exclusion. *See* ECF No. 321 at ¶ 11.

address any objections in their reply papers to be filed with the Court on or before October 18, 2019.

XIII. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

242. Pursuant to the Preliminary Approval Order, and as set forth in the Settlement Notice, all Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less (i) all federal, state, and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (ii) the costs and expenses incurred in connection with providing notice to Class Members and administering the Settlement on behalf of Class Members; (iii) any attorneys' fees and Litigation Expenses awarded by the Court; and (iv) any other costs or fees approved by the Court) must submit a valid Claim Form with all required information postmarked no later than November 27, 2019. As set forth in the Settlement Notice, the Net Settlement Fund will be distributed among Class Members who submit valid Claim Forms according to the plan of allocation approved by the Court.

243. Lead Counsel consulted with Plaintiffs' experienced damages expert, Dr. Steven Feinstein, PhD, CFA in developing the proposed Plan of Allocation for the Net Settlement Fund. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Class Members who suffered losses as result of the conduct alleged in the Complaint.

244. The Plan of Allocation is set forth at the end of the Settlement Notice at pages 11 to 16. *See* Simmons Decl., Ex. A at pp. 11-16. As described in the Settlement Notice, calculations under the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover at trial or estimates of the amounts that will

be paid to Authorized Claimants pursuant to the Settlement. Settlement Notice ¶ 75. Instead, the calculations under the plan are only a method to weigh the claims of Class Members against one another for the purposes of making equitable, *pro rata* allocations of the Net Settlement Fund. *Id.*

245. Under the proposed Plan of Allocation, the Net Settlement Fund will be divided into two separate funds for purposes of making allocations to Authorized Claimants: (i) the "Exchange Act Claim Fund," which will compensate members of the Exchange Act Subclass, and (ii) the "Securities Act Claim Fund," which will compensate members of the Securities Act Subclass. *Id.* ¶ 86. The entire portion of the Settlement Amount that was paid by or on behalf of the Underwriter Defendants will be allocated to the Securities Act Claim Fund; the portion of the Current Settlement Amount that was paid by or on behalf of the SunEdison Defendants will be divided between the two Claim Funds in proportion to Plaintiffs' damages expert's estimate of the size of total damages for the Exchange Act Subclass and the Securities Act Subclass; and any amounts paid as part of the Supplemental Payment allocated to the Exchange Act Claim Fund. *Id.* ¶ 87. Based on these calculations, the Exchange Act Claim Fund will be allocated $19.5 million, as well as any amounts paid as part of the potential Supplemental Payment of up to $2 million, and the Securities Act Claim Fund will be allocated $54.5 million. *Id.*[13]

246. Under the Plan of Allocation, Recognized Loss Amounts for purchases and acquisitions of SunEdison preferred stock are calculated based on the statutory formula for damages under Section 11 of the Securities Act, 15 U.S.C. § 77k(e). *Id.* ¶¶ 95-98. Recognized Loss Amounts for purchases and acquisitions of SunEdison common stock, which give rise to

[13] Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement will be deducted proportionally from the two Claim Funds based on the relative sizes of the funds.

only Section 10(b) claims, are calculated principally based on the difference between the amount of estimated alleged artificial inflation in SunEdison common stock at the time of purchase and at the time of sale, or the difference between the actual purchase price and sale price of the stock, whichever is less. *Id*. ¶¶ 90-94. Claimants who purchased and sold all their shares of SunEdison common stock before the first alleged corrective disclosure, which occurred after the close of trading on November 9, 2015, or who purchased and sold all their shares of SunEdison common between two consecutive disclosure dates, will have no Recognized Loss Amount under the Plan of Allocation for those transactions because any loss suffered on those sales would not be the result of the alleged misstatements. *Id*. ¶ 92. The Plan of Allocation also limits Claimants based on whether they had an overall market loss in their transactions in SunEdison Securities during the relevant Class Periods. *Id*. ¶¶ 106-109.

247. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Class Members based on damages they suffered on purchases of SunEdison Securities that were attributable to the misconduct alleged in the Complaint. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

248. As noted above, through September 19, 2019, more than 287,000 copies of the Settlement Notice, which contains the Plan of Allocation and advises Class Members of their right to object to the proposed Plan of Allocation, had been sent to potential Class Members and nominees. S*ee* Simmons Decl. ¶ 7. To date, no objections to the proposed Plan of Allocation have been received.

XIV. THE FEE AND EXPENSE APPLICATION

249. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court, on behalf of all Plaintiffs' Counsel, for an award of

attorneys' fees of 21% of the Settlement Fund (the "Fee Application").[14] Lead Counsel also requests payment for litigation expenses that Plaintiffs' Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $1,525,355.53 (the "Expense Application"). In connection with the Expense Application, Lead Counsel further requests reimbursement to Plaintiffs MERS and ATRS in the aggregate amount of $15,418.15 for costs and expenses that Plaintiffs incurred directly related to their representation of the Class, in accordance with the PSLRA. The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

A. The Fee Application

250. For its efforts on behalf of the Class, Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interest of Plaintiffs and the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances and taking into account the litigation risks faced in a class action. Use of the percentage method has been recognized as appropriate by the Supreme Court and Second Circuit for cases of this nature.

251. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the

[14] If the fee request is granted in full, the fee award will amount to 21% of the $74 million Current Settlement Amount (*i.e.*, $15,540,000, plus accrued interest) plus 21% of any future recovery with respect to the Supplemental Payment of up to $2 million (*i.e.*, up to a maximum additional $420,000, plus accrued interest).

representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 21% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

1. Plaintiffs Have Authorized and Support the Fee Application

252. Plaintiffs MERS and ATRS are both sophisticated institutional investors that closely supervised and monitored the prosecution and settlement of the Action. *See* LaVictoire Decl. ¶¶ 5-6; Graves Decl. ¶¶ 7-8. Both Plaintiffs have evaluated the Fee Application and fully support the fee requested.

253. The fee requested is within the terms allowed under the written fee agreement entered into between MERS and Lead Counsel at the outset of the litigation, which provided for a percentage fee of up to 22%. After the parties' agreement to settle was finalized, MERS agreed that Lead Counsel could seek a fee award equal to 21% of the Settlement Fund. Both Plaintiffs have evaluated the Fee Application in light of the result obtained, the substantial risks in the litigation, and the work performed by Lead Counsel, and both support the fee requested as fair and reasonable. *See* LaVictoire Decl. Decl. ¶ 8; Graves Decl. ¶ 10.

2. The Time and Labor Devoted to the Action by Plaintiffs' Counsel

254. Lead Counsel and the other Plaintiffs' Counsel devoted substantial time to the prosecution of the Action. As described above in greater detail, the work that Plaintiffs' Counsel performed in this Action included: (i) conducting an extensive investigation into the claims asserted, including a detailed review of public documents, interviews with numerous witnesses, and consultation with experts; (ii) researching and drafting two extensive amended complaints; (iii) achieving the successful transfer and consolidation of these actions by filing a motion before the MDL Panel; (iv) researching and briefing Plaintiffs' successful (in part) opposition to

Defendants' motions to dismiss; (v) researching and briefing Plaintiffs' successful motion for class certification; (vi) undertaking substantial fact-discovery efforts, including obtaining and reviewing more than 2,260,000 pages of documents and taking or defending 22 depositions across the United States and internationally; (viii) responding to pre-motion letters concerning Defendants' anticipated summary-judgment motions; (ix) consulting extensively throughout the litigation with experts and consultants; and (x) engaging in extensive, arm's-length settlement negotiations to achieve the Settlement, including three separate mediation sessions.

255. Throughout the litigation, Plaintiffs' Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation. BLB&G's partners monitored and maintained control of the work performed by other lawyers at BLB&G and the other Plaintiffs' Counsel throughout the litigation. Other experienced attorneys at Plaintiffs' Counsel were also involved in the drafting of pleadings, motion papers, and in the settlement negotiations. More junior attorneys and paralegals worked on matters appropriate to their skill and experience level.

256. Attached hereto as Exhibits 5A, 5B, and 5C, respectively, are my declaration on behalf of BLB&G and the declarations of John H. Drucker on behalf of Cole Schotz and William C. Fredericks on behalf of Scott+Scott, in support of Lead Counsel's motion for an award of attorneys' fees and litigation expenses (the "Fee and Expense Declarations"). Each of the Fee and Expense Declarations includes a schedule summarizing the lodestar of the firm and the litigation expenses it incurred, delineated by category. The Fee and Expense Declarations indicate the amount of time spent on the Action by the attorneys and professional support staff of each firm and the lodestar calculations based on their current hourly rates. These declarations were prepared from contemporaneous daily time records regularly maintained and prepared by the

respective firms, which are available at the request of the Court. The first page of Exhibit 5 is a chart that collects the information set forth in the Fee and Expense Declarations, listing the total hours expended, lodestar amounts, and litigation expenses for each Plaintiffs' Counsel's firm, and gives totals for the numbers provided.

257. As set forth in Exhibit 5, Plaintiffs' Counsel expended a total of 38,187.10 hours in the investigation, prosecution, and resolution of this Action through August 15, 2019. The resulting lodestar is $18,082,632.00. The vast majority of the total lodestar—95%—was incurred by Lead Counsel.

258. The requested fee of 21% of the $74 million Current Settlement Amount equals $15,540,000 (plus interest) and therefore is approximately 86% of the value of Plaintiffs' Counsel's time. Thus, if the fee request is granted in full, Plaintiffs' Counsel will receive only 86% of the value of the time that they dedicated to the Action, representing a fractional or "negative" multiplier of approximately 0.86 under the lodestar approach.[15]

3. The Experience and Standing of Lead Counsel

259. As demonstrated by the firm resume attached as Exhibit 5A-3 hereto, Lead Counsel BLB&G is among the most experienced and skilled law firms in the securities-litigation field, with a long and successful track record representing investors in such cases. BLB&G is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken

[15] As discussed above, the requested attorneys' fees may include up to an additional $420,000 (plus interest) in fees, for a total fee award of $15,960,000 (plus interest), depending on the ultimate future recovery on the $2 million Supplemental Payment. Based on a potential total award of $15,960,000, the requested attorneys' fees would still represent a "negative" multiplier of approximately 0.88.

complex cases such as this Action to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions.

4. The Standing and Caliber of Defendants' Counsel

260. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of its opposition. Defendants were represented by extremely able counsel—including Sidley Austin LLP, Wilmer Cutler Pickering Hale and Dorr LLP, Shearman & Sterling LLP, and Paul, Weiss, Rifkind, Wharton & Garrison LLP. In the face of this skillful and well-financed opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants and their counsel to settle the case on terms that will significantly benefit the Class.

5. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases

261. The prosecution of these claims was undertaken entirely on a contingent-fee basis, and the considerable risks assumed by Lead Counsel in bringing this Action to a successful conclusion are described above. Those risks are relevant to the Court's evaluation of an award of attorneys' fees. Here, the risks assumed by Lead Counsel, and the time and expenses incurred by Lead Counsel without any payment, were extensive.

262. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, lengthy, and hard-fought litigation with no guarantee of ever being compensated for the substantial investment of time and the outlay of money that vigorous prosecution of the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in terms of attorney and support-staff time) were dedicated to the litigation, and that Lead Counsel would further advance all of the costs necessary to pursue the case vigorously on a fully contingent basis, including funds to compensate vendors and consultants

and to cover the considerable out-of-pocket costs that a case such as this typically demands. Because complex shareholder litigation generally proceeds for several years before reaching a conclusion, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the over-three-year course of this Action and no reimbursement of out-of-pocket expenses, yet they have incurred more than $1,525,000 in expenses in prosecuting this Action for the benefit of SunEdison investors.

263. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset this case presented a number of significant risks and uncertainties, including challenges in proving the falsity of Defendants' statements, establishing scienter, and establishing loss causation and damages. Moreover, due to the Company's April 2016 bankruptcy and the steadily declining pool of available D&O Insurance funds, Plaintiffs' Counsel faced a significant risk that, even if Plaintiffs succeeded in proving liability and damages at trial, there would be no remaining assets to compensate members of the Exchange Act Subclass.

264. As noted above, the Settlement was reached only after the completion of fact discovery and after Plaintiffs' motion for class certification was decided, expert discovery was underway, and the Parties had exchanged summary-judgment pre-motion letters. Had the Settlement not been reached when it was, and this litigation continued, Plaintiffs' Counsel would have been required to complete extensive and expensive expert discovery, including taking and defending numerous depositions. After the close of expert discovery, Defendants would have moved for summary judgment, which would have had to be briefed and argued, a pre-trial order would have had to be prepared, proposed jury instructions would have had to be submitted, and

motions *in limine* would have had to be filed and argued. Substantial time and expense would have also need to been expended in preparing the case for trial. The trial itself would have been expensive and uncertain. Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would have been the subject of post-trial motions, post-trial challenges to individual Class Members' damages, and appeals.

265. Plaintiffs' Counsel's persistent efforts in the face of significant risks and uncertainties have resulted in a significant and certain recovery for the Class. In light of this recovery and Plaintiffs' Counsel's investment of time and resources over the course of the litigation, Lead Counsel believes the requested attorneys' fee is fair and reasonable and should be approved.

6. The Reaction of the Class to the Fee Application

266. As noted above, through September 19, 2019, over 287,000 Settlement Notice Packets had been mailed to potential Class Members advising them that Lead Counsel would apply for attorneys' fees in an amount not to exceed 22% of the Settlement Fund. *See* Simmons Decl. ¶ 7 and Ex. A (Settlement Notice ¶¶ 5, 55). In addition, the Court-approved Summary Settlement Notice has been published in the *Wall Street Journal* and transmitted over the *PR Newswire*. *Id*. ¶ 8. To date, no objections to the request for attorneys' fees have been received.

* * *

267. In sum, Plaintiffs' Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that the requested fee is fair and reasonable.

B. The Litigation-Expense Application

268. Lead Counsel also seeks payment from the Settlement Fund of $1,525,355.53 for litigation expenses that Plaintiffs' Counsel reasonably incurred in connection with the prosecution of the Action (the "Expense Application").

269. From the outset of the Action, Lead Counsel and other Plaintiffs' Counsel have been cognizant of the fact that they might not recover any of their expenses, and, further, if there were to be reimbursement of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

270. As set forth in Exhibit 5 hereto, Plaintiffs' Counsel have paid or incurred a total of $1,525,355.53 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 6, which identifies each category of expense, *e.g.*, experts, document management, mediation, on-line legal and factual research, travel costs, telephone, and photocopying expenses, and the amount incurred for each category. These expenses are reflected on the books and records maintained by Plaintiffs' Counsel, which are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are submitted separately by Plaintiffs' Counsel and are not duplicated by the firm's hourly rates.

271. Of the total amount of expenses, $724,157.56, or approximately 47%, was expended for the retention of experts. As discussed above, Lead Counsel consulted extensively with experts in market efficiency, damages, director due diligence, underwriter due diligence,

and the Company's cash flows during its investigation and the preparation of the Complaint and during the course of discovery. In connection with Plaintiffs' motion for class certification, Plaintiffs' market-efficiency expert, Dr. Feinstein, submitted a report on the efficiency of the market for SunEdison securities and class-wide damages. Lead Counsel consulted further with its experts during settlement negotiations with Defendants and in connection with the development of the proposed Plan of Allocation. All of these experts were instrumental in Lead Counsel's appraisal of the claims and in bringing about the favorable result achieved.

272. Another significant cost was the expense of document management and discovery support, which included, among other things, the costs of retaining a database provider to host and manage the database containing the documents produced in the Action. The document management costs in total came to $201,809.68, or approximately 13% of the total expenses.

273. The combined costs of on-line legal and factual research were $200,084.00, or approximately 13% of the total expenses. Plaintiffs' share of the mediation costs paid to Phillips ADR for the services of the mediators was $143,513.10, or approximately 9% of the total expenses.

274. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, travel costs, printing and copying costs, long distance telephone charges, and postage and delivery expenses.

275. In addition, Plaintiffs seek reimbursement of the reasonable costs and expenses that they incurred directly in connection with their representation of the Class. Such payments are expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee Memorandum. MERS seeks payment of $13,598.65 and ATRS seeks payment of $1,819.50 for

the time expended by their employees in connection with the Action, who spent a substantial amount of time communicating with Lead Counsel, reviewing pleadings and motion papers, responding to discovery requests, and preparing for, traveling to, and testifying at depositions in connection with the class certification motion. *See* LaVictoire Decl. ¶¶ 5-6, 10-12; Graves Decl. ¶¶ 7-8, 12-14.

276. The Settlement Notice informed Class Members that Lead Counsel would be seeking payment of Litigation Expenses in an amount not to exceed $2,000,000, which might include an application for the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Class. Settlement Notice ¶¶ 5, 55. The total amount requested, $1,540,773.68, which includes $1,525,355.53 for Plaintiffs' Counsel's litigation expenses and $15,418.15 for total costs and expenses incurred by Plaintiffs, is significantly below the $2,000,000 that Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Settlement Notice.

277. The expenses incurred by Lead Counsel and Plaintiffs were reasonable and necessary to represent the Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the application for payment of litigation expenses from the Settlement Fund should be approved.

278. Attached to this declaration are copies of the following documents previously cited in this declaration:

Exhibit 1: Declaration of Layn R. Phillips in Support of Motion for Final Approval of Class Action Settlement.

Exhibit 2: Declaration of Brian LaVictoire, Deputy General Counsel of Municipal Employees' Retirement System of Michigan, in Support of: (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses.

Exhibit 3: Declaration of Rod Graves, Deputy Director of Arkansas Teacher Retirement System, in Support of: (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses.

Exhibit 4: Declaration of Richard W. Simmons Regarding (A) Mailing of the Settlement Notice and Claim Form and (B) Publication of the Summary Settlement Notice.

Exhibit 5: Summary of Plaintiffs' Counsel's Lodestar and Expenses.

Exhibit 5A: Declaration of Salvatore J. Graziano in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, Filed on Behalf of Bernstein Litowitz Berger & Grossmann LLP.

Exhibit 5B: Declaration of John H. Drucker in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, Filed on Behalf of Cole Schotz P.C.

Exhibit 5C: Declaration of William C. Fredericks in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, Filed on Behalf of Scott+Scott Attorneys at Law LLP.

Exhibit 6: Breakdown of Plaintiffs' Counsel's Litigation Expenses by Category.

279. Attached to this declaration are true and correct copies of the following documents cited in the Fee Memorandum:

Exhibit 7: *Freudenberg v. E*Trade Fin. Corp.*, No. 07 Civ. 8538 (JPO) (MHD), slip op. (S.D.N.Y. Oct. 20, 2012), ECF No. 154.

Exhibit 8: *In re Merrill Lynch & Co. Sec., Derivative & ERISA Litig.*, No. 07-cv-9633 (JSR)(DFE), slip op. (S.D.N.Y. Aug. 21, 2009), ECF No. 272.

Exhibit 9: *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-09866 (LTS)(HBP), slip op. (S.D.N.Y. Dec. 21, 2016), ECF No. 727.

Exhibit 10: *In re SunEdison, Inc. Sec. Litig.*, Civil Action No. 1:16-md-2742-PKC, Apr. 17, 2018 Tr. at 31:17-20, ECF No. 356.

Exhibit 11: *In re SunEdison, Inc. Sec. Litig.*, Civil Action No. 1:16-md-2742-PKC, Jan. 31, 2018 Tr., ECF No. 299.

XV. CONCLUSION

280. For all the reasons discussed above, Plaintiffs and Lead Counsel respectfully submit that the proposed Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 21% of the Settlement Fund should be approved as fair and reasonable, and the request for payment of total litigation expenses in the amount of $1,540,773.68, which includes Plaintiffs' costs and expenses, should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 20, 2019.

/s Salvatore J. Graziano
Salvatore J. Graziano

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF LAYN R. PHILLIPS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, LAYN R. PHILLIPS, declare:

1. I am a former District Judge with the U.S. District Court for the Western District of Oklahoma. I am the Chief Executive Officer of Phillips ADR, where I specialize in alternative dispute resolution. I am a member of the bars of Oklahoma, Texas, California and the District of Columbia, as well as the U.S. Courts of Appeal for the Ninth, Tenth and Federal Circuits.

2. A considerable amount of my professional time is devoted to serving as a mediator and arbitrator for complex cases like this one. I have over twenty years of dispute resolution experience, including conducting thousands of mediations and settlement conferences in all types of complex class actions, securities fraud actions and shareholder derivative actions. Without in any way waiving the mediation privilege, I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

3. In 2016, I was selected collectively by the parties to this litigation to serve as mediator to explore potential settlement. In my capacity as the independent mediator, I

presided over extensive negotiations among the parties, including formal in-person mediation sessions on February 10, 2017, February 27, 2017, March 2, 2017, March 3, 2017, October 6, 2017, and June 12, 2018 in New York City involving counsel for all parties to the litigation. In advance of the first full-day mediation sessions, the parties submitted detailed mediation statements. The parties additionally provided updated statements or summaries based on key documents and information obtained during discovery prior to each subsequent mediation session.

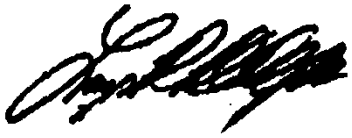
4. Although the parties were unable to settle the action at the in-person mediation sessions, they continued periodically to negotiate with my assistance over the remainder of the litigation, including, in particular, countless telephonic communications between me and my colleague, Gregory Lindstrom, and the respective parties over a several-month period in 2019 preceding this Settlement.

5. From the materials submitted by the parties and the numerous discussions over the course of the formal and informal mediation sessions, I am familiar with the factual and legal issues involved in this action and the important documents in the litigation. I am also familiar with the process by which the parties arrived at the Settlement, which came out of a mediator's recommendation for settlement that I made to the parties in 2019. I believe that at the time the Settlement was reached, the parties had a clear understanding of the strengths and weaknesses of their respective litigation positions and negotiated the Settlement vigorously, in good faith, and with a belief that the process was fair and reasonable.

6. Based on my first-hand observations, I am pleased to represent to the Court that the Settlement was the product of hard-fought, arms'-length negotiations by skilled, experienced and effective counsel. In my opinion, the Settlement reflects a reasonable recovery for the investor class under the circumstances, and is a fair and reasonable compromise of the claims in the action.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 29, 2019, at Newport Beach, California.



LAYN R. PHILLIPS
Former United States District Court Judge

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF BRIAN LAVICTOIRE, DEPUTY GENERAL COUNSEL OF MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN, IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

I, Brian LaVictoire, hereby declare under penalty of perjury as follows:

1. I am the Deputy General Counsel for Investments and Compliance of the Municipal Employees' Retirement System of Michigan ("MERS"), the Court-appointed Lead Plaintiff and Class Representative for the Exchange Act Subclass in this securities class action (the "Action").[1] I submit this declaration in support of (i) Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (ii) Lead Counsel's motion for attorneys' fees and Litigation Expenses. I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

2. MERS an independent statutory public corporation that provides retirement plans and benefits to employees of participating Michigan municipalities and courts. MERS administers over 2,000 plans represented by 900 units of local government across the state – 84%

[1] Unless otherwise defined in this Declaration, all capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement dated July 11, 2019 (ECF No. 316-1).

of Michigan municipalities – and represents over 145,000 participants. As of December 31, 2018, MERS had $10.9 billion in total assets under management.

I. MERS' Oversight of the Action

3. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA").

4. On March 24, 2016, the Eastern District of Missouri issued an Order appointing MERS as a Lead Plaintiff in the Action pursuant to the PSLRA, and approved its selection of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") as Lead Counsel for the Class. On January 7, 2019, the Court approved MERS as the class representative for the Exchange Act Subclass.

5. MERS, through my active and continuous involvement, as well as the involvement of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. MERS received periodic status reports from BLB&G on case developments and participated in regular discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and/or other employees of MERS, including MERS' former General Counsel, Patricia Tarini, and its current General Counsel, Kristin Beals Bellar: (a) communicated with BLB&G by email and telephone calls regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in the Action; (c) assisted in searching for and producing documents and information requested by Defendants in the course of discovery; (d) participated in the mediation process and consulted with BLB&G concerning the settlement negotiations as they progressed; and (e) evaluated and approved the proposed Settlement.

6. In addition, I was also deposed by counsel for Defendants in this Action on July 27, 2018 in Lansing, Michigan. I spent a substantial amount of time preparing for and appearing at that deposition. In addition, I was advised of and participated in the settlement negotiations and the mediation process, and conferred regularly with BLB&G regarding the Parties' respective positions.

II. MERS Strongly Endorses Approval of the Settlement

7. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, MERS believes that the proposed Settlement is fair, reasonable, and adequate to the Class. MERS believes that the Settlement represents a favorable recovery for the Class, particularly in light of the substantial risks of continuing to prosecute the claims in this case and in recovering a judgment larger than the proposed Settlement. Therefore, MERS strongly endorses approval of the Settlement by the Court.

III. MERS Supports Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses

8. While it is understood that the ultimate determination of Lead Counsel's request for attorneys' fees and expenses rests with the Court, MERS believes that Lead Counsel's request for an award of attorneys' fees in the amount of 21% of the Settlement Fund is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed by Plaintiffs' Counsel on behalf of Plaintiffs and the Class. MERS has evaluated the fee request by considering the substantial recovery obtained for the Class in this Action, the risks of the Action, and its observations of the high-quality work performed by Plaintiffs' Counsel throughout the litigation, and has authorized this fee request to the Court for its ultimate determination.

9. MERS further believes that Plaintiffs' Counsel's Litigation Expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, MERS fully supports Lead Counsel's motion for attorneys' fees and Litigation Expenses.

10. MERS understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, MERS seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Class in the Action.

11. My responsibility as MERS' Deputy General Counsel for Investments and Compliance involves monitoring our investment portfolio and our organization generally with respect to statutory compliance and other regulatory compliance, and includes monitoring litigation matters related to the investment portfolio. Patricia Tarini, MERS' former General Counsel, and Kristin Beals Bellar, MERS' current General Counsel, also dedicated time to the prosecution of this Action.

12. The time that we devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for MERS and, thus, represented a cost to MERS. MERS seeks reimbursement in the amount of $13,598.65 for (a) the time I devoted to supervising and participating in the Action in the amount of $7,559.89 (92.25 hours at $81.95 per hour); (b) the time Ms. Tarini devoted to this Action in the amount of

$5,401.76 (53 hours at $101.92 per hour); and (c) the time Ms. Bellar devoted to this Action in the amount of $637 (6.25 hours at $101.92 per hour).[2]

IV. Conclusion

13. In conclusion, MERS, a Court-appointed Lead Plaintiff and Class Representative, which was intimately involved throughout the prosecution and settlement of the Action, strongly endorses the Settlement as fair, reasonable, and adequate, and believes it represents a favorable recovery for the Class in light of the risks of continued litigation. MERS further supports Lead Counsel's motion for attorneys' fees and payment of Plaintiffs' Counsel's Litigation Expenses and believes that it represents fair and reasonable compensation for counsel in light of the recovery obtained for the Class, the substantial work conducted, and the litigation risks. And finally, MERS requests reimbursement for its expenses under the PSLRA as set forth above. Accordingly, MERS respectfully requests that the Court approve (i) Plaintiffs' motion for final approval of the proposed Settlement and Plan of Allocation; and (ii) Lead Counsel's motion for attorneys' fees and Litigation Expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of MERS.

[2] The hourly rates used for purposes of this request are based on the annual salaries of the positions of the respective MERS personnel who worked on this Action.

Executed this 20th day of August, 2019.

Brian LaVictoire
Deputy General Counsel for Investments and Compliance
Municipal Employees' Retirement System of Michigan

#1315715

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF ROD GRAVES, DEPUTY DIRECTOR OF ARKANSAS TEACHER RETIREMENT SYSTEM, IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

I, Rod Graves, hereby declare under penalty of perjury as follows:

1. I am the Deputy Director of the Arkansas Teacher Retirement System ("ATRS"), the Court-appointed Class Representative for the Securities Act Subclass in this securities class action (the "Action").[1] I submit this declaration in support of (i) Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (ii) Lead Counsel's motion for attorneys' fees and Litigation Expenses. I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

2. ATRS is a public pension fund organized in 1937 to provide retirement, disability, and survivor benefit programs to active and retired public teachers of the State of Arkansas. ATRS is responsible for the retirement income of these employees and their beneficiaries. As of

[1] Unless otherwise defined in this Declaration, all capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement dated July 11, 2019 (ECF No. 316-1).

June 30, 2018, ATRS's defined benefit plans served more than 125,000 active and retired members and their beneficiaries, and ATRS had over $17 billion in assets under management.

I. ATRS's Oversight of the Action

3. I am aware of and understand the requirements and responsibilities of a class representative in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995. As the Deputy Director of ATRS, I have overseen ATRS's service as a class representative in several securities class actions.

4. ATRS retained Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") through a formalized request for qualifications (RFQ) process. Through that RFQ process, ATRS determined that BLB&G was qualified and adequate to conduct portfolio monitoring services for ATRS and to represent ATRS in securities litigation if ATRS chose to seek involvement in such cases.

5. Consistent with Arkansas statute (A.C.A. § 25- 16-708) and ATRS's long-standing policy for securities litigation counsel, BLB&G understood at the outset of the Action that it would be paid on a contingency basis and permitted only to seek attorneys' fees of up to a maximum of 25% of any recovery obtained and that ATRS would also review the reasonableness of the proposed fee at the conclusion of the Action in light of the result obtained and other factors.

6. ATRS, which purchased SunEdison preferred stock during the Securities Act Class Period, served as an additional named Plaintiff in this Action. ATRS was named as a Plaintiff in the Amended Consolidated Securities Class Action Complaint filed July 22, 2016 and all subsequent pleadings. On January 7, 2019, the Court approved ATRS as the class representative for the Securities Act Subclass.

7. ATRS, through my active and continuous involvement, as well as the involvement of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. ATRS received periodic status reports from BLB&G on case developments and participated in regular discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with BLB&G by email and telephone calls regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in the Action; (c) assisted in searching for and producing documents and information requested by Defendants in the course of discovery; (d) participated in the mediation process and consulted with BLB&G concerning the settlement negotiations as they progressed; and (e) evaluated and approved the proposed Settlement.

8. I personally coordinated the collection of documents in response to Defendants' discovery requests and reviewed significant Court filings. In addition, in my capacity as a corporate representative for ATRS, I was deposed by counsel for Defendants in this Action on July 24, 2018 in New York. I spent a substantial amount of time preparing for, traveling to, and appearing at that deposition. I was also advised of and participated in the settlement negotiations and the mediation process, and conferred regularly with BLB&G regarding the Parties' respective positions.

II. ATRS Strongly Endorses Approval of the Settlement

9. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, ATRS believes that the proposed Settlement is fair, reasonable, and adequate to the Class. ATRS believes that the Settlement represents a favorable recovery for the Class, particularly in light of the substantial risks of continuing to prosecute the claims in this

case and in recovering a judgment larger than the proposed Settlement. Therefore, ATRS strongly endorses approval of the Settlement by the Court.

III. ATRS Supports Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses

10. While it is understood that the ultimate determination of Lead Counsel's request for attorneys' fees and expenses rests with the Court, ATRS believes that Lead Counsel's request for an award of attorneys' fees in the amount of 21% of the Settlement Fund is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed by Plaintiffs' Counsel on behalf of Plaintiffs and the Class. ATRS has evaluated the fee request by considering the substantial recovery obtained for the Class in this Action, the risks of the Action, and its observations of the high-quality work performed by Plaintiffs' Counsel throughout the litigation, and has authorized this fee request to the Court for its ultimate determination.

11. ATRS further believes that Plaintiffs' Counsel's Litigation Expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, ATRS fully supports Lead Counsel's motion for attorneys' fees and Litigation Expenses.

12. ATRS understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, ATRS seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Class in the Action.

13. My primary responsibility at ATRS involves overseeing ATRS's operations, including monitoring litigation matters involving the fund, such as ATRS's activities in the securities class actions where (as here) it has served as a class representative.

14. I dedicated substantial time to supervising and participating in the Action on behalf of ATRS, including time spent communicating with Lead Counsel, reviewing significant court filings, overseeing the collection of ATRS documents, preparing for and attending my deposition, and participating in the settlement negotiations and the mediation process. The time that I devoted to the representation of the Class in this Action was time that I otherwise would have spent on other work for ATRS and, thus, represented a cost to ATRS at a rate of $72.78 per hour (based on my annual salary). Accordingly, ATRS seeks reimbursement for 25 hours of my time, in the amount of $1,819.50 for my time devoted to the Action.

IV. Conclusion

15. In conclusion, ATRS, a Court-appointed Class Representative, which was intimately involved throughout the prosecution and settlement of the Action, strongly endorses the Settlement as fair, reasonable, and adequate, and believes it represents a favorable recovery for the Class in light of the risks of continued litigation. ATRS further supports Lead Counsel's motion for attorneys' fees and payment of Plaintiffs' Counsel's Litigation Expenses and believes that it represents fair and reasonable compensation for counsel in light of the recovery obtained for the Class, the substantial work conducted, and the litigation risks. And finally, ATRS requests reimbursement for certain of its expenses under the PSLRA as set forth above. Accordingly, ATRS respectfully requests that the Court approve (i) Plaintiffs' motion for final approval of the proposed Settlement and Plan of Allocation; and (ii) Lead Counsel's motion for attorneys' fees and Litigation Expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of ATRS.

Executed this 12 th day of September, 2019.

Rod Graves
Deputy Director of
Arkansas Teacher Retirement System

#1315715

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF RICHARD W. SIMMONS REGARDING (A) MAILING OF THE SETTLEMENT NOTICE AND CLAIM FORM AND (B) PUBLICATION OF THE SUMMARY SETTLEMENT NOTICE

I, RICHARD W. SIMMONS, hereby declare under penalty of perjury as follows:

1. I am the President of Analytics Consulting, LLC ("Analytics"). The following statements are based on my personal knowledge and information provided by other Analytics employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. Pursuant to its Order Preliminarily Approving Settlement and Providing for Settlement Notice dated July 16, 2019 (ECF No. 636) (the "Preliminary Approval Order"), the Court authorized the retention of Analytics as the Claims Administrator in connection with the proposed Settlement of the above-captioned action (the "Action").[1] I submit this declaration to provide the Court with proof of the mailing of the Court-approved Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Settlement Notice") and the Proof of Claim and Release Form (the "Claim Form," and collectively with the Settlement Notice, the "Settlement Notice Packet") and

[1] All terms with initial capitalization not otherwise defined in this declaration shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated July 11, 2019 (ECF No. 316-1) (the "Stipulation").

the publication of the Court-approved Summary Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Summary Settlement Notice").

MAILING OF THE SETTLEMENT NOTICE PACKET

3. Pursuant to the Preliminary Approval Order, Analytics has disseminated the Settlement Notice Packet to potential Class Members, brokers, and other nominees. A copy of the Settlement Notice Packet is attached to this declaration as Exhibit A.

4. As more fully described in the Declaration of Richard W. Simmons Regarding Class Notice and Report on Requests for Exclusion Received (ECF No. 319), Analytics previously conducted a mailing campaign (the "Class Notice Mailing") in which it mailed the Notice of Pendency of Class Action (the "Class Notice") to persons and entities identified as potential Class Members. To identify potential Class Members, Analytics received information from SunEdison's former transfer Agent, Computershare, containing the names and addresses of potential Class Members. Analytics mailed Class Notices to the investors listed. Analytics also mailed the Class Notice to brokerage firms, banks, institutions, and other third-party nominees listed in Analytics' proprietary nominee database (the "Nominee Database"). In response, Analytics received names and addresses of nominees' clients who were potential Class Members, as well as requests from nominees for additional copies of the Class Notice so that the nominees could forward the Class Notice directly to their clients. Analytics also received names and addresses directly from potential Class Members in this Action.

5. Through this process, Analytics created a mailing list of all known potential Class Members and their nominees for use in connection with the Class Notice and any future notices in the Action (the "Mailing List").

6. In accordance with Paragraph 4(a) of the Preliminary Approval Order, on July 30, 2019, Analytics mailed copies of the Settlement Notice Packet to all persons and entities identified in the Mailing List and the Nominee Database. Consistent with Paragraph 6 of the Preliminary Approval Order, the Settlement Notice Packets mailed to nominees included a letter explaining that if the nominee had previously submitted names and addresses in connection with the Class Notice Mailing, or had previously requested copies of the Class Notice in bulk, it did not need to submit that information again unless it had additional names and addresses to provide or needed a different number of Settlement Notice Packets.

7. Through September 19, 2019, a total of 287,016 Settlement Notice Packets have been disseminated to potential members of the Class or their nominees, which includes (i) 179,371 Settlement Notice Packets that were mailed to potential Class Members and nominees in the initial mailing on July 30, 2019; (ii) an additional 55,529 Settlement Notice Packets that were mailed to potential Class Members whose names and addresses were received from individuals, entities, or nominees requesting that the packet be mailed to such persons; and (iii) an additional 52,116 Settlement Notice Packets that were mailed to nominees for forwarding to their customers. In addition, Analytics has re-mailed 2,217 Settlement Notice Packets to persons whose original mailings were returned by the U.S. Postal Service ("USPS") as undeliverable and for whom updated addresses were provided to Analytics by the USPS.

PUBLICATION OF THE SUMMARY SETTLEMENT NOTICE

8. In accordance with Paragraph 4(c) of the Preliminary Approval Order, Analytics caused the Summary Settlement Notice to be published in the *Wall Street Journal* and to be transmitted over the *PR Newswire* on August 13, 2019. Copies of proof of publication of the Summary Settlement Notice in the *Wall Street Journal* and over the *PR Newswire* are attached to this declaration as Exhibits B and C, respectively.

WEBSITE

9. Analytics is maintaining a website dedicated to this Action (www.SunEdisonSecuritiesLitigation.com) to assist Class Members. In accordance with Paragraph 4(b) of the Preliminary Approval Order, contemporaneously with the initial mailing of the Settlement Notice Packets on July 30, 2019, Analytics updated the website with information regarding the proposed Settlement. The website address was set forth in the Settlement Notice and the Summary Settlement Notice. The website states the date and time of the Settlement Hearing, the deadline for objecting to the proposed Settlement, and the deadline for submitting Claims. The website also contains copies of the Settlement Notice, Claim Form, Preliminary Approval Order, Stipulation, and Complaint. Analytics will continue to operate and maintain the website as appropriate throughout the administration of the Settlement.

TOLL-FREE TELEPHONE LINE

10. Analytics is also maintaining toll-free telephone number for the Action (1-866-887-2962), with an Interactive Voice Recording system ("IVR") and live operators, to assist Class Members. The IVR was established in connection with the Class Notice Mailing and was updated to provide callers with information regarding the proposed Settlement and the option to request a copy of the Settlement Notice Packet. In addition, Monday through Friday from 9:30 a.m. to 9:00 p.m. Eastern Time (excluding official holidays), callers to the toll-free telephone line can speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about the Settlement. Analytics will continue to operate and maintain the toll-free telephone line and will update the IVR as necessary throughout the administration of the Settlement.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

Executed on September 19, 2019.

Richard W. Simmons

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

NOTICE OF (I) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION; (II) SETTLEMENT HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

If you: purchased or otherwise acquired the common stock of SunEdison, Inc. (NYSE ticker: SUNE, CUSIP: 86732Y109), from after the close of trading on September 2, 2015 through and including April 3, 2016, and were damaged thereby, or

you purchased or otherwise acquired shares of SunEdison preferred stock (CUSIP: 86732Y208) from August 18, 2015 through and including November 9, 2015, and were damaged thereby,

you may be entitled to receive money from a class action settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF SETTLEMENT: The Court-appointed representatives for the Court-certified Class (as defined in ¶ 31 below), Lead Plaintiff Municipal Employees' Retirement System of Michigan ("MERS") and Named Plaintiff Arkansas Teacher Retirement System ("ATRS," and together with MERS, "Plaintiffs"), on behalf of themselves and the Class, have reached a proposed settlement of the above-captioned securities class action with the SunEdison Defendants[1] and Underwriter Defendants[2] in exchange for a cash payment of $74 million with a potential additional supplemental payment of up to $2 million. If the Settlement is approved, it will resolve all claims asserted in the Action against the Defendants and bring the Action to an end.[3]

PLEASE READ THIS NOTICE CAREFULLY. It explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Class, your legal rights will be affected whether or not you act.

If you have any questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Clerk's office, Defendants, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (*see* ¶ 72 below).

1. **Description of the Action and the Class:** This notice relates to a proposed settlement of claims in a pending securities class action brought by investors alleging that Defendants violated the federal securities laws by, among other things, making false and misleading statements regarding the financial condition of SunEdison, Inc. ("SunEdison" or the "Company") or were statutorily liable for false and misleading statements in the offering materials for the August 2015 offering of SunEdison preferred stock. A more detailed description of the Action is set forth in ¶¶ 12-30 below. If the Court approves the proposed Settlement, the claims asserted in the Action against Defendants will be dismissed with prejudice and members of the Class (defined in ¶ 31 below) will settle and release the applicable Released Class Claims, as discussed in ¶¶ 41-43 below).

2. **Statement of the Class's Recovery:** Subject to Court approval, Plaintiffs, on behalf of themselves and the Class, have agreed to settle the Action in exchange for a cash payment of $74,000,000, plus a contingent Supplemental Payment of up to $2,000,000 more (as discussed in ¶ 33 below) (collectively, the "Settlement Amount"). The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (i) any Taxes, (ii) any and all Notice and Administration Costs, (iii) any attorneys' fees awarded by the Court; (iv) any Litigation Expenses awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation (the "Plan of Allocation") is set forth on pages 11 to 16 below.

3. **Estimate of Average Amount of Recovery Per Common or Preferred Share:** Based on Plaintiffs' damages expert's estimates of the number of shares of SunEdison common and preferred stock purchased during the respective Class Periods that may have been affected by the

[1] The "SunEdison Defendants" are Ahmad Chatila, Brian Wuebbels, Antonio Alvarez, Clayton Daley, Randy Zwirn, James Williams, Georganne Proctor, Steven Tesoriere, Peter Blackmore, and Emmanuel Hernandez.

[2] The "Underwriter Defendants" are Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), Merrill Lynch, Pierce, Fenner & Smith Inc., Deutsche Bank Securities Inc., Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC, Macquarie Capital (USA), Inc., and MCS Capital Markets LLC. The SunEdison Defendants and Underwriter Defendants are collectively referred to as "Defendants."

[3] The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement dated July 11, 2019 (the "Stipulation"). The Stipulation can be viewed at www.SunEdisonSecuritiesLitigation.com. Any capitalized terms used in this notice that are not otherwise defined shall have the meanings given to them in the Stipulation.

conduct alleged in the Action, and assuming that all eligible Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described below) would be $0.02 per eligible share of SunEdison common stock and $149.63 per eligible share of SunEdison preferred stock. Class Members should note, however, that the foregoing average recoveries per share are only estimates. Some Class Members may recover more or less than these estimated amounts depending on, among other factors, when and at what price they purchased their shares, whether they sold their shares, and, if so, when and at what price; and the total number and value of valid claims submitted for each of the securities. Distributions to Class Members will be made based on the Plan of Allocation set forth in this notice (*see* pages 11 to 16 below) or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Common or Preferred Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Plaintiffs were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception, have not received any payment of attorneys' fees for their representation of the Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 22% of the Settlement Fund. In addition, Lead Counsel will also apply for payment of Litigation Expenses in an amount not to exceed $2 million, which may include an application for the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Class. Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel's fee and expense application, the estimated average cost would be $0.004 per eligible share of SunEdison common stock and $36.96 per eligible share of SunEdison preferred stock.

6. **Identification of Attorneys' Representatives and Further Information:** Plaintiffs and the Class are represented by Salvatore J. Graziano, Katherine M. Sinderson, and Adam Hollander of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-380-8496, settlements@blbglaw.com. Further information regarding the Action, the Settlement, and this notice may be obtained by contacting Lead Counsel or the Court-appointed Claims Administrator by mail at *In re SunEdison, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2007, Chanhassen, MN 55317-2007, by email at info@SunEdisonSecuritiesLitigation.com, or by toll free phone at 1-866-887-2962.

7. **Reasons for the Settlement:** Plaintiffs' principal reason for entering into the Settlement is the substantial immediate cash benefit for the Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – against Defendants might be achieved after further contested motions, a trial of the Action, and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement to eliminate the uncertainty, burden, and expense of further litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN NOVEMBER 27, 2019.	This is the only way to be eligible to receive a payment from the Settlement. If you are a Class Member, you will be bound by the Settlement as approved by the Court and will give up your right to sue about the claims that are resolved by the Settlement, so it is in your interest to submit a Claim Form.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS *RECEIVED* NO LATER THAN OCTOBER 4, 2019.	If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the request for attorneys' fees and Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Class Member.
GO TO A HEARING ON OCTOBER 25, 2019 AT 2:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *RECEIVED* NO LATER THAN OCTOBER 4, 2019.	Filing a written objection and notice of intention to appear by October 4, 2019 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the proposed Plan of Allocation, and/or the request for attorneys' fees and Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you do not submit a valid Claim Form you will not be eligible to receive any payment from the Settlement.

The rights and options set forth above -- and the deadlines to exercise them -- are explained in this notice.

WHAT THIS NOTICE CONTAINS

WHY DID I GET THIS NOTICE?

8. The Court directed that this notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired SunEdison common stock between September 2, 2015 and April 4, 2016 and/or purchased or otherwise acquired SunEdison preferred stock from August 18, 2015 through November 9, 2015, inclusive. The Court has directed us to send you this notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit and the Settlement will affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Plaintiffs and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. This notice is directed to you in the belief that you may be a member of the Class. If you do not meet the Class definition, or if you previously excluded yourself from the Class as a whole in connection with the Notice of Pendency of Class Action that was mailed to potential Class Members beginning in April 2019 (the "Class Notice") and are listed on both Appendix 1 and 2 to the Stipulation (available at www.SunEdisonSecuritiesLitigation.com), this notice does not apply to you.

10. The purpose of this notice is to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and payment of Litigation Expenses (the "Settlement Hearing"). *See* ¶ 57 below for details about the Settlement Hearing, including the date and location of the hearing.

11. The issuance of this notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

12. SunEdison was once one of the world's largest renewable energy developers. The Action involves allegations that Defendants made misrepresentations and material omissions about SunEdison's financial condition, including in the offering documents for SunEdison's August 18, 2015 offering of preferred stock (the "Preferred Offering"). On April 21, 2016, SunEdison filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York.

13. Beginning in November 2015, several related securities class actions brought on behalf of investors in SunEdison securities were filed in California State Superior Court and in the United States District Courts for the Northern District of California and the Eastern District of Missouri. In March 2016, the Eastern District of Missouri entered an order that appointed MERS as Lead Plaintiff in the Action pursuant to the Private Securities Litigation Reform Act of 1995, approved Lead Plaintiff's selection of Lead Counsel, and consolidated all related actions.

14. In October 2016, the United States Judicial Panel on Multidistrict Litigation ordered that the Action and 14 other related actions be transferred to the United States District Court for the Southern District of New York (the "Court"), and assigned to the Honorable P. Kevin Castel for coordinated or consolidated pretrial proceedings.

15. The Parties agreed to engage in private mediation in an attempt to resolve the Action and retained retired United States District Court Judge Layn R. Phillips and his colleague, Gregory P. Lindstrom, of Phillips ADR, to act as mediators in the case. Over a series of four days in February and March 2017, Lead Counsel and Defendants' Counsel, along with counsel in other actions consolidated as part of the multi-district litigation pending before the Court, participated in a mediation session before Judge Phillips. In advance of that session, the Parties exchanged detailed mediation statements, which addressed the issues of liability, damages, and class certification. The session ended without any agreement being reached to resolve the Action.

16. On March 21, 2017, Plaintiffs filed the operative complaint in the Action, the Second Amended Consolidated Securities Class Action Complaint (the "Complaint"). Among other things, the Complaint alleged that SunEdison CEO Ahmad Chatila and former Executive Vice President, Chief Administrative Officer, and CFO Brian Wuebbels (the "Executive Defendants") made misstatements about SunEdison's liquidity and financial condition and made misstatements or material omissions concerning certain loans that SunEdison had entered into, and that the offering documents for the August 2015 Preferred Offering included material misstatements on these topics. The Complaint asserted claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, and under Section 20(a) of the Exchange Act against the Executive Defendants; under Section 11 of the Securities Act of 1933 (the "Securities Act") against the SunEdison Defendants, the Underwriter Defendants, and SunEdison's auditor, KPMG LLP; under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; and under Section 15 of the Securities Act against the SunEdison Defendants.

17. On June 9, 2017, Defendants moved to dismiss the Complaint.

18. On October 6, 2017, Lead Counsel and Defendants' Counsel participated in a second mediation session before Judge Phillips. The session ended without the Parties reaching any agreement to resolve the Action.

19. On March 6, 2018, after full briefing of Defendants' motions to dismiss, the Court issued an Order denying in part and granting in part the motions to dismiss (the "Motion to Dismiss Order").

20. In the Motion to Dismiss Order, the Court held that Plaintiffs had sufficiently pleaded the claim asserted in the Complaint under Section 10(b) of the Exchange Act and Rule 10b-5 relating to a September 2, 2015 interview during which Mr. Chatila allegedly falsely stated that SunEdison would start "generating cash for a living" in "probably early 2016 or late 2015," when he knew or was materially reckless in not knowing that SunEdison's internal forecasts allegedly did not project that SunEdison would have positive cash flow by the first quarter of 2016. The Court also held in the Motion to Dismiss Order that Plaintiffs had not sufficiently pleaded the claims asserted in the Complaint under Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, relating to any of the other challenged statements allegedly made by Mr. Chatila. The Court also dismissed Plaintiffs' Exchange Act claims against Defendant Brian Wuebbels in their entirety and dismissed Plaintiffs' Section 20(a) claim against Mr. Chatila.

21. In the Motion to Dismiss Order, the Court also held that Plaintiffs had sufficiently pleaded the claims asserted in the Complaint against Defendants under the Securities Act relating to Plaintiffs' allegations that, in the offering documents for the Preferred Offering, Defendants: allegedly (i) omitted material facts regarding a second-lien loan that SunEdison had recently taken from Goldman Sachs Bank USA, (ii) omitted material facts regarding a margin call on a margin loan (the "Margin Loan"), and (iii) materially misrepresented the Margin Loan as non-recourse to SunEdison, when it was in fact recourse to SunEdison. In the Motion to Dismiss Order, the Court also held that Plaintiffs had not sufficiently pleaded the claims asserted in the Complaint under the Securities Act relating to Plaintiffs' allegations that, in the offering documents for the Preferred Offering, Defendants allegedly: (i) materially misrepresented that SunEdison's liquidity would be sufficient to support the Company's operations for the ensuing 12 months and (ii) omitted material facts regarding certain internal-control issues. The Court also dismissed the Securities Act claims against KPMG LLP.

22. On June 13, 2018, Plaintiffs filed a motion for class certification. Following briefing on the motion, on January 7, 2019, the Court issued an Opinion and Order that granted the class certification motion with a modified class, certified the Class consisting of the Exchange Act Subclass and Securities Act Subclass (as defined in ¶ 31 below), appointed MERS as the Class Representative for the Exchange Act Subclass and ATRS as the Class Representative for the Securities Act Subclass, and appointed BLB&G as Class Counsel for the certified Class.

23. By Orders dated February 11, 2019 and March 21, 2019, the Court approved the dissemination of notice to potential Class Members to notify them of, among other things: (i) the Action pending against Defendants; (ii) the Court's certification of the Action to proceed as a class action on behalf of the Class; and (iii) their right to request to be excluded from the Class or one of the subclasses, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion.

24. Beginning on April 18, 2019, the Notice of Pendency of Class Action was mailed to potential Class Members, and on April 30, 2019, the Summary Notice of Pendency of Class Action was published in the *Wall Street Journal* and transmitted over the *PR Newswire*.

25. The Class Notice provided Class Members with the opportunity to request exclusion from the Class or one of the subclasses, explained that right, and set forth the deadline and procedures for doing so. The Class Notice stated that it would be within the Court's discretion whether to permit a second opportunity to request exclusion from the Class or one of the subclasses if there was a settlement or judgment in the Action. The Class Notice informed Class Members that if they chose to remain a member of the Class, they would "be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable." In light of the extensive notice program undertaken in connection with class certification and the ample opportunity provided to Class Members to request exclusion from the Class or one of the subclasses at that time, the Court has exercised its discretion to not permit a second opportunity for Class Members to exclude themselves from the Exchange Act Subclass, the Securities Act Subclass, or the entire Class in connection with the Settlement proceedings.

26. The deadline for requesting exclusion from the Class or one of the two subclasses pursuant to the Class Notice was June 17, 2019. A total of 28 persons and entities requested exclusion from the Class or one of the two subclasses, as listed on Appendix 1 and 2 to the Stipulation.[4]

27. Discovery in the Action commenced in March 2018. Defendants and third parties produced more than 300,000 documents, totaling more than 2,260,000 pages, to Plaintiffs. Plaintiffs produced over 12,000 pages of documents to Defendants, and Plaintiffs' market-efficiency expert produced more than 22,000 additional pages of documents to Defendants. Between October 2018 and February 2019, Plaintiffs deposed 19 fact witnesses, including nine former senior executives or high-ranking employees of SunEdison or related companies TerraForm Power and TerraForm Global, four former directors of SunEdison, and six representatives of the Underwriter Defendants. In connection with Plaintiffs' class-certification motion, Defendants deposed one representative from each Plaintiff, as well as Plaintiffs' market-efficiency expert Dr. Steven Feinstein. The Parties also served and responded to interrogatories and requests for admission and exchanged numerous letters, including disputes between the Parties and with nonparties, concerning discovery issues, several of which were submitted to the Court for resolution.

28. A third mediation session before Judge Phillips and Mr. Lindstrom of Phillips ADR was held on June 12, 2018. While the Parties did not reach an agreement to resolve the Action at the mediation session, negotiations continued under the mediators' supervision while discovery proceeded in the litigation. As a result of those negotiations and pursuant to a mediator's proposal, the Parties reached an agreement on June 11, 2019 to settle the Action in return for a total cash payment by or on behalf of Defendants of $74 million, with the possibility of an additional payment of up to $2 million more.

29. On July 11, 2019, the Parties entered into the Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at www.SunEdisonSecuritiesLitigation.com.

30. On July 16, 2019, the Court preliminarily approved the Settlement, authorized this notice to be disseminated to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE CLASS?

31. If you are a member of the Class and you did not previously request exclusion from the Class in connection with the Class Notice, you are subject to the Settlement. The Class certified by Order of the Court on January 7, 2019 consists of:

(i) 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"),[5] and were damaged thereby (the "Exchange Act Subclass"); and

(ii) all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock between August 18, 2015 and November 9, 2015, inclusive (the "Securities Act Class Period"), pursuant or traceable to the registered public Preferred Offering on or about August 18, 2015, and were damaged thereby (the "Securities Act Subclass").

It is possible for you to be a member of either or both subclasses described above. Excluded from the Class by definition are: (i) Defendants; (ii) members of the Immediate Family of any Defendant; (iii) any directors and Officers of Defendants during the Exchange Act Class Period or the Securities Act 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, an Investment Vehicle shall not be deemed an excluded person or entity.[6] Certain persons and entities who requested exclusion from the Class or from one of the subclasses in response to the Class Notice are also excluded from the Class or one of the subclasses pursuant to their request, as set forth in Appendix 1 and 2 to the Stipulation, available at www.SunEdisonSecuritiesLitigation.com.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS 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 Claim Form that is being distributed with this notice and the required supporting documentation as set forth therein *postmarked no later than November 27, 2019*.

WHAT DOES THE SETTLEMENT PROVIDE?

32. **Pursuant to the Settlement, Defendants will pay or cause to be paid $74,000,000 in cash into an escrow account for the benefit of the Class.**

33. In addition, a potential supplemental payment of up to a maximum of $2,000,000 (in addition to the $74,000,000) (the "Supplemental

[4] Pursuant to its Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") dated July 16, 2019, the Court is not permitting Class Members a second opportunity to exclude themselves from the Class in connection with the Settlement.

[5] For purposes of clarification, to be a member of the Exchange Act Subclass you must have purchased or acquired shares of SunEdison common stock from after the close of trading on September 2, 2015 through the close of trading on April 3, 2016. If your only purchases or acquisitions of SunEdison common stock occurred before the close of trading on September 2, 2015 or on April 4, 2016, you are not a member of the Exchange Act Subclass.

[6] "Investment Vehicle" means 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; *provided, however*, that this definition of Investment Vehicle shall not bring into the Class any of the Underwriter Defendants themselves.

Payment") may also be paid for the benefit of the Class on behalf of Defendant Ahmad Chatila from certain of SunEdison's directors and officers insurance policies (the "Side A D&O Insurance Policies"). The Supplemental Payment is contingent on the amount of other costs that may be required to be paid from the funds remaining under SunEdison's Side A D&O Insurance Policies. Specifically, the insurers responsible for the Side A D&O Insurance Policies will be obligated to pay the Supplemental Payment to the Class when certain specified cases have been fully resolved. At that time, $2,000,000 or whatever lesser amount remains available under the Side A D&O Insurance Policies at that time, if any, will be paid into the settlement escrow account for the benefit of the Class. Full details regarding the terms of the Supplemental Payment are set forth in Exhibit C to the Stipulation (available at www.SunEdisonSecuritiesLitigation.com). **While Plaintiffs expect that the Supplemental Payment will result in additional funds to be added to the Settlement Fund, no payment under the Supplemental Payment is guaranteed.**

WHAT ARE PLAINTIFFS' REASONS FOR THE SETTLEMENT?

34. Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, that there are substantial risks they would face in establishing liability and damages at trial.

35. With respect to Plaintiffs' claim against Defendant Ahmad Chatila under Section 10(b) of the Exchange Act, Plaintiffs faced significant risk that, at either the summary-judgment stage or after a trial, Chatila would prevail on the elements of falsity, scienter, and/or loss causation. For example, Plaintiffs argued that Chatila's September 2, 2015 statement that the company would "generat[e] cash for a living" by "early 2016" was false in part because a late-August 2015 presentation by Company management to the Board projected positive total cash flows in the second quarter of 2016 at the earliest. That presentation also included certain financial metrics projected to be positive by the first quarter of 2016. Chatila argued that his September 2, 2015 statement referred to those metrics, and that his statement was therefore not false or made with the intent to deceive necessary to prove liability. If Chatila prevailed on either of those arguments, or in establishing that his September 2, 2015 statement was insulated from liability as a "forward looking" projection accompanied by adequate cautionary language, Plaintiffs would not have been able to obtain any recovery for common stock investors in this Action. Plaintiffs also faced the risk of not proving loss causation—that Chatila's alleged September 2, 2015 misstatement was the cause of investors' losses—and in proving damages, particularly in connection with declines in the price of SunEdison common stock after November 10, 2015, on which date the Company released its third-quarter 2015 results, including a statement by Chatila that the Company would "generate positive cash flow in mid 2016."

36. With respect to Plaintiffs' claims under the Securities Act, Plaintiffs would have faced the substantial risk that the Underwriter Defendants and/or Director Defendants would prevail on summary judgment or at trial in proving their defense that they conducted adequate due diligence and thus cannot be liable or their defense of negative causation for the declines in the value of SunEdison preferred stock. The Underwriter Defendants could have prevailed on arguments that, among other things, they conducted due diligence through their retention of experienced counsel in connection with the August 2015 Preferred Offering, as well as based on previous diligence the Underwriter Defendants conducted for SunEdison in connection with other offerings and at various points leading up to the Preferred Offering. Plaintiffs would have faced the significant risk that Defendants could prevail on "negative causation" arguments by establishing as a matter of law, or proving to a jury, that declines in the price of SunEdison preferred stock on and after November 9, 2015 were due to reasons other than the alleged misstatements and omissions underlying Plaintiffs' Securities Act claims because, by that date, the Company had fully disclosed and corrected the three items underlying the Securities Act claims: (1) that the Company had received a margin call on an outstanding margin loan; (2) that the Company had recently taken a second-lien loan from Goldman Sachs at onerous terms; and (3) that the outstanding margin loan was recourse to the Company. If the Court or a jury agreed and found that Defendants proved negative causation for declines in the value of SunEdison preferred stock on or after November 9, 2015, the amount of recoverable damages would have been eliminated or substantially less.

37. Plaintiffs also faced the substantial risk that even if they were to secure a significant judgment at trial, Defendants would be unable to satisfy such a judgment. Concerning Plaintiffs' Section 10(b) claim, Chatila is the only defendant; he does not have any substantial personal assets to contribute to any settlement or post-trial judgment, including because he held his SunEdison stock until it completely declined in value. Further, SunEdison, as a bankrupt, liquidating entity, is not a Defendant. Accordingly, any judgment or settlement of Plaintiffs' Section 10(b) claim would be satisfied using only insurance funds. Given that this case has been litigated over the course of over three years, however, available insurance money has significantly diminished, as it has been used both to defend against and resolve several governmental investigations and private actions, including class actions on behalf of TerraForm Power and TerraForm Global shareholders, a derivative action on behalf of TerraForm Global shareholders, individual actions by large institutions raising Securities Act claims concerning the August 2015 Preferred Offering, and one or more investigations by the U.S. Department of Justice. The settlement in this case represents the substantial majority of the remaining available insurance funds available to satisfy the claims against Chatila.

38. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Class, Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Plaintiffs and Lead Counsel believe that the Settlement of $74 million with the possibility of up to an additional $2 million payment, provides a substantial benefit to the Class now as compared to the risk that the claims asserted in the Action would produce a smaller, or zero, recovery after trial and appeals, possibly years in the future.

39. Defendants have denied all claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

40. If there were no Settlement and Plaintiffs failed to establish any essential legal or factual element of their claims against Defendants,

neither Plaintiffs nor the other members of the Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses at trial or on appeal, the Class could recover less than the amount provided in the Settlement, or nothing at all.

HOW ARE CLASS MEMBERS AFFECTED BY THE SETTLEMENT?

41. If you are a Class Member, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims in the Action and will provide that, upon the Effective Date of the Settlement, **(a)** MERS and each of the other members of the Exchange Act Subclass, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Exchange Act Claim (as defined in ¶ 42 below) against the Defendants' Releasees (as defined in ¶ 45 below), and will forever be barred and enjoined from prosecuting any or all of the Released Exchange Act Claims against any of the Defendants' Releasees; and **(b)** ATRS and each of the other members of the Securities Act Subclass, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Securities Act Claim (as defined in ¶ 43 below) against the Defendants' Releasees (as defined in ¶ 45 below), and will forever be barred and enjoined from prosecuting any or all of the Released Securities Act Claims against any of the Defendants' Releasees. The Released Exchange Act Claims and Released Securities Act Claims are collectively referred to as the "Released Class Claims."

42. **"Released Exchange Act Claims"** means all claims, demands, losses, rights, and causes of action of every nature and description whatsoever, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that MERS or any other member of the Exchange Act Subclass: (i) asserted in the Complaint or any prior complaint filed in the Action and that relate to the purchase, acquisition, sale, disposition, or holding of SunEdison common stock during the Exchange Act Class Period, or (ii) could have asserted in the Action or any other forum, or could in the future assert in any forum, that arise out of, are based upon or relate in any way to any of the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Complaint or any prior complaint filed in the Action and that relate to the purchase, acquisition, sale, disposition, or holding of SunEdison common stock during the Exchange Act Class Period.[7]

43. **"Released Securities Act Claims"** means all claims, demands, losses, rights, and causes of action of every nature and description whatsoever, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that ATRS or any other member of the Securities Act Subclass (i) asserted in the Complaint or any prior complaint filed in the Action and that relate to the purchase, acquisition, sale, disposition, or holding of SunEdison preferred stock during the Securities Act Class Period, or (ii) could have asserted in the Action or any other forum, or could in the future assert in any forum, that arise out of, are based upon, or relate in any way to any of the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Complaint or any prior complaint filed in the Action and that relate to the purchase, acquisition, sale, disposition, or holding of SunEdison preferred stock during the Securities Act Class Period.[8]

44. **"Unknown Claims"** means any Released Exchange Act Claims which MERS or any other member of the Exchange Act Subclass does not know or suspect to exist in his, her or its favor at the time of the release of such claims, any Released Securities Act Claims which ATRS or any other member of the Securities Act Subclass does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims (as defined in ¶ 47 below) which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A general release does not does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of 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.

Plaintiffs and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

45. **"Defendants' Releasees"** means Defendants and their current and former parent entities, business units, business divisions, equity holders, control persons, affiliates, or subsidiaries and each and all of their current and former officers, directors, attorneys, employees, agents, trustees, parents, affiliates, subsidiaries, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their successors, predecessors, heirs, assigns, Immediate Family members, and assignees.

[7] Released Exchange Act Claims do not cover, include, or release: (i) any claims relating to the enforcement of the Settlement; (ii) any claims asserted in any derivative action or ERISA action, including without limitation, the claims asserted in *Usenko v. SunEdison, Inc.*, No. 16-cv-7950-PKC (S.D.N.Y.), or any cases consolidated into those actions; (iii) any claims by the Department of Justice, the Securities and Exchange Commission, or any other governmental entity arising out of any investigation of SunEdison, Defendants, or any of the Defendants' respective former or current officers, directors, employees, or partners relating to the wrongful conduct alleged in the Action; or (iv) any claims of any persons or entities set forth on Appendix 1 to the Stipulation.

[8] Released Securities Act Claims do not cover, include, or release: (i) any claims relating to the enforcement of the Settlement; (ii) any claims asserted in any derivative action or ERISA action, including without limitation, the claims asserted in *Usenko v. SunEdison, Inc.*, No. 16-cv-7950-PKC (S.D.N.Y.), or any cases consolidated into those actions; (iii) any claims by the Department of Justice, the Securities and Exchange Commission, or any other governmental entity arising out of any investigation of SunEdison, Defendants, or any of the Defendants' respective former or current officers, directors, employees, or partners relating to the wrongful conduct alleged in the Action; or (iv) any claims of any persons or entities set forth on Appendix 2 to the Stipulation.

46. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 47 below) against Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 48 below), and will forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

47. **"Released Defendants' Claims"** means all claims, demands, losses, rights, and causes of action of every nature and description whatsoever, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of, are based upon, or relate in any way to Plaintiffs' institution, prosecution, or settlement of the claims asserted against Defendants in the Action.[9]

48. **"Plaintiffs' Releasees"** means Plaintiffs, all other plaintiffs in the Action, and all other Class Members, and their respective current and former parent entities, business units, business divisions, affiliates or subsidiaries and each and all of their current and former officers, directors, attorneys, employees, agents, trustees, parents, affiliates, subsidiaries, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors, Immediate Family members, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their successors, predecessors, assigns, and assignees (all solely in their capacities as such).

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

49. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than November 27, 2019**. A Claim Form is included with this notice, or you may obtain one from the website maintained by the Claims Administrator for the Action, wwwSunEdisonSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-887-2962 or by emailing the Claims Administrator at info@SunEdisonSecuritiesLitigation.com. Please retain all records of your ownership of and transactions in SunEdison preferred or common stock, as they may be needed to document your Claim. If you previously requested exclusion from the Class in connection with Class Notice or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

50. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before November 27, 2019 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Class Member releases the applicable Released Class Claims (as defined in ¶¶ 41-43 above) against the Defendants' Releasees (as defined in ¶ 45 above) and will be barred and enjoined from filing, prosecuting, or pursuing any of the applicable Released Class Claims against any of the Defendants' Releasees whether or not such Class Member submits a Claim Form.

HOW MUCH WILL MY PAYMENT BE?

51. At this time, it is not possible to make any determination as to how much any individual Class Member may receive from the Settlement.

52. The proceeds of the Settlement will be distributed in accordance with a plan of allocation that is approved by the Court. The amounts to be distributed to individual Class Members will depend on a variety of factors, including: the number of shares of SunEdison common and preferred stock the claimant purchased during the respective Class Periods, the prices and dates of those purchases, the prices and dates of any sales, and the total value of the claims submitted by Class Members with respect to each of the SunEdison Securities.

53. The proposed Plan of Allocation, which is subject to Court approval, appears on pages 11 to 16 of this notice. Please review the Plan of Allocation carefully.

WHAT PAYMENT ARE COUNSEL FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?

54. As a Class Member, you are represented by Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the counsel listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 9 below.

55. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Class, nor have Plaintiffs' Counsel been paid for their litigation expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 22% of the Settlement Fund. Lead Counsel has fee or work sharing agreements with the other Plaintiffs' Counsel firms, Cole Schotz P.C. and Scott + Scott Attorneys at Law LLP, respectively, and Lead Counsel will compensate these firms from the attorneys' fees that Lead Counsel receives in this Action in amounts commensurate with those firms' efforts in this litigation that were undertaken at the specific direction of Lead Counsel. At the same time, Lead Counsel also intends to apply for payment of Litigation Expenses from the Settlement Fund in an amount not to exceed $2 million, which may include an application for the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Class. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Class Members are not personally liable for any such fees or expenses.

[9] Released Defendants' Claims do not cover, include, or release: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims by Defendants against any person or entity listed on Appendix 1 or 2 of the Stipulation.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

56. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.** Please Note: The date and time of the Settlement Hearing may change without further written notice to the Class. You should monitor the Court's docket or the website maintained by the Claims Administrator, www.SunEdisonSecuritiesLitigation.com, before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Lead Counsel.

57. The Settlement Hearing will be held on **October 25, 2019** at **2:00 p.m.**, before the Honorable P. Kevin Castel, in the United States District Court for the Southern District of New York, in Courtroom 11D of the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for attorneys' fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

58. Any Class Member may object to the Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of New York at the address set forth below on or before October 4, 2019. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are ***received*** **on or before October 4, 2019**.

Clerk's Office

United States District Court Southern District of New York
Office of the Clerk of the Court
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Lead Counsel

Bernstein Litowitz Berger & Grossmann LLP
Salvatore J. Graziano
1251 Avenue of the Americas, 44th Floor
New York, NY 10020

Defendants' Counsel

Sidley Austin LLP
Sara B. Brody
555 California Street, Suite 2000
San Francisco, CA 94104

Wilmer Cutler Pickering Hale and Dorr LLP
Timothy Perla
60 State Street
Boston, MA 02109

Shearman & Sterling LLP
Adam S. Hakki
599 Lexington Avenue
New York, NY 10022

59. Any objection (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must state whether the objector is represented by counsel and, if so, the name, address, and telephone number of the objector's counsel; (c) must state with specificity the grounds for the Class Member's objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (d) must include documents sufficient to prove membership in the Class.

60. Documents sufficient to prove membership in the Class consist of **(a)** documents showing the number of shares of SunEdison common stock that the objector (i) owned as of the close of trading on September 2, 2015, and (ii) purchased/acquired and/or sold during the period from the close of trading on September 2, 2015 through the close of trading on April 3, 2016, as well as the number of shares, dates, and prices for each such purchase/acquisition and sale; and **(b)** documents showing the number of shares of SunEdison preferred stock that the objector purchased/acquired and/or sold during the period from April 18, 2015 through the close of trading on November 9, 2015, as well as the number of shares, dates, and prices for each such purchase/acquisition and sale. Documentation establishing membership in the Class must consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement.

61. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses if you are not a member of the Class.

62. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

63. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 58 above so that it is ***received*** **on or before October 4, 2019**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

64. You are not required to hire counsel to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire counsel, it will be at your own expense, and your counsel must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 58 above so that the notice is ***received*** **on or before October 4, 2019**.

65. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

66. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

WHAT IF I BOUGHT SUNEDISON SECURITIES ON SOMEONE ELSE'S BEHALF?

67. **If you previously provided the names and addresses of persons and entities on whose behalf you purchased/acquired SunEdison common stock during the period between September 2, 2015 and April 4, 2016 and/or on whose behalf you purchased/acquired SunEdison preferred stock during the period from August 18, 2015 through November 9, 2015, inclusive, in connection with the Class Notice that was mailed beginning in April 2019, and (i) those names and addresses remain current and (ii) you have no additional names and addresses for potential Class Members to provide to the Claims Administrator, *you need do nothing further at this time***. The Claims Administrator will mail a copy of this Settlement Notice and the Claim Form (together, the "Settlement Notice Packet") to the beneficial owners whose names and addresses were previously provided in connection with the Class Notice.

68. **If you elected to mail the Class Notice directly to beneficial owners of SunEdison preferred and common stock**, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Settlement Notice Packets to you to send to the beneficial owners. The Court has ordered that, WITHIN FOURTEEN (14) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, you must forward the Settlement Notice Packets to the beneficial owners. If you need more copies of the Settlement Notice Packet than you previously requested in connection with the Class Notice mailing, please contact Analytics Consulting at 1-866-887-2962 and let them know how many additional packets you require. You must mail the Settlement Notice Packets to the beneficial owners within fourteen (14) calendar days of your receipt of the packets.

69. **If you have additional or updated name and address information or have not already provided information regarding persons and entities on whose behalf you purchased or acquired SunEdison common or preferred stock during the relevant periods discussed above, then the Court has ordered that you must**, WITHIN FOURTEEN (14) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, either: (i) send a list of the additional or updated names and addresses of such beneficial owners to the Claims Administrator at *In re SunEdison, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2007, Chanhassen, MN 55317-2007, in which event the Claims Administrator shall promptly mail the Settlement Notice Packet to such beneficial owners; or (ii) request a sufficient number of copies of the Settlement Notice Packet from Analytics, and forward the Settlement Notice Packets to the beneficial owners within fourteen (14) calendar days of your receipt of the packets. **As stated above, if you have already provided this information in connection with the Class Notice, unless that information has changed (*e.g.*, beneficial owner has changed address), it is unnecessary to provide such information again.**

70. Upon full and timely compliance with these directions, nominees who mail the Settlement Notice Packet to beneficial owners may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

71. Copies of the Settlement Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, www.SunEdisonSecuritiesLitigation.com, by calling the Claims Administrator toll-free at 1-866-887-2962, or by emailing the Claims Administrator at info@SunEdisonSecuritiesLitigation.com.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

72. This notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you may access copies of the Stipulation, the Complaint, and any related orders entered by the Court on the website maintained by the Claims Administrator, www.SunEdisonSecuritiesLitigation.com. Alternatively, you may access the papers on file in the Action during regular office hours at the Office of the Clerk, United States District Court of the Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007.

All inquiries concerning this notice and the Claim Form should be directed to:

In re SunEdison, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2007
Chanhassen, MN 55317-2007

1-866-887-2962
info@SunEdisonSecuritiesLitigation.com

and/or

Bernstein Litowitz Berger & Grossmann LLP
Salvatore J. Graziano
Katherine M. Sinderson
Adam Hollander
1251 Avenue of the Americas
New York, NY 10020

1-800-380-8496
settlements@blbglaw.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: July 30, 2019

By Order of the Court
United States District Court
Southern District of New York

PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

73. If approved by the Court, the plan of allocation set forth below (the "Plan of Allocation") will determine how the net proceeds of the Settlement will be distributed to members of the Class who submit timely and valid Claims ("Authorized Claimants").

I. GENERAL PROVISIONS

74. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid seventy-four million dollars ($74,000,000) in cash, plus a potential Supplemental Payment, depending on certain contingencies, of up to an additional two million dollars ($2,000,000) (collectively, the "Settlement Amount"). The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Class Members and administering the Settlement on behalf of Class Members; (c) any attorneys' fees and Litigation Expenses awarded by the Court; and (d) any other costs or fees approved by the Court) will be distributed to Class Members who submit valid Claim Forms, in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve.

75. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to Class Members who allegedly suffered economic losses as a result of the alleged wrongdoing in the Action. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

76. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

77. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation or such other plan of allocation as may be approved by the Court.

78. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

79. The Plan of Allocation is intended to compensate Class Members who purchased or acquired SunEdison common stock during the Exchange Act Class Period and were damaged thereby and Class Members who purchased or acquired SunEdison preferred stock during the Securities Act Class Period and were damaged thereby. Collectively, SunEdison common stock and SunEdison preferred stock are referred to as the "SunEdison Securities". No other securities other than SunEdison common stock and SunEdison preferred stock are eligible for compensation under the Settlement.

80. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked no later than November 27, 2019 shall be forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a member of the Class and the applicable subclasses of which he, she, or it is a member and be subject to the applicable provisions of the Stipulation, including the terms of any Judgment entered and releases given.

81. Each Claim must provide all of the information requested therein and provide sufficient supporting documentation as stated therein.

82. Participants in and beneficiaries of a plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in SunEdison Securities held through an ERISA Plan in any Claim that they may submit in this Action. They should include ONLY those securities that they purchased, acquired, or sold outside of an ERISA Plan. Claims based on any ERISA Plan's purchases, acquisitions, or sales of SunEdison Securities during either the Securities Act Class Period and/or Exchange Act Class Period may be made by the plan's trustees.

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

84. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim.

85. Only Class Members or persons authorized to submit a Claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Class by definition or that previously excluded themselves from the Class as a whole pursuant to request in connection with the Class Notice will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

II. ALLOCATION OF THE SETTLEMENT AMOUNT INTO THE EXCHANGE ACT CLAIM FUND AND SECURITIES ACT CLAIM FUND

86. The Net Settlement Fund is divided into two separate funds for purposes of making allocations to Authorized Claimants:

a) The **Exchange Act Claim Fund** will compensate members of the Exchange Act Subclass – persons and entities who or which purchased or otherwise acquired shares of **SunEdison common stock** from after the close of trading on September 2, 2015 through the close of trading on April 3, 2016 (the "Exchange Act Class Period"), and were damaged thereby. Plaintiffs allege that members of the Exchange Act Subclass purchased or acquired SunEdison common stock at prices that were artificially inflated as a result of a materially false statement made by SunEdison's former CEO after the close of trading on September 2, 2015 and were allegedly damaged when the alleged misstatement was revealed and the price of SunEdison common stock declined.

b) The **Securities Act Claim Fund** will compensate members of the Securities Act Subclass – persons and entities who or which purchased or otherwise acquired shares of **SunEdison preferred stock** from August 18, 2015 through November 9, 2015, inclusive (the "Securities Act Class Period"), and were damaged thereby. Plaintiffs allege that the offering documents for SunEdison's offering of preferred stock on August 18, 2015 contained material omissions and misrepresentations and that members of the Securities Act Subclass who purchased SunEdison preferred stock pursuant to or traceable to the offering through and including November 9, 2015 and who sold or held their shares for a loss were allegedly damaged.

87. The Net Settlement Fund will be allocated between the Exchange Act Claim Fund and Securities Act Claim Fund based on the identity of the Defendants contributing to the Settlement, the amounts of their respective contributions to the Settlement, and the types of claims asserted against each group of Defendants. The entire portion of the Settlement Amount that was paid by or on behalf of the Underwriter Defendants (less proportional fees and expenses) will be allocated to the Securities Act Claim Fund. The portion of the Current Settlement Amount that was paid by or on behalf of the SunEdison Defendants will be divided between the two Claim Funds in proportion to Plaintiffs' damages expert's estimate of the size of total damages for the Exchange Act Subclass and the Securities Act Subclass. Any amounts paid as part of the Supplemental Payment will be included in the Exchange Act Claim Fund. Based on these calculations:

a) The **Exchange Act Claim Fund** will be allocated $19.5 million, as well as any amounts paid as part of the potential Supplemental Payment of up to $2 million, *less* a proportional amount of the total Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement.

b) The **Securities Act Claim Fund** will be allocated $54.5 million, less a proportional amount of the total Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement.

c) All Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Settlement will be deducted proportionally based on the relative size of the two Claim Funds.

88. As detailed below, the Exchange Act Claim Fund will be allocated on a *pro rata* basis according to each Authorized Claimant's Exchange Act Recognized Claim (which will be calculated based on his, her, or its purchases of SunEdison common stock during the Exchange Act Class Period), and the Securities Act Claim Fund will be allocated on a *pro rata* basis according to each Authorized Claimant's Securities Act Recognized Claim (which will be calculated based on his, her, or its purchases of SunEdison preferred stock during the Securities Act Class Period).

89. Any Class Member who is excluded from the Exchange Act Subclass shall not be eligible for any payment from the Exchange Act Claim Fund. Any Class Member who is excluded from the Securities Act Subclass shall not be eligible for any payment from the Securities Act Claim Fund. Any person or entity who is excluded from the Class as a whole or who is not a member of the Class by definition shall not be eligible for any payment from the Net Settlement Fund.

III. CALCULATION OF RECOGNIZED LOSS AMOUNTS

EXCHANGE ACT CALCULATIONS – FOR COMMON STOCK

90. Section 10(b) of the Exchange Act serves as the basis for the calculation of claims based on the purchase or acquisition of SunEdison common stock during the Exchange Act Class Period under the Plan of Allocation. In developing the Plan of Allocation, Plaintiffs' damages expert calculated the estimated amount of artificial inflation in the closing prices of SunEdison common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiffs' damages expert considered price changes in SunEdison common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes that were attributable to market or industry forces. The estimated artificial inflation per share of SunEdison common stock during the Exchange Act Class Period is stated in Table A at the end of this Notice.

91. For losses to be compensable damages under Section 10(b) of the Exchange Act, the disclosure of the allegedly misrepresented information must be, among other things, the cause of the decline in the price or value of the security. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Exchange Act Class Period which had the effect of artificially inflating the prices of SunEdison common stock. Lead Plaintiff further alleges that corrective information was released to the market on several dates which partially removed the artificial inflation from the price of SunEdison common stock on: November 10, 2015, January 7, 2016, February 12, 2016, March 1, 2016, March 22, 2016, March 29, 2016, and April 4, 2016.

92. Exchange Act Recognized Loss Amounts for transactions in SunEdison common stock are calculated under the Plan of Allocation based primarily on the difference in the amount of alleged artificial inflation in the prices of SunEdison common stock at the time of purchase or acquisition and at the time of sale, or the difference between the actual purchase/acquisition price and sale price. Accordingly, in order to have an Exchange Act Recognized Loss Amount under the Plan of Allocation, a member of the Exchange Act Subclass who or which purchased or otherwise acquired SunEdison common stock prior to the first alleged corrective disclosure, which occurred after the close of trading on November 9, 2015, must have held the SunEdison common stock through at least that time. A member of the Exchange Act Subclass who or which purchased or otherwise acquired SunEdison common stock after November 9, 2015 must have held the SunEdison common stock through at least a later alleged corrective disclosure.

SunEdison Common Stock

93. Based on the formula stated below, an "Exchange Act Recognized Loss Amount" will be calculated for each purchase or acquisition of SunEdison common stock from after the close of trading on September 2, 2015 through the close of trading on April 3, 2016 (the "Exchange Act Class Period") that is listed on the Claim Form and for which adequate documentation is provided. If an Exchange Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

94. For each share of SunEdison common stock purchased or otherwise acquired from after the close of trading on September 2, 2015 through the close of trading on April 3, 2016, and:

a) Sold before November 10, 2015, the Exchange Act Recognized Loss Amount will be $0.00 per share.

b) Sold from November 10, 2015 through and including April 3, 2016, the Exchange Act Recognized Loss Amount will be ***the lesser of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A (at the end of this notice) *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.

c) Sold from April 4, 2016 through and including the close of trading on July 1, 2016, the Exchange Act Recognized Loss Amount will be ***the least of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A (at the end of this notice); (ii) the purchase/acquisition price *minus* the average closing price between April 4, 2016 and the date of sale as stated in Table B (at the end of this notice); or (iii) the purchase/acquisition price *minus* the sale price.

d) Held as of the close of trading on July 1, 2016, the Exchange Act Recognized Loss Amount will be ***the lesser of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A (at the end of this notice); or (ii) the purchase/acquisition price minus $0.21 per share.[10]

SECURITIES ACT CALCULATIONS – FOR PREFERRED STOCK

95. Securities Act claims were asserted with respect to shares of SunEdison preferred stock purchased or otherwise acquired pursuant or traceable to the Preferred Offering on August 18, 2015 and that were purchased or acquired prior to November 10, 2015. Because the Preferred Offering was an initial offering of the security, all shares of SunEdison preferred stock purchased from the initial offering date of the security on August 18, 2015 through November 9, 2015 are traceable to the Preferred Offering and potentially eligible for recovery under the Securities Act.

96. The claims asserted in the Action under Section 11 of the Securities Act serve as the basis for the calculation of the Securities Act Recognized Loss Amounts under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Plaintiffs' damages expert, generally track the statutory formula. For purposes of the statutory calculations, July 22, 2016, the date of filing of the initial complaint in the Action, is considered to be the "date of suit" and the value of SunEdison preferred stock on July 22, 2016 is considered to have been zero.

SunEdison Preferred Stock

97. Based on the formulas stated below, a "Securities Act Recognized Loss Amount" will be calculated for each purchase/acquisition of SunEdison preferred stock from its initial offering on August 18, 2015 through the close of trading on November 9, 2015 (the "Securities Act Class Period"). If a Securities Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

98. For each share of SunEdison preferred stock purchased or otherwise acquired from its initial offering on August 18, 2015 through the close of trading on November 9, 2015, and

a) Sold before the close of trading on July 22, 2016, the Securities Act Recognized Loss Amount will be the purchase/acquisition price (not to exceed $1,000, the issue price of the Preferred Offering) *minus* the sale price.

b) Held as of the close of trading on July 22, 2016, the Securities Act Recognized Loss Amount will be the purchase/acquisition price (not to exceed $1,000, the issue price of the Preferred Offering).

[10] Pursuant to Section 21(D)(e)(1) of the Exchange Act, "in any private action arising under this title in 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 look-back 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 Exchange Act, Exchange Act Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of SunEdison common stock during the 90-day look-back period from April 4, 2016 through and including July 1, 2016. The mean (average) closing price for SunEdison common stock during this 90-day look-back period was $0.21 per share.

ADDITIONAL PROVISIONS

99. **Calculation of Claimant's "Exchange Act Recognized Claim":** A Claimant's "Exchange Act Recognized Claim" will be the sum of his, her, or its Exchange Act Recognized Loss Amounts as calculated above with respect to all purchases or acquisitions of SunEdison common stock during the Exchange Act Class Period.

100. **Calculation of Claimant's "Securities Act Recognized Claim":** A Claimant's "Securities Act Recognized Claim" will be the sum of his, her, or its Securities Act Recognized Loss Amounts as calculated above with respect to all purchases or acquisitions of SunEdison preferred stock during the Securities Act Class Period.

101. **FIFO Matching:** If a Class Member made more than one purchase/acquisition or sale of SunEdison common stock and/or preferred stock during the Exchange Act Class Period or Securities Act Class Period, respectively, all purchases/acquisitions and sales of the like security will be matched on a First In, First Out ("FIFO") basis. Sales will be matched first against any holdings at the beginning of the relevant Class Period (if applicable), and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the security's respective Class Period.

102. **Purchase/Sale Prices:** For the purposes of calculations in this Plan of Allocation, "purchase/acquisition price" means the actual price paid, excluding all fees, taxes, and commissions, and "sale price" means the actual amount received, not deducting any fees, taxes, and commissions.

103. **Purchase/Sale Dates:** Purchases or acquisitions and sales of SunEdison common stock and/or preferred stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of SunEdison common stock and/or preferred stock during their respective Class Periods shall not be deemed a purchase, acquisition, or sale of these securities for the calculation of a Claimant's Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of such securities unless (i) the donor or decedent purchased or otherwise acquired or sold SunEdison common stock and/or preferred stock during the relevant Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those shares of SunEdison common stock and/or SunEdison preferred stock.

104. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the SunEdison common stock or preferred stock. The date of a "short sale" is deemed to be the date of sale of the SunEdison common stock or preferred stock. In accordance with the Plan of Allocation, however, the Exchange Act Recognized Loss Amount or Securities Act Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

105. **Securities Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to any shares of SunEdison common stock or preferred stock purchased or sold through the exercise of an option, the purchase/sale date of the stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

106. **Exchange Act Market Gains and Losses:** The Claims Administrator will determine if the Claimant had an "Exchange Act Market Gain" or an "Exchange Act Market Loss" with respect to his, her, or its overall transactions during the Exchange Act Class Period with respect to all shares of SunEdison common stock purchased or acquired during the Exchange Act Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant's Total Common Stock Purchase Amount[11] and (ii) the sum of the Claimant's Total Common Stock Sales Proceeds[12] and the Claimant's Common Stock Holding Value.[13] If the Claimant's Total Common Stock Purchase Amount minus the sum of the Claimant's Total Common Stock Sales Proceeds and the Common Stock Holding Value is a positive number, that number will be the Claimant's "Exchange Act Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Exchange Act Market Gain".

107. If a Claimant had an Exchange Act Market Gain with respect to his, her, or its overall transactions in SunEdison common stock during the Exchange Act Class Period, the value of the Claimant's Exchange Act Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Exchange Act Market Loss with respect to his, her, or its overall transactions in SunEdison common stock during the Exchange Act Class Period but that Exchange Act Market Loss was less than the Claimant's Exchange Act Recognized Claim, then the Claimant's Exchange Act Recognized Claim will be limited to the amount of the Exchange Act Market Loss.

108. **Securities Act Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Securities Act Market Gain" or a "Securities Act Market Loss" with respect to his, her, or its overall transactions in SunEdison preferred stock during the Securities Act Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between the Claimant's Total Preferred Stock Purchase Amount[14] and (ii) the sum of the Claimant's Total Preferred Stock Sales Proceeds.[15] If the Claimant's Total Preferred

[11] The "Total Common Stock Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for all SunEdison common stock purchased/acquired during the Exchange Act Class Period.

[12] The Claims Administrator shall match any sales of SunEdison common stock during the Exchange Act Class Period first against the Claimant's opening position in the SunEdison common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (not deducting any fees, taxes, and commissions) for sales of the remaining SunEdison common stock, sold during the Exchange Act Class Period is the "Total Common Stock Sales Proceeds."

[13] The Claims Administrator shall ascribe a "Common Stock Holding Value" of $0.21 to each share of SunEdison common stock purchased/acquired during the Exchange Act Class Period that was still held as of the close of trading on April 3, 2016.

[14] The "Total Preferred Stock Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for SunEdison preferred stock purchased/acquired during the Securities Act Class Period.

[15] The total amount received (not deducting any fees, taxes, and commissions) for sales of SunEdison preferred stock sold during the Securities Act Class Period is the "Total Preferred Stock Sales Proceeds."

Stock Purchase Amount *minus* the Claimant's Total Preferred Stock Sales Proceeds is a positive number, that number will be the Claimant's "Securities Act Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Securities Act Market Gain".

109. If a Claimant had a Securities Act Market Gain with respect to his, her, or its overall transactions in SunEdison preferred stock during the Securities Act Class Period, the value of the Claimant's Securities Act Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Securities Act Market Loss with respect to his, her, or its overall transactions in SunEdison preferred stock during the Securities Act Class Period but that Securities Act Market Loss was less than the Claimant's Securities Act Recognized Claim, then the Claimant's Securities Act Recognized Claim will be limited to the amount of the Securities Act Market Loss.

110. **Allocation of the Exchange Act Claim Fund:** Each member of the Exchange Act Subclass who submits a Claim that is approved by the Court for payment from the Exchange Act Claim Fund will be an "Exchange Act Authorized Claimant". Each Exchange Act Authorized Claimant will receive a *pro rata* share of the Exchange Act Claim Fund, which will be his, her, or its Exchange Act Recognized Claim divided by the sum total of the Exchange Act Recognized Claims of all Exchange Act Authorized Claimants, multiplied by the total amount in the Exchange Act Claim Fund.

111. **Allocation of the Securities Act Claim Fund:** Each member of the Securities Act Subclass who submits a Claim that is approved by the Court for payment from the Securities Act Claim Fund will be an "Securities Act Authorized Claimant". Each Securities Act Authorized Claimant will receive a *pro rata* share of the Securities Act Claim Fund, which will be his, her, or its Securities Act Recognized Claim divided by the sum total of the Securities Act Recognized Claims of all Securities Act Authorized Claimants, multiplied by the total amount in the Securities Act Claim Fund.

112. **Distribution Amount:** The Distribution Amount paid to an Authorized Claimant will be the sum of (i) his, her, or its *pro rata* share, if any, of the Exchange Act Claim Fund; and (ii) his, her, or its *pro rata* share, if any, of the Securities Act Claim Fund. If an Authorized Claimant's Distribution Amount calculates to less than $10.00, no distribution will be made to that Authorized Claimant.

113. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund (including either of the respective Claim Funds) after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than seven (7) months after the initial distribution, will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least $10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least $10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost effective, the remaining balance will be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

114. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, Plaintiffs' damages expert, Defendants, Defendants' Counsel, or any of the other Plaintiffs' Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Plaintiffs, Defendants, Defendants' Counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, Net Settlement Fund, or respective Claim Funds; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

115. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Plaintiffs after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, www.SunEdisonSecuritiesLitigation.com.

Table A

Estimated Artificial Inflation in SunEdison Common Stock

Date Range	Artificial Inflation Per Share
September 2, 2015 (after the close of trading) through November 9, 2015	$5.65
November 10, 2015 through January 6, 2016	$4.19
January 7, 2016 through February 11, 2016	$2.42
February 12, 2016 through February 29, 2016	$1.78
March 1, 2016 through March 21, 2016	$1.33
March 22, 2016 through March 28, 2016	$0.91
March 29, 2016 through April 3, 2016	$0.21
April 4, 2016 and later	$0.00

Table B

SunEdison Common Stock Closing Price and Average Closing Price

April 4, 2016 through July 1, 2016

Date	Closing Price	Average Closing Price
4/4/2016	$0.21	$0.21
4/5/2016	$0.26	$0.24
4/6/2016	$0.37	$0.28
4/7/2016	$0.40	$0.31
4/8/2016	$0.36	$0.32
4/11/2016	$0.39	$0.33
4/12/2016	$0.40	$0.34
4/13/2016	$0.37	$0.35
4/14/2016	$0.59	$0.37
4/15/2016	$0.37	$0.37
4/18/2016	$0.34	$0.37
4/19/2016	$0.32	$0.37
4/20/2016	$0.34	$0.36
4/21/2016	$0.34	$0.36
4/22/2016	$0.22	$0.35
4/25/2016	$0.22	$0.34
4/26/2016	$0.24	$0.34
4/27/2016	$0.25	$0.33
4/28/2016	$0.24	$0.33
4/29/2016	$0.24	$0.32
5/2/2016	$0.24	$0.32
5/3/2016	$0.24	$0.32
5/4/2016	$0.23	$0.31
5/5/2016	$0.20	$0.31
5/6/2016	$0.19	$0.30
5/9/2016	$0.21	$0.30
5/10/2016	$0.19	$0.29
5/11/2016	$0.19	$0.29
5/12/2016	$0.17	$0.29
5/13/2016	$0.17	$0.28
5/16/2016	$0.15	$0.28
5/17/2016	$0.13	$0.27
5/18/2016	$0.13	$0.27
5/19/2016	$0.13	$0.27
5/20/2016	$0.16	$0.26
5/23/2016	$0.16	$0.26
5/24/2016	$0.15	$0.26
5/25/2016	$0.15	$0.25
5/26/2016	$0.15	$0.25
5/27/2016	$0.16	$0.25
5/31/2016	$0.16	$0.25
6/1/2016	$0.14	$0.24
6/2/2016	$0.15	$0.24
6/3/2016	$0.15	$0.24
6/6/2016	$0.16	$0.24
6/7/2016	$0.17	$0.24
6/8/2016	$0.16	$0.24
6/9/2016	$0.16	$0.23
6/10/2016	$0.17	$0.23
6/13/2016	$0.17	$0.23
6/14/2016	$0.16	$0.23
6/15/2016	$0.16	$0.23
6/16/2016	$0.15	$0.23
6/17/2016	$0.15	$0.23
6/20/2016	$0.14	$0.22
6/21/2016	$0.14	$0.22
6/22/2016	$0.14	$0.22
6/23/2016	$0.14	$0.22
6/24/2016	$0.13	$0.22
6/27/2016	$0.13	$0.22
6/28/2016	$0.13	$0.22
6/29/2016	$0.13	$0.21
6/30/2016	$0.14	$0.21
7/1/2016	$0.15	$0.21

In re SunEdison, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2007
Chanhassen, MN 55317-2007

Toll-Free Number: 1-866-887-2962
Email: info@SunEdisonSecuritiesLitigation.com
Website: www.SunEdisonSecuritiesLitigation.com

PROOF OF CLAIM AND RELEASE FORM

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form ("Claim Form") and mail it by first-class mail to the above address, ***postmarked*** **no later than November 27, 2019**.

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

Do not mail or deliver your Claim Form to the Court, the parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.

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PART I – CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's Name

First Name

Last Name

Joint Beneficial Owner's Name (*if applicable*)

First Name

Last Name

If this claim is submitted for an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA, please include "IRA" in the "Last Name" box above (*e.g.*, Jones IRA).

Entity Name (*if the Beneficial Owner is not an individual*)

Name of Representative, if applicable (*executor, administrator, trustee, c/o, etc.*), if different from Beneficial Owner

Last 4 digits of Social Security Number or Taxpayer Identification Number

Street Address

City

State/Province

Zip Code

Foreign Postal Code (*if applicable*)

Foreign Country (*if applicable*)

Telephone Number (Day)

Telephone Number (Evening)

Email Address (*email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim*):

Type of Beneficial Owner:

Specify one of the following:

☐ Individual(s) ☐ Corporation ☐ UGMA Custodian ☐ IRA ☐ Partnership ☐ Estate ☐ Trust

☐ Other (*describe:*_____)

PART II – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Settlement Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Settlement Notice. The Settlement Notice describes the proposed Settlement, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Settlement Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Settlement Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Settlement Notice. If you are not a Class Member (see the definition of the Class on page 5 of the Settlement Notice, which sets forth who is included in and who is excluded from the Class), or if you submitted a request for exclusion from the Class as a whole, do not submit a Claim Form. If you are excluded from the Class by definition or you submitted a request for exclusion from the Class as a whole, any claim form that you submit, or that may be submitted on your behalf, will not be accepted and you will not be eligible for any payment from the Settlement. If you are not a member of the Exchange Act Subclass or you requested exclusion from the Exchange Act Subclass, you are not eligible for any payment from the Exchange Act Claim Fund (as defined in the Settlement Notice). If you are not a member of the Securities Act Subclass or you requested exclusion from the Securities Act Subclass, you are not eligible for any payment from the Securities Act Claim Fund (as defined in the Settlement Notice).

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Settlement Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

4. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) in and holdings of SunEdison common stock and SunEdison preferred stock (collectively, the "SunEdison Securities"). On this schedule, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of the SunEdison Securities (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. **Please note**: Only SunEdison common stock purchased during the Exchange Act Class Period (*i.e.*, from after the close of trading on September 2, 2015 through the close of trading on April 3, 2016) is eligible under the Settlement. However, sales of SunEdison common stock during the period from April 4, 2016 through July 1, 2016, inclusive, will be used for purposes of calculating your claim under the Plan of Allocation. Similarly, only SunEdison preferred stock purchased during the Securities Act Class Period (*i.e.*, from August 18, 2015 through November 9, 2015) is eligible under the Settlement, but sales of SunEdison preferred stock during the period from November 10, 2015 through July 22, 2016 will be used for purposes of calculating your claim. In order for the Claims Administrator to be able to balance your claim, the requested purchase/acquisition information during the additional periods must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of SunEdison Securities set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in SunEdison Securities. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

7. Use Part I of this Claim Form entitled "CLAIMANT INFORMATION" to identify the beneficial owner(s) of SunEdison Securities. The complete name(s) of the beneficial owner(s) must be entered. If you held the eligible SunEdison Securities in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of eligible SunEdison Securities were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of these shares, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners each must sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form.

8. **One Claim should be submitted for each separate legal entity.** Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

9. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

   (a) expressly state the capacity in which they are acting;

   (b) identify the name, account number, Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the SunEdison Securities; and

   (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

10. By submitting a signed Claim Form, you will be swearing that you:

    (a) own(ed) the SunEdison Securities you have listed in the Claim Form; or

    (b) are expressly authorized to act on behalf of the owner thereof.

11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

12. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

13. **PLEASE NOTE**: As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Settlement Notice, you may contact the Claims Administrator, Analytics Consulting, at the above address, by email at info@SunEdisonSecuritiesLitigation.com, or by toll-free phone at 1-866-887-2962, or you can visit the website, www.SunEdisonSecuritiesLitigation.com, where copies of the Claim Form and Settlement Notice are available for downloading.

15. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the ***mandatory*** electronic filing requirements and file layout, you may visit the settlement website at www.SunEdisonSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at info@SunEdisonSecuritiesLitigation.com. **Any file not in accordance with the required electronic filing format will be subject to rejection.** Only one claim should be submitted for each separate legal entity (*see* ¶ 8 above) and the ***complete*** name of the beneficial owner of the securities must be entered where called for (*see* ¶ 7 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at info@SunEdisonSecuritiesLitigation.com to inquire about your file and confirm it was received.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-887-2962.

PART III – SCHEDULE OF TRANSACTIONS IN SUNEDISON SECURITIES

A. **SUNEDISON COMMON STOCK (CUSIP: 86732Y109)** Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

1. **HOLDINGS AS OF THE CLOSE OF TRADING ON SEPTEMBER 2, 2015** – State the total number of shares of SunEdison common stock held as of the ***close of trading*** on September 2, 2015. (Must be documented.) If none, write "zero" or "0." ☐☐☐☐☐☐☐

Confirm Proof of Position Enclosed ☐

2. **PURCHASES/ACQUISITIONS FROM AFTER THE CLOSE OF TRADING ON SEPTEMBER 2, 2015 THROUGH THE CLOSE OF TRADING ON APRIL 3, 2016** – Separately list each and every purchase or acquisition (including free receipts) of SunEdison common stock from after the close of trading on September 2, 2015[1] through the close of trading on April 3, 2016. (*Must be documented.*)

Date of Purchase/Acquisition (*List Chronologically*) MM / DD / YY	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (*excluding any commissions, taxes and fees*)	Confirm Proof of Purchase Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

3. **PURCHASES/ACQUISITIONS FROM APRIL 4, 2016 THROUGH JULY 1, 2016** – State the total number of shares of SunEdison common stock purchased or acquired (including free receipts) from April 4, 2016 through the close of trading on July 1, 2016. If none, write "zero" or "0."[2] ☐☐☐☐☐☐☐

4. **SALES FROM AFTER THE CLOSE OF TRADING ON SEPTEMBER 2, 2015 THROUGH JULY 1, 2016** – Separately list each and every sale or disposition (including free deliveries) of SunEdison common stock from after the close of trading on September 2, 2015 through the close of trading on July 1, 2016. (*Must be documented.*) **IF NONE, CHECK HERE** ☐

Date of Sale (*List Chronologically*) MM / DD / YY	Number of Shares Sold	Sale Price Per Share	Total Sale Price (*not deducting any commissions, taxes or fees*)	Confirm Proof of Sale Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

5. **HOLDINGS AS OF JULY 1, 2016** – State the total number of shares of SunEdison common stock held as of the close of trading on July 1, 2016. (*Must be documented.*) If none, write "zero" or "0." ☐☐☐☐☐☐☐

Confirm Proof of Position Enclosed ☐

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX. ☐

[1] For purchases or acquisitions made on September 2, 2015 after the close of trading, the supporting documentation, such as a broker's transaction confirmation, submitted with the Claim Form must indicate the specific time that the purchase or acquisition occurred. For all other purchases or acquisitions, the supporting documentation need only indicate the date of the purchase or acquisition.

[2] **Please note:** Information requested with respect to your purchases and acquisitions of SunEdison common stock from April 4, 2016 through and including July 1, 2016 is needed in order to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

PART III – SCHEDULE OF TRANSACTIONS IN SUNEDISON SECURITIES

B. **SUNEDISON PREFERRED STOCK (CUSIP: 86732Y208)** Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

1. **PURCHASES/ACQUISITIONS AT ANY TIME THROUGH NOVEMBER 9, 2015** – Separately list each and every purchase or acquisition (including free receipts) of SunEdison preferred stock at any time from the date of its initial offering on August 18, 2015 (including in that offering) or thereafter through the close of trading on November 9, 2015. (*Must be documented.*)

Date of Purchase/Acquisition (*List Chronologically*) M M / D D / Y Y	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (*excluding any commissions, taxes and fees*)	Confirm Proof of Purchase Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

2. **PURCHASES/ACQUISITIONS FROM NOVEMBER 10, 2015 THROUGH JULY 22, 2016** – State the total number of shares of SunEdison preferred stock purchased or acquired (including free receipts) from November 10, 2015 through the close of trading on July 22, 2016. If none, write "zero" or "0."[3] ☐☐☐☐☐☐☐

3. **SALES AT ANY TIME THROUGH JULY 22, 2016** – Separately list each and every sale or disposition (including free deliveries) of SunEdison preferred stock at any time prior to the close of trading on July 22, 2016. (*Must be documented.*)
IF NONE, CHECK HERE ☐

Date of Sale (*List Chronologically*) M M / D D / Y Y	Number of Shares Sold	Sale Price Per Share	Total Sale Price (*not deducting any commissions, taxes or fees*)	Confirm Proof of Sale Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

4. **HOLDINGS AS OF JULY 22, 2016** – State the total number of shares of SunEdison preferred stock held as of the close of trading on July 22, 2016. (*Must be documented.*) If none, write "zero" or "0." ☐☐☐☐☐☐☐

Confirm Proof of Position Enclosed ☐

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/ TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX. ☐

[3] **Please note:** Information requested with respect to your purchases and acquisitions of SunEdison preferred stock from November 10, 2015 through and including July 22, 2016 is needed in order to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

PART IV - RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 8 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)') heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment:

(1) shall, if a member of the Exchange Act Subclass, have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Exchange Act Claim (including, without limitation, any Unknown Claims) against the Defendants' Releasees and shall forever be barred and enjoined from prosecuting any or all of the Released Exchange Act Claims against any or all of the Defendants' Releasees; and

(2) shall, if a member of the Securities Act Subclass, have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Securities Act Claim (including, without limitation, any Unknown Claims) against the Defendants' Releasees and shall forever be barred and enjoined from prosecuting any or all of the Released Securities Act Claims against any or all of the Defendants' Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Settlement Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Class Member(s), as defined in the Settlement Notice, and is (are) not excluded by definition from the Class as set forth in the Settlement Notice;
3. that the claimant(s) did ***not*** submit a request for exclusion from the Class as a whole;
4. that I (we) own(ed) the SunEdison Securities identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of SunEdison Securities and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this Claim, and waives any right of appeal or review with respect to such determination;
9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

_____ **Date Signed** ☐☐ – ☐☐ – ☐☐☐☐
Signature of Claimant *M M D D Y Y Y Y*

_____
Print Claimant Name Here

_____ **Date Signed** ☐☐ – ☐☐ – ☐☐☐☐
Signature of Joint Claimant, if any *M M D D Y Y Y Y*

_____
Print Joint Claimant Name Here

If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:

_____ **Date Signed** ☐☐ – ☐☐ – ☐☐☐☐
Signature of Person Signing on Behalf of Claimant *M M D D Y Y Y Y*

_____
Print Name of Person Signing on Behalf of Claimant Here

_____
Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (*Must provide evidence of authority to act on behalf of claimant – see ¶ 9 on page 4 of this Claim Form.*)

REMINDER CHECKLIST

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only ***copies*** of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-866-887-2962.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at info@SunEdisonSecuritiesLitigation.com, or by toll-free phone at 1-866-887-2962, or you may visit www.SunEdisonSecuritiesLitigation.com. DO NOT call Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, ***POSTMARKED*** **NO LATER THAN NOVEMBER 27, 2019**, ADDRESSED AS FOLLOWS: *In re SunEdison, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2007, Chanhassen, MN 55317-2007, 1-866-887-2962, www.SunEdisonSecuritiesLitigation.com.

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before November 27, 2019 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

Exhibit B

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
CITY OF MONMOUTH JUNCTION, in the COUNTY OF MIDDLESEX)

I, Andrew Introne, being duly sworn, depose and say that I am the Advertising Clerk of the Publisher of THE WALL STREET JOURNAL, a daily national newspaper of general circulation throughout the United States, and that the notice attached to this Affidavit has been regularly published in THE WALL STREET JOURNAL for National distribution for

1 insertion(s) on the following date(s):

AUG-13-2019;

ADVERTISER: SUNEDISON, INC. SECURITIES LITIGATION;

and that the foregoing statements are true and correct to the best of my knowledge.

Sworn to before me this
13 day of August 2019

Notary Public

IAN C MARTIN
NOTARY PUBLIC
ID # 50086494
COMMISSION EXPIRES 7/18/2023
STATE OF NEW JERSEY

Retailers Look to Go Cashierless

Chains try out latest technology allowing shoppers to simply walk out the door

By John Murawski

SAM'S CLUB

Sam's Club chose a store in Dallas to test a system that uses artificial intelligence to help manage the billing of customers.

U.S. retailers large and small are pressing ahead with testing the use of artificial intelligence to track what products shoppers pick up and to automatically bill their accounts when they walk out the door, eliminating the need for checkout lines.

The concept got a push from Amazon Go stores, which Amazon.com Inc. launched in early 2018; there are now 15 stores, with two opening last week, in New York and San Francisco. Amazon Go relies on hundreds of cameras and sensors in each store to identify products that customers take off the shelves. Shoppers typically scan a code to enter the stores.

Recent AI adopters include Sam's Club Inc., the warehouse retailer owned by **Walmart** Inc., and **Giant Eagle** Inc., a regional chain of grocery and convenience stores. Giant Eagle said last month it would test a technology similar to Amazon Go's at a convenience store in Pittsburgh, where it is based. Several companies that sell cashierless technology—including **Standard Cognition** Inc. and **Vcognition Technologies** Inc., which does business as Zippin—said they are working with U.S. clients but declined to give details.

Sam's Club plans to offer AI-powered cashierless shopping later this month at a 32,000-square-foot store in Dallas, a quarter of the size of its average store.

Currently, customers shop at the store by scanning barcodes on the products, an older cashierless-checkout technology. Once the AI system is in place, customers will use their smartphone cameras to scan the product itself. The cloud-based system, which uses computer vision and machine learning, recognizes products by matching them to a database of stored images. This is different from Amazon Go, where cameras installed in the stores do the work of scanning the products.

Customers at the Sam's Club store can't pay using cash at the register, as they can in certain Amazon Go stores.

A global survey of about 400 retailers conducted in June by research and advisory firm International Data Corp. found that 28% are testing or piloting cashierless systems, said Leslie Hand, vice president of IDC's Retail Insights division. Ms. Hand said she knows of nearly 100 companies world-wide that are trying out the systems, adding she can't discuss the details because of nondisclosure agreements.

"It's awoken that fire for retailers to understand that really this is the future of retail and they need to invest in it," Ms. Hand said.

Cashierless technology is being tested by U.K.-based Tesco PLC and France-based Carrefour SA. Tesco has said its method costs a tenth of systems used by its competitors, partly because it uses only cameras, not sensors.

Not every type of store is suited for cashierless technology. Walmart tried out a cashierless system based on scanning barcodes for about six months in more than 100 stores but discontinued it in April 2018. The technology proved impractical for pricing produce and other items that had to be taken to a cashier to be weighed, causing delays, a spokesman said.

Theft is also a concern. Manual scanning operates on an honor system and some customers don't scan every item, often requiring stores to validate purchases, said Richard Crone, chief executive of Crone Consulting LLC, an advisory firm focused on retail, convenience and restaurant businesses. In the Sam's Club trial, an employee checks customer purchases as shoppers exit, though the clerk samples just one product per customer to see if it's listed on the electronic receipt.

Still, the potential benefits include speed and convenience, and even small companies are testing the waters.

Software Flaws Get Payouts for Hackers

By James Rundle

The market for pointing out flaws in software is becoming more lucrative, with companies willing to shell out huge sums to researchers who find zero-day vulnerabilities, or those that are totally unknown to developers.

Microsoft Corp. plans to expand the bounty program for its Azure cloud service and has built a secure server for researchers to probe its platform for weaknesses. Hackers can earn up to $40,000 for severe flaws. **Apple** Inc. plans to let top-notch hackers access its devices to stress-test defenses. The company is dangling up to $1 million for those who achieve objectives such as breaking into the iOS operating system's core without asking a device's owner to tap on an app or provide other help.

Companies often mistrusted the researchers who brought bugs to their attention, dealing with them at arm's length, if at all. That relationship is beginning to change due to pervasive attacks that exploit software problems, combined with a tighter regulatory focus on cybersecurity at companies that store sensitive data.

For their part, the researchers who look for bugs also have had to change. Now, they calculate taxes in their invoices, draw up contracts and obtain import-export licenses.

"Five years ago, if you wanted to sell a vulnerability, it was in a dark alley and you didn't talk about it with anyone," said Maor Schwartz, a cybersecurity consultant who previously brokered transactions between hacker-researchers and software firms. "These days, more companies and researchers openly say they're dealing with zero-days," he said during a talk at the Black Hat USA conference last week in Las Vegas.

HackerOne Inc., which manages bug-bounty programs, said it has registered more than 300,000 hackers and that companies have paid out $42 million in bounties through its platform since November 2013.

Still, few hacker-researchers focus on the complex work of attacking professional-grade software for mega payouts. Around 75% of researchers go after quick wins relating to website vulnerabilities, which garner far smaller rewards, such as a few thousand dollars, according to HackerOne.

Major companies, such as Apple and Microsoft, promote contests, but many others hesitate to engage. Concerns related to reputation are a factor. Adam Ruddermann, director of bug-bounty services at security firm NCC Group PLC, said at a separate panel at Black Hat that the services of security researchers should be seen as "opportunities, not risks."

Bain, Carlyle Face Rival Bidder For German Lighting Company

By Will Louch

Austrian chip maker **AMS** AG submitted a €3.7 billion ($4.1 billion) offer for German lighting specialist **Osram Licht** AG, triggering a potential bidding war with U.S. buyout firms **Bain Capital** and **Carlyle Group**.

AMS said late Sunday it had submitted a fully financed €38.50 ($43.13) a share offer for the company, a 10% premium to the €35-a-share offer Osram's board accepted from the private-equity consortium in July.

Shares in Osram rose 10.4% Monday to €34.95.

The news presents yet another obstacle to Bain and Carlyle's attempted takeover of Osram, a former **Siemens** AG unit.

Since a €3.4 billion offer was accepted by Osram's supervisory board early last month, some shareholders have moved to oppose the deal.

Allianz Global Investors, Osram's largest shareholder, said last week it would likely reject the €3.4 billion private-equity offer on the grounds it was too low, saying it amounted to a "knock down price."

SdK Group, which represents smaller shareholders in the German lighting business, said Friday it also would reject the bid because it undervalued the company.

Osram, which is listed on the Frankfurt and Munich stock exchanges, had about 26,200 employees as of Sept. 30, 2018, and generated more than €3.8 billion in revenue in the most recent fiscal year. Its products are used in smartphones, virtual-reality devices and connected lighting systems.

If the bid by Bain and Carlyle collapses, it would be the latest high-profile private-equity bid for a public company to fall through in Europe this year, underscoring the difficulty of completing these types of deals.

Buyout firms target acquisitions of public companies in a bet that they can improve performance through measures such as cost-cutting and acquisitions of other businesses.

In May, a consortium that included buyout firms **Hellman & Friedman** and **Blackstone Group** Inc. failed to reach the 50% threshold of investor support needed to take private German online classified ad business **Scout24** AG.

The proposed deal valued the company at €5.7 billion, including debt.

A proposed acquisition of U.K. defense company **Cobham** PLC by private-equity firm Advent International for £4 billion ($4.85 billion) also has run into opposition from Cobham's largest shareholder, **Silchester International Investors**, which said the 165 pence all-cash offer wasn't compelling and urged the board to look for other buyers.

EU Probes Of Facebook Near End

Continued from page B1

Commission is the focus of intense attention because it is the lead privacy regulator in the EU for some of the world's biggest technology companies, including **Alphabet** Inc.'s Google, **Apple** Inc., **Twitter** Inc. and **Microsoft** Corp.'s LinkedIn, because they, too, have a regional headquarters in the country.

How Ireland will decide its cases against big Silicon Valley companies also has been a focus of attention in part because some smaller ad-tech firms and advertising buyers said the GDPR has, at least initially, led marketers to shift digital-ad spending to Google and Facebook.

Unlike the U.S. FTC settlement, the Irish investigations into Facebook don't focus on the company's relationship with the now-defunct political-campaign group Cambridge Analytica. That relationship predates the GDPR, which went into effect in May 2018, and has already led the U.K.'s privacy regulator, the Information Commissioner's Office, to fine Facebook under older EU rules.

SASCHA STEINBACH/EPA/SHUTTERSTOCK

Under new EU rules, privacy regulators can order changes in behavior. A pop-up store in Germany.

Under the new EU rules, privacy regulators have more expansive powers than the FTC to order changes in behavior. But the fines could be less than the FTC's settlement. Under the GDPR, fines can run up to 4% of a company's prior-year world-wide revenue, which for Facebook works out to $2.23 billion.

Theoretically Facebook could be fined in each of the cases involving it, but there is still little precedent on how regulators will assess their fines, or what courts will say on appeal.

In January, France's privacy regulator fined Google €50 million ($56 million) for "lack of valid consent regarding ads personalization"—a ruling Google is appealing.

The spokesman for Ireland's regulator didn't say which of the cases involving Facebook are nearing the decision phase, except for one looking at whether Facebook's chat app WhatsApp gives sufficient information to users and nonusers about how it shares data with other Facebook units.

Other cases Ireland has said it is investigating go to the heart of Facebook's business model, though it isn't clear how close those cases are to resolution.

—Emily Glazer and Valentina Pop contributed to this article.

Exhibit C

From: nyhubs@prnewswire.com [mailto:nyhubs@prnewswire.com]
Sent: Tuesday, August 13, 2019 10:00 AM
Subject: PR Newswire: Press Release Distribution Confirmation for Bernstein Litowitz Berger & Grossmann LLP. ID#2546139-1-1

Hello

Your press release was successfully distributed at: 13-Aug-2019 11:00:00 AM ET

Release headline: Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlement of In re SunEdison, Inc. Securities Litigation
Word Count: 882
Product Selections:
US1
Visibility Reports Email
Complimentary Press Release Optimization
PR Newswire ID: 2546139-1-1

View your release:* http://www.prnewswire.com/news-releases/bernstein-litowitz-berger--grossmann-llp-announces-proposed-settlement-of-in-re-sunedison-inc-securities-litigation-300898358.html?tc=eml_cleartime

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Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlement of In re SunEdison, Inc. Securities Litigation

NEWS PROVIDED BY
Bernstein Litowitz Berger & Grossmann LLP →
Aug 13, 2019, 11:00 ET

NEW YORK, Aug. 13, 2019 /PRNewswire/ --

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

SUMMARY NOTICE OF (I) PROPOSED SETTLEMENT AND PLAN OF ALLOCATION; (II) SETTLEMENT HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

To: all persons and entities who purchased or acquired the common stock of SunEdison, Inc. (NYSE ticker SUNE, CUSIP: 86732Y109), from after the close of trading on September 2, 2015 through and including April 3, 2016, and were damaged thereby, and/or

all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock (CUSIP: 86732Y208) from August 18, 2015 through and including November 9, 2015, and were damaged thereby (collectively, the "Class").[1]

PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, that Lead Plaintiff Municipal Employees' Retirement System of Michigan and Named Plaintiff Arkansas Teacher Retirement System ("Plaintiffs"), on behalf of themselves and the Court-certified Class in the above-captioned securities class action (the "Action"), have reached a proposed settlement with all defendants in the Action, including certain of SunEdison's officers and directors and the underwriters of SunEdison's August 2015 public offering of preferred stock. The proposed Settlement provides for payment of $74,000,000 in cash for the benefit of the Class as well as a potential, contingent Supplemental Payment of up to $2,000,000 more. If approved, the Settlement will resolve all claims in the Action.

A hearing will be held on October 25, 2019 at 2:00 p.m. before the Honorable P. Kevin Castel, in the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007, Courtroom 11D, to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the releases specified and described in the Stipulation and Agreement of Settlement dated July 11, 2019 should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an

award of attorneys' fees and litigation expenses should be approved.

If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the full printed Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Settlement Notice") and the Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *In re SunEdison, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2007, Chanhassen, MN 55317-2007, (866) 887-2962. Copies of the Settlement Notice and Claim Form can also be downloaded from the website for the Action, www.SunEdisonSecuritiesLitigation.com.

If you are a Class Member, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form ***postmarked*** **no later than November 27, 2019**. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are ***received*** **no later than October 4, 2019**, in accordance with the instructions set forth in the Settlement Notice.

Please do not contact the Court, the Clerk's office, SunEdison, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Requests for the Settlement Notice and Claim Form should be made to:

In re SunEdison, Inc. Securities Litigation,
c/o Analytics Consulting
P.O. Box 2007
Chanhassen, MN 55317-2007

(866) 887-2962
info@SunEdisonSecuritiesLitigation.com

Inquiries, other than requests for the Settlement Notice and Claim Form, may be made to Lead Counsel:

Bernstein Litowitz Berger & Grossmann LLP
Salvatore J. Graziano
1251 Avenue of the Americas
New York, NY 10020

(800) 380-8496
settlements@blbglaw.com

By Order of the Court

[1] Certain persons and entities are excluded from the Class by definition and others are excluded from the Class or one of the subclasses pursuant to their previous requests for exclusion. The full definition of the Class and the full list of Defendants are set forth in the Settlement Notice referred to below.

SOURCE Bernstein Litowitz Berger & Grossmann LLP

Exhibit 5

EXHIBIT 5

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

SUMMARY OF PLAINTIFFS' COUNSEL'S LODESTAR AND EXPENSES

TAB	FIRM	HOURS	LODESTAR	EXPENSES
A	Bernstein Litowitz Berger & Grossmann LLP	36,881.50	$17,193,462.50	$1,507,379.13
B	Cole Schotz P.C.	1,059.30	$719,931.50	$9,129.87
C	Scott+Scott Attorneys at Law LLP	246.30	$169,238.00	$8,846.53
	TOTAL:	**38,187.10**	**$18,082,632.00**	**$1,525,355.53**

Exhibit 5A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF SALVATORE J. GRAZIANO IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

I, Salvatore J. Graziano, hereby declare under penalty of perjury as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), Court-appointed Lead Counsel in the above-captioned action (the "Action").[1] I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered by Plaintiffs' Counsel in the Action, as well as for payment of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify thereto.

2. My firm, as Lead Counsel of record in the Action, was involved in all aspects of the litigation of the Action and its settlement as described in the Declaration of Salvatore J. Graziano in Support of: (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses.

3. The information in this declaration regarding my firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I, together with attorneys working

[1] All capitalized terms that are not otherwise defined have the meanings set forth in the Stipulation and Agreement of Settlement, dated July 11, 2019 (the "Stipulation").

under my direction, reviewed my firm's daily time records to confirm their accuracy and reasonableness. Time expended in preparing the application for fees and expenses has not been included in this report, and time for timekeepers who had worked only a *de minimis* amount of total time on this case (*e.g.*, less than 10 hours) was also removed from the time report.

4. I believe that the time reflected in my firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of this litigation. The total number of hours expended on this Action by the firm's attorneys and professional support staff employees through August 15, 2019 was 36,881.50. The total resulting lodestar is $17,193,462.50. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in this Action, and the lodestar calculation based on their current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly rates of such personnel in his or her final year of employment by my firm.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the same as, or comparable to, rates submitted by BLB&G and accepted by courts for lodestar cross-checks in other class action litigation fee applications in this District and nationwide. *See, e.g., In re HeartWare Int'l, Inc. Sec. Litig.*, Master File No. 1:16-cv-00520 (S.D.N.Y. April 12, 2019), ECF No. 85; *Lomingkit, et al. v. Apollo Educ. Group, Inc., et al.*, Case No. 2:16-cv-00689-PHX-JAT (D. Ariz. June 26, 2019), ECF No. 123; *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig. – Securities Actions*, MDL No. 2672 CRB (JSC) (N.D. Cal. May 10, 2019), ECF No. 6285.

6. My firm's lodestar figures are based upon the firm's hourly rates, which do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.

7. BLB&G has incurred a total of $1,507,379.13 in unreimbursed expenses in connection with the prosecution of this Action, which are detailed in Exhibit 2.

8. The expenses reflected in Exhibit 2 are the expenses incurred by my firm, which are further limited by "caps" based on the application of the following criteria:

a. Out-of-town travel – airfare is capped at coach rates, hotel rates are capped at $250 for lower-cost cities and $350 for higher-cost cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

b. Out-of-Office Working Meals – capped at $25 per person for lunch and $50 per person for dinner.

c. In-Office Working Meals – capped at $20 per person for lunch and $30 per person for dinner.

d. Internal Copying – capped at $0.10 per page.

e. On-Line Research – Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred in this Action are reflected in the records of my firm, which are regularly prepared and maintained in the ordinary course of business. These records are

prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on September 20, 2019.

/s Salvatore J. Graziano
Salvatore J. Graziano

#1323909

EXHIBIT 1

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

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
TIME REPORT

From Inception Through August 15, 2019

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Max Berger	346.50	$1,300	$450,450.00
Michael Blatchley	293.25	$800	$234,600.00
Salvatore Graziano	1,416.00	$1,050	$1,486,800.00
Avi Josefson	22.00	$900	$19,800.00
Lauren Ormsbee	14.00	$800	$11,200.00
Gerald Silk	97.00	$1,050	$101,850.00
Katherine Sinderson	2,048.50	$800	$1,638,800.00
Senior Counsel			
Adam Hollander	2,004.00	$775	$1,553,100.00
Associates			
Dave Duncan	133.25	$700	$93,275.00
Catherine Van Kampen	25.25	$700	$17,675.00
John Mills	121.00	$700	$84,700.00
Jake Nachmani	1,366.50	$500	$683,250.00
Brenna Nelinson	1,273.00	$475	$604,675.00
Ross Shikowitz	66.00	$600	$39,600.00
Staff Attorneys			
Kevin Baum	2,301.75	$350	$805,612.50
Andrew Boruch	1,143.75	$350	$400,312.50
Girolamo Brunetto	55.25	$350	$19,337.50
Chris Clarkin	1,230.00	$375	$461,250.00
Monique Claxton	363.00	$375	$136,125.00
Alex Dickin	39.50	$350	$13,825.00
Steffanie Keim	624.25	$350	$218,487.50
Jed Koslow	1,347.75	$375	$505,406.25
Laura Lefkowitz	1,611.50	$395	$636,542.50
Danielle Leon	12.75	$340	$4,335.00
Matt Mulligan	1,596.25	$375	$598,593.75
Comfort Orji	1,896.75	$375	$711,281.25

NAME	HOURS	HOURLY RATE	LODESTAR
Stephen Roehler	1,005.25	$395	$397,073.75
Joel Shelton	2,802.25	$395	$1,106,888.75
Andrew Tolan	2,342.50	$395	$925,287.50
Kesav Wable	2,187.00	$350	$765,450.00
Saundra Yaklin	1,631.00	$395	$644,245.00
Paralegals			
Ricia Augusty	608.50	$335	$203,847.50
Jesse Axman	25.50	$255	$6,502.50
Matthew Gluck	98.50	$275	$27,087.50
Ellen Jordan	19.00	$245	$4,655.00
Matthew Mahady	120.50	$335	$40,367.50
Matthew Molloy	451.00	$300	$135,300.00
Ruben Montilla	33.50	$255	$8,542.50
Norbert Sygdziak	1,303.25	$335	$436,588.75
Gary Weston	400.25	$375	$150,093.75
Investigators			
Chris Altiery	87.00	$255	$22,185.00
Amy Bitkower	322.25	$550	$177,237.50
Lisa Burr	295.00	$300	$88,500.00
Jacob Foster	11.00	$300	$3,300.00
Jenna Goldin	847.75	$300	$254,325.00
Victoria Kapastin	100.75	$290	$29,217.50
Joelle Landino	30.25	$350	$10,587.50
Director of Investor Services			
Adam Weinschel	99.25	$500	$49,625.00
Financial Analysts			
Matthew McGlade	70.75	$350	$24,762.50
Michelle Miklus	66.00	$325	$21,450.00
Sharon Safran	35.75	$335	$11,976.25
Tanjila Sultana	46.00	$350	$16,100.00
Litigation Support			
Babatunde Pedro	46.50	$295	$13,717.50
Roberto Santamarina	15.25	$375	$5,718.75
Andrea R. Webster	38.50	$330	$12,705.00
Jessica M. Wilson	18.75	$295	$5,531.25
Managing Clerk			
Mahiri Buffong	10.00	$335	$3,350.00

NAME	HOURS	HOURLY RATE	LODESTAR
Errol Hall	116.00	$310	$35,960.00
Case Analyst			
Sam Jones	11.00	$350	$3,850.00
Intern			
Sara Winkler	137.00	$150	$20,550.00
TOTAL:	**36,881.50**		**$17,193,462.50**

EXHIBIT 2

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

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
EXPENSE REPORT

CATEGORY	AMOUNT
Paid Expenses:	
Court Fees	$815.00
Service of Process	$4,511.75
On-Line Legal Research	$160,197.86
On-Line Factual Research	$37,079.74
Telephone	$167.80
Postage & Express Mail	$9,460.72
Hand Delivery	$1,930.90
Local Transportation	$13,398.63
Internal Copying/Printing	$52,305.90
Outside Copying	$54,049.16
Out of Town Travel*	$28,071.97
Working Meals	$22,083.36
Court Reporting & Transcripts	$4,086.29
Specialty Publications	$1,316.10
Document Storage & Retrieval	$116.61
Experts	$402,772.56
Mediation	$140,175.60
Total Paid:	**$932,539.95**
Outstanding Expenses:	
Expert	$321,385.00
Discovery/Document Management	$201,809.68
Court Reporting & Transcripts	$48,307.00
Mediation	$3,337.50
Total Outstanding:	**$574,839.18**
TOTAL EXPENSES:	**$1,507,379.13**

* This includes only coach airfare and includes hotels in the following higher-cost cities capped at $350 per night: Chicago, Madrid, New York, Palo Alto, San Francisco, and Washington, DC; and the following lower-cost cities capped at $250 per night: Detroit, Lansing, and Tampa.

EXHIBIT 3

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

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
FIRM BIOGRAPHY

BLB&G

Trusted Advocacy. Proven Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

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BLB&G Bernstein Litowitz Berger & Grossmann LLP

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Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over $33 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including three of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

FIRM OVERVIEW

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), a national law firm with offices located in New York, California, Louisiana and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Ontario Teachers' Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden ("AP1"); Fjarde AP-fonden ("AP4"); the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over $33 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained many of the largest securities recoveries in history (including 6 of the top 13):

- *In re WorldCom, Inc. Securities Litigation* – $6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – $3.3 billion recovery
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – $2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation* ("Nortel II") – $1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – $1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – $1.05 billion recovery*

*Source: ISS Securities Class Action Services

For over a decade, ISS Securities Class Action Services has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on ISS SCAS's "Top 100 Settlements of All Time" report, having recovered nearly 40% of all the settlement dollars represented in the report (over $25 billion), and having prosecuted over a third of all the cases on the list (35 of 100).

Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, as well as M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedents which have increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

Advocacy for Victims of Corporate Wrongdoing

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco's African-American employees in *Roberts v. Texaco Inc*., which resulted in a recovery of $176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco's human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class's losses – an extraordinary result in consumer class cases.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class and derivative litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, workplace harassment, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This

litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

General Commercial Litigation and Alternative Dispute Resolution

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

Distressed Debt and Bankruptcy Creditor Negotiation

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to completion of successful settlements.

Consumer Advocacy

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

THE COURTS SPEAK

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

IN RE WORLDCOM, INC. SECURITIES LITIGATION

THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

"I have the utmost confidence in plaintiffs' counsel…they have been doing a superb job…. The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy…. The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative. . . . Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

IN RE CLARENT CORPORATION SECURITIES LITIGATION

THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

"It was the best tried case I've witnessed in my years on the bench . . ."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]. . . . We've all been treated to great civility and the highest professional ethics in the presentation of the case…."

"These trial lawyers are some of the best I've ever seen."

LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY

"I do want to make a comment again about the excellent efforts . . . put into this case. . . . This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system . . . you hold up this case as an example of what to do."

MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)

THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

SECURITIES CLASS ACTIONS

CASE: ***IN RE WORLDCOM, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $6.19 billion securities fraud class action recovery – the second largest in history; unprecedented recoveries from Director Defendants.

CASE SUMMARY: Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the **New York State Common Retirement Fund**, we obtained unprecedented settlements totaling more than $6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a $2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly $3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over $60 million to settle the claims against them. An unprecedented first for outside directors, $24.75 million of that amount came out of the pockets of the individuals – 20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as literally having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for $65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over $6.19 billion.

CASE: ***IN RE CENDANT CORPORATION SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

CASE SUMMARY: The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for $2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for $335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs **CalPERS –** the **California Public Employees' Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

CASE: ***IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

DESCRIPTION: The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the **Ohio Public Employees Retirement System**, and the **Teacher Retirement System of Texas** in this securities class action filed on behalf of shareholders of Bank of America Corporation ("BAC") arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

CASE: ***IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION ("NORTEL II")***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Over $1.07 billion in cash and common stock recovered for the class.

DESCRIPTION: This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the **Ontario Teachers' Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay $2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay $228.5 million toward the settlement, bringing the total amount of the global settlement to approximately $2.7 billion, and the total amount of the Nortel II settlement to over $1.07 billion.

CASE: ***IN RE MERCK & CO., INC. SECURITIES LITIGATION***

COURT: **United States District Court, District of New Jersey**

HIGHLIGHTS: $1.06 billion recovery for the class.

DESCRIPTION: This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" Cox-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a $1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the **Public Employees' Retirement System of Mississippi.**

CASE: ***IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Northern District of California**

HIGHLIGHTS: $1.05 billion recovery for the class.

DESCRIPTION: This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a $960 million settlement from the company; $72.5 million in cash from Arthur Andersen; and, on the eve of trial, a $10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than $1 billion.

CASE: ***IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $735 million in total recoveries.

DESCRIPTION: Representing the **Government of Guam Retirement Fund**, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of $735 million in recoveries consisting of: a $426 million settlement with underwriters of Lehman securities offerings; a $90 million settlement with former Lehman directors and officers; a $99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a $120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and that the auditors never disavowed the statements.

CASE: ***HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION***

COURT: **United States District Court for the Northern District of Alabama**

HIGHLIGHTS: $804.5 million in total recoveries.

DESCRIPTION: In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the **Retirement Systems of Alabama**. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over $2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of $804.5 million was obtained in this litigation through a series of settlements, including an approximately $445 million settlement for shareholders and bondholders, a $100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants (collectively, "UBS"), and $33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded $230 million, recouping over a third of bond purchaser damages.

BLB&G Bernstein Litowitz Berger & Grossmann LLP

CASE:	***IN RE CITIGROUP, INC. BOND ACTION LITIGATION***
COURT:	**United States District Court for the Southern District of New York**
HIGHLIGHTS:	$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.
DESCRIPTION:	In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a $730 million cash recovery – the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs **Minneapolis Firefighters' Relief Association**, **Louisiana Municipal Police Employees' Retirement System**, and **Louisiana Sheriffs' Pension and Relief Fund**.

CASE:	***IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION***
COURT:	**United States District Court for the District of Arizona**
HIGHLIGHTS:	Over $750 million – the largest securities fraud settlement ever achieved at the time.
DESCRIPTION:	BLB&G was appointed Chair of the Executive Committee responsible for litigating the action on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over $750 million – then the largest securities fraud settlement ever achieved.

CASE:	***IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION***
COURT:	**United States District Court for the District of New Jersey**
HIGHLIGHTS:	$688 million in combined settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.
DESCRIPTION:	After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytorin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined $688 million in settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25 settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs **Arkansas Teacher Retirement System,** the **Public Employees' Retirement System of Mississippi,** and the **Louisiana Municipal Police Employees' Retirement System**.

CASE: ***IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

DESCRIPTION: BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the **Parnassus Fund**, **Teamsters Locals 175 & 505 D&P Pension Trust**, **Anchorage Police and Fire Retirement System** and the **Louisiana School Employees' Retirement System.** The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly $679 million in fiscal 2000. The settlement obtained in this case is valued at approximately $667 million, and is composed of cash, stock and warrants.

CASE: ***IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $627 million recovery – among the 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

DESCRIPTION: This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multi-billion dollar option-ARM (adjustable rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined $627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs **Orange County Employees Retirement System** and **Louisiana Sheriffs' Pension and Relief Fund** in this action.

CASE: ***BEAR STEARNS MORTGAGE PASS-THROUGH LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $500 million recovery - the largest recovery ever on behalf of purchasers of residential mortgage-backed securities.

DESCRIPTION: BLB&G served as Co-Lead Counsel in this securities action, representing Lead Plaintiffs the **Public Employees' Retirement System of Mississippi.** The case alleged that Bear Stearns & Company, Inc.'s sold mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. After six years of hard-fought litigation and extensive arm's-length negotiations, the $500 million recovery is the largest settlement in a U.S. class action against a bank that packaged and sold mortgage securities at the center of the 2008 financial crisis.

CASE:	***GARY HEFLER ET AL. V. WELLS FARGO & COMPANY ET AL***
COURT:	**United States District Court for the Northern District of California**
HIGHLIGHTS:	$480 million recovery - the fourth largest securities settlement ever achieved in the Ninth Circuit and the 31st largest securities settlement ever in the United States.
DESCRIPTION:	BLB&G served as Lead Counsel for the Court-appointed Lead Plaintiff Union Asset Management Holding, AG in this action, which alleged that Wells Fargo and certain current and former officers and directors of Wells Fargo made a series of materially false statements and omissions in connection with Wells Fargo's secret creation of fake or unauthorized client accounts in order to hit performance-based compensation goals. After years of presenting a business driven by legitimate growth prospects, U.S. regulators revealed in September 2016 that Wells Fargo employees were secretly opening millions of potentially unauthorized accounts for existing Wells Fargo customers. The Complaint alleged that these accounts were opened in order to hit performance targets and inflate the "cross-sell" metrics that investors used to measure Wells Fargo's financial health and anticipated growth. When the market learned the truth about Wells Fargo's violation of its customers' trust and failure to disclose reliable information to its investors, the price of Wells Fargo's stock dropped, causing substantial investor losses.
CASE:	***OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC***
COURT:	**United States District Court for the Southern District of Ohio**
HIGHLIGHTS:	$410 million settlement.
DESCRIPTION:	This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** alleging that Federal Home Loan Mortgage Corporation ("Freddie Mac") and certain of its current and former officers issued false and misleading statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than $5 billion in earnings. A settlement of $410 million was reached in the case just as deposition discovery had begun and document review was complete.
CASE:	***IN RE REFCO, INC. SECURITIES LITIGATION***
COURT:	**United States District Court for the Southern District of New York**
HIGHLIGHTS:	Over $407 million in total recoveries.
DESCRIPTION:	The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over $407 million. BLB&G represented Co-Lead Plaintiff **RH Capital Associates LLC**.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

CASE: ***CITY OF MONROE EMPLOYEES' RETIREMENT SYSTEM, DERIVATIVELY ON BEHALF OF TWENTY-FIRST CENTURY FOX, INC. V. RUPERT MURDOCH, ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Landmark derivative litigation establishes unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping $90 million for the company's coffers.

DESCRIPTION: Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the **City of Monroe (Michigan) Employees' Retirement System.**

CASE: ***IN RE ALLERGAN, INC. PROXY VIOLATION SECURITIES LITIGATION***

COURT: **United States District Court for the Central District of California**

HIGHLIGHTS: Litigation recovered over $250 million for investors in challenging unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

DESCRIPTION: As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquire a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew – but investors did not – was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoys a massive instantaneous profit upon public news of the proposed acquisition, and the scheme works for both parties as he kicks back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtains a $250 million settlement for Allergan investors, and creates precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the **State Teachers Retirement System of Ohio**, the **Iowa Public Employees Retirement System**, and **Patrick T. Johnson.**

CASE: ***UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the District of Minnesota**

HIGHLIGHTS: Litigation recovered over $920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

DESCRIPTION: This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over $920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement]…. [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the **St. Paul Teachers' Retirement Fund Association**, the **Public Employees' Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs' Pension & Relief Fund**, the **Louisiana Municipal Police Employees' Retirement System** and **Fire & Police Pension Association of Colorado**.

CASE: ***CAREMARK MERGER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Landmark Court ruling orders Caremark's board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by $7.50 per share, equal to more than $3.3 billion in additional consideration to Caremark shareholders.

DESCRIPTION: Commenced on behalf of the **Louisiana Municipal Police Employees' Retirement System** and other shareholders of Caremark RX, Inc. ("Caremark"), this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation ("CVS"), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to shareholders by $7.50 per share in cash (over $3 billion in total).

CASE: ***IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated $75 million fund.

DESCRIPTION: In the wake of Pfizer's agreement to pay $2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana Sheriffs' Pension and Relief Fund** and **Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory

and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

CASE: ***MILLER ET A. V. IAC/INTERACTIVECORP ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Litigation shuts down efforts by controlling shareholders to obtain "dynastic control" of the company through improper stock class issuances, setting valuable precedent and sending strong message to boards and management in all sectors that such moves will not go unchallenged.

DESCRIPTION: BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers seek ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller lays out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ends in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This becomes critical corporate governance precedent, given trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

CASE: ***IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

DESCRIPTION: As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least $55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of $49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

CASE: ***QUALCOMM BOOKS & RECORDS LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

DESCRIPTION: The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

CASE: ***IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **Delaware Court of Chancery – Kent County**

HIGHLIGHTS: An unprecedented settlement in which News Corp. recoups $139 million and enacts significant corporate governance reforms that combat self-dealing in the boardroom.

DESCRIPTION: Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped $139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

CASE: ***IN RE ACS SHAREHOLDER LITIGATION (XEROX)***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a $69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

DESCRIPTION: Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for $69 million. In the settlement, Deason agreed to pay $12.8 million, while ACS agreed to pay the remaining $56.1 million.

CASE: ***IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION***

COURT: **Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville**

HIGHLIGHTS: Holding Board accountable for accepting below-value "going private" offer.

DESCRIPTION: A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a $40 million settlement in favor of the shareholders, with a potential for $17 million more for the Class.

BLB&G Bernstein Litowitz Berger & Grossmann LLP

CASE:	***LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION***
COURT:	**Delaware Court of Chancery – New Castle County**
HIGHLIGHTS:	Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional $14.5 million cash payment for the class.
DESCRIPTION:	In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed of $14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at $65 million.

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

CASE: ***ROBERTS V. TEXACO, INC.***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: BLB&G recovered $170 million on behalf of Texaco's African-American employees and engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

DESCRIPTION: Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over $170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

CASE: ***ECOA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION***

COURT: **Multiple jurisdictions**

HIGHLIGHTS: Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing practices nationwide.

DESCRIPTION: The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

NMAC: The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.

GMAC: The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

DAIMLERCHRYSLER: The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute $1.8 million to provide consumer education and assistance programs on credit financing.

FORD MOTOR CREDIT: The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

COLUMBIA LAW SCHOOL – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

FIRM SPONSORSHIP OF HER JUSTICE

NEW YORK, NY – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at www.herjustice.org.

THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

COLUMBIA LAW SCHOOL – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

FIRM SPONSORSHIP OF CITY YEAR NEW YORK

NEW YORK, NY – BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

MAX W. BERGER PRE-LAW PROGRAM

BARUCH COLLEGE – In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

NEW YORK SAYS THANK YOU FOUNDATION

NEW YORK, NY – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.

OUR ATTORNEYS

MEMBERS

MAX W. BERGER, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* ($3.3 billion); *Citigroup–WorldCom* ($2.575 billion); *Bank of America/Merrill Lynch* ($2.4 billion); *JPMorgan Chase–WorldCom* ($2 billion); *Nortel* ($1.07 billion); *Merck* ($1.06 billion); and *McKesson* ($1.05 billion). In addition, he has prosecuted seminal cases establishing precedents which have increased market integrity and transparency; held corporate wrongdoers accountable; and improved corporate business practices in groundbreaking ways.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, he handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first-ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a $627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a $516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger's role in the WorldCom case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

One of the "100 Most Influential Lawyers in America"

Widely recognized as the "Dean" of the US plaintiff securities bar for his remarkable career and his professional excellence, Mr. Berger has a distinguished and unparalleled list of honors to his name.

He was selected one of the "100 Most Influential Lawyers in America" by The National Law Journal for being "front and center" in holding Wall Street banks accountable and obtaining over $5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.

Described as a "standard-bearer" for the profession in a career spanning over 40 years, he was the recipient of *Chambers USA*'s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger's "numerous headline-grabbing successes," as well as his unique stature among colleagues – "warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table."

Benchmark Litigation recently inducted him into its exclusive "Hall of Fame" in recognition of his career achievements and impact on the field of securities litigation.

Upon its tenth anniversary, *Lawdragon* named Mr. Berger a "Lawdragon Legend" for his accomplishments.

Law360 published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.

Since their various inceptions, Mr. Berger has been recognized as a litigation "star" and leading lawyer in his field by *Chambers USA* and the *Legal 500 US Guide*, as well as being named one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America*® guide has named Mr. Berger a leading lawyer in his field.

Mr. Berger has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Mr. Berger to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Mr. Berger also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he served as the President of the Baruch College Fund from 2015-2019 and now serves as its Chairman. A member of the Dean's Council to Columbia Law School, he has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the fall 2011 issue of *Columbia Law School Magazine.*

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is a significant and long-time contributor to Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the many legal problems they face. He is also an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July

2005, he was named City Year New York's "Idealist of the Year," for his commitment to, service for, and work in the community. He and his wife, Dale, have also established The Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and The Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

GERALD H. SILK's practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Mr. Silk is a member of the firm's Management Committee. He also oversees the firm's New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of several lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Mr. Silk one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America" and one of America's top 500 "rising stars" in the legal profession, also recently profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, he is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected as a New York *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars which resulted in a $300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for $3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately $3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, Fall 2006; "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," 75 *St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch, Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times, Financial Times, Bloomberg, The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

SALVATORE J. GRAZIANO is widely recognized as one of the top securities litigators in the country. He has served as lead trial counsel in a wide variety of major securities fraud class actions, recovering billions of dollars on behalf of institutional investors and hedge fund clients.

Over the course of his distinguished career, Mr. Graziano has successfully litigated many high-profile cases, including: *Merck & Co., Inc. (Vioxx) Sec. Litig.* (D.N.J.); *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *New York State Teachers' Retirement System v. General Motors Co.* (E.D. Mich.); *In re MF Global Holdings Limited Sec. Litig.* (S.D.N.Y); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century Sec. Litig.* (C.D. Cal.).

Industry observers, peers and adversaries routinely honor Mr. Graziano for his accomplishments. He is one of the "Top 100 Trial Lawyers" in the nation according to *Benchmark Litigation*, which credits him for performing "top quality work." *Chambers USA* describes Mr. Graziano as "wonderfully talented…a smart, aggressive lawyer who works hard for his clients," while Legal 500 praises him as a "highly effective litigator." Heralded multiple times as one of a handful of Securities Litigation and Class Action "MVPs" in the nation by *Law360*, he is also one of *Lawdragon*'s "500 Leading Lawyers in America," and named as a leading mass tort and plaintiff class action litigator by *Best Lawyers*®, as well as a New York "Super Lawyer" by Thomson Reuters.

A highly esteemed voice on investor rights, regulatory and market issues, in 2008 he was called upon by the Securities and Exchange Commission's Advisory Committee on Improvements to Financial Reporting to give testimony as to the state of the industry and potential impacts of proposed regulatory changes being considered. He is the author and co-author of numerous articles on developments in the securities laws, and was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*.

A managing partner of the firm, Mr. Graziano has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York. He regularly lectures on securities fraud litigation and shareholder rights.

Prior to entering private practice, Mr. Graziano served as an Assistant District Attorney in the Manhattan District Attorney's Office.

EDUCATION: New York University College of Arts and Science, B.A., psychology, *cum laude*, 1988. New York University School of Law, J.D., *cum laude*, 1991.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Courts of Appeals for the First, Second, Third, Fourth, Ninth and Eleventh Circuits.

AVI JOSEFSON prosecutes securities fraud litigation for the firm's institutional investor clients, and has participated in many of the firm's significant representations, including *In re SCOR Holding (Switzerland) AG Securities Litigation*, which resulted in a recovery worth in excess of $143 million for investors. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of $92.4 million.

As a member of the firm's New Matter department, Mr. Josefson counsels institutional clients on potential legal claims. He has presented argument in several federal and state courts, including an appeal he argued before the Delaware Supreme Court.

Mr. Josefson is also actively involved in the M&A litigation practice, and represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch. A member of the firm's subprime litigation team, he has participated in securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion-dollar loss from mortgage-backed investments. Mr. Josefson has prosecuted actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities, and is advising U.S. and foreign institutions concerning similar claims arising from investments in mortgage-backed securities.

Mr. Josefson practices in the firm's Chicago and New York Offices.

EDUCATION: Brandeis University, B.A., *cum laude*, 1997. Northwestern University, J.D., 2000; *Dean's List*; Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000).

BAR ADMISSIONS: Illinois, New York; U.S. District Courts for the Southern District of New York and the Northern District of Illinois.

KATHERINE M. SINDERSON is involved in a variety of the firm's practice areas, including securities fraud, corporate governance, and advisory services. She is currently leading the teams prosecuting securities class actions against FleetCor Technologies, Frontier Communications, and Novo Nordisk, as well as litigation arising from the failure of SunEdison, Inc.

Ms. Sinderson played a key role in two of the largest cases in the firm's history, both of which settled shortly before trial for billions of dollars on behalf of investors. In *In re Merck Securities Litigation*, she was a member of the small trial team that achieved a $1.062 billion settlement.

This settlement is twelfth largest in history, and the largest recovery ever achieved against a pharmaceutical company. She was also a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which resulted in a recovery of $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act and one of the largest shareholder recoveries in history. Most recently, Ms. Sinderson was a senior member of the team that led the securities litigation concerning Wilmington Trust, which resulted in a $210 million recovery for the class.

Ms. Sinderson has also been part of the trial teams in numerous other securities litigations that have successfully recovered hundreds of millions of dollars on behalf of injured investors. She served as a senior member of the teams that recovered $210 million in *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, and $74 million in the take-private merger litigation *San Antonio Fire and Police Pension Fund et al v. Dole Food Co. et al*. She was also a member of the trial team that prosecuted the action against Washington Mutual, Inc. and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations. The action resulted in a recovery of $216.75 million, the largest recovery ever achieved in a securities class action in the Western District of Washington. Some of her other prominent prosecutions include the *In re Bristol-Myers Squibb Co. Securities Litigation*, which resulted in a recovery of $125 million; and *In re Biovail Corporation Securities Litigation*, which resulted in a recovery of $138 million for defrauded investors and represents the second largest recovery in any securities case involving a Canadian issuer.

In 2016, Ms. Sinderson was recognized as a national "Rising Star" by *Law360* for her work in securities litigation and, in 2016, 2017, 2018, and 2019 was named to *Benchmark Litigation*'s "Under 40 Hot List," which recognizes her as one the nation's most accomplished legal partners under the age of 40. She is also regularly selected as a New York "Rising Star" by *Super Lawyers*.

EDUCATION: Baylor University, B.A., *cum laude*, 2002. Georgetown University, J.D., *cum laude*, 2006; Dean's Scholar; Articles Editor for *The Georgetown Journal of Gender and the Law*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York; U.S. Court of Appeals for the Second Circuit.

MICHAEL D. BLATCHLEY's practice focuses on securities fraud litigation. He is currently a member of the firm's New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Mr. Blatchley has also served as a member of the litigation teams responsible for prosecuting a number of the firm's significant cases. For example, Mr. Blatchley was a key member of the team that recovered $150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale." He was also a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an $85 million recovery for investors. In addition, Mr. Blatchley prosecuted a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities and other complex financial products. Currently, Mr. Blatchley is a member of the team prosecuting *In re Allergan, Inc. Proxy Violation Securities Litigation*.

Mr. Blatchley was recently named to *Benchmark Litigation's* "Under 40 Hot List," which recognizes him as one the nation's most accomplished legal partners under the age of 40.

While attending Brooklyn Law School, Mr. Blatchley held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

EDUCATION: University of Wisconsin, B.A., 2000. Brooklyn Law School, J.D., *cum laude*, 2007; Edward V. Sparer Public Interest Law Fellowship, William Payson Richardson Memorial Prize, Richard Elliott Blyn Memorial Prize, Editor for the *Brooklyn Law Review*, Moot Court Honor Society.

BAR ADMISSIONS: New York, New Jersey; U.S. District Courts for the Southern District of New York and the District of New Jersey.

LAUREN MCMILLEN ORMSBEE practices out of the firm's New York office, focusing on complex commercial and securities litigation. She has prosecuted a variety of class and direct actions involving securities fraud and other fiduciary violations, obtaining hundreds of millions of dollars in recoveries on behalf of the firm's institutional and private investor clients.

Ms. Ormsbee has been an integral part of trial teams in numerous major actions, including: *In re HealthSouth Bondholder Litigation*, which obtained $230 million for the HealthSouth bondholder Class; *In re New Century Securities Litigation*, which resulted in $125 million for its investors after the mortgage originator became one of the first casualties of the subprime crisis; *In re State Street Corporation Securities Litigation*, which obtained $60 million in the wake of a series of alleged misrepresentations about the company's own internal portfolio; *In re Ambac Financial Group Securities Litigation*, which obtained $33 million from the now-bankrupt insurer; *In re Altisource Portfolio Solutions, S.A. Securities Litigation*, which obtained $32 million from the mortgage loan servicer*; In re Goldman Sachs Mortgage Pass-Through Litigation*, which obtained $26.6 million for the benefit of the class of RMBS purchasers; and *Barron v. Union Bancaire Privée*, which recovered $8.9 million on behalf of the class of investors harmed by investments with Bernard Madoff, among others.

Ms. Ormsbee graduated from the University of Pennsylvania Law School, where she was an editor of the Law Review. Following law school, she served as a law clerk for the Honorable Colleen McMahon of the Southern District of New York. Prior to joining the firm in 2007, Ms. Ormsbee was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where she had extensive experience in securities litigation and complex commercial litigation.

EDUCATION: Duke University, B.A., History, 1996. University of Pennsylvania Law School, J.D., *cum laude*, 2000; Research Editor for the *University of Pennsylvania Law Review*.

BAR ADMISSIONS: New York; U. S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second and Third Circuits.

SENIOR COUNSEL

ADAM HOLLANDER prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's clients.

Mr. Hollander has represented investors and corporations in state and federal trial and appellate courts throughout the country. He was an integral member of the teams that prosecuted, among other cases, *In re Salix Pharmaceuticals Ltd.*, recovering $210 million for investors; *San Antonio Fire & Police Pension Fund v. Dole Food Company, Inc.*, recovering $74 million for investors;

and *Bach v. Amedisys, Inc.*, recovering $43.75 million for investors after a successful appeal to the U.S. Court of Appeals for the Fifth Circuit following a previous dismissal.

Currently, Mr. Hollander represents clients in a number of disputes relating to corporate misconduct and alleging harm to investors, including a securities-fraud class action against Volkswagen which recently resulted in a $48 million recovery for Volkswagen investors arising out of the "Dieselgate" emissions-cheating scandal; a securities-fraud class action on behalf of investors in the now-bankrupt renewable energy company SunEdison, Inc.; a securities-fraud class action against Novo Nordisk concerning pricing of its insulin drugs; and a class action on behalf of Puerto Rico investors to whom UBS improperly recommended risky Puerto Rico securities.

Prior to joining BLB&G, Mr. Hollander clerked for the Honorable Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit, and for the Honorable Stefan R. Underhill of the U.S. District Court for the District of Connecticut. He has also been associated with two New York defense firms, where he gained significant experience representing clients in various civil, criminal, and regulatory matters, including white-collar and complex commercial litigation.

EDUCATION: Brown University, A.B., *magna cum laude*, 2001, Urban Studies. Yale Law School, J.D., 2006; Editor, *Yale Law and Policy Review*.

BAR ADMISSIONS: New York; Connecticut; U.S. District Courts for the Southern District of New York and the District of Connecticut; U.S. Court of Appeals for the Second Circuit.

ASSOCIATES

DAVID L. DUNCAN's practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, Mr. Duncan worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, Mr. Duncan served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

EDUCATION: Harvard College, A.B., Social Studies, *magna cum laude*, 1993. Harvard Law School, J.D., *magna cum laude*, 1997.

BAR ADMISSIONS: New York; Connecticut; U.S. District Court for the Southern District of New York.

JOHN J. MILLS' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law;* Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

BRENNA NELINSON's practice focuses on securities fraud, corporate governance and shareholder rights litigation.

She is currently a member of the firm's teams prosecuting securities class actions against Virtus Investment Partners and Signet Jewelers.

Prior to joining the firm, Ms. Nelinson was a Litigation Associate at Hogan Lovells US LLP. She represented a variety of defendants in all aspects of corporate litigation.

EDUCATION: New York University, B.A., 2011, Individualized Study – Psychology and Philosophy. American University Washington College of Law, J.D., *cum laude,* 2014; Note & Comment Editor, *American University International Law Review;* Moot Court Honor Society.

BAR ADMISSION: Maryland.

CATHERINE E. VAN KAMPEN's practice concentrates on class action settlement administration. She has extensive experience in complex litigation and litigation management, having overseen attorney teams in many of the firm's most high-profile cases. Fluent in Dutch, she has served as lead investigator and led discovery efforts in several actions involving international corporations and financial institutions headquartered in Belgium and the Netherlands.

Prior to joining BLB&G, Ms. van Kampen focused on complex litigation initiated by institutional investors and the Federal Government. She has worked on litigation and investigations related to regulatory enforcement actions, corporate governance and compliance matters as well as conducted extensive discovery in English and Dutch in cross-border litigation.

A committed humanitarian, Ms. van Kampen was honored as the 2018 Ambassador Medalist at the New Jersey Governor's Jefferson Awards for Outstanding Public Service for her international humanitarian and *pro bono* work with refugees. The Jefferson Awards, issued by the Jefferson Awards Foundation that was founded by Jacqueline Kennedy Onassis, are awarded by state governors and are considered America's highest honor for public service bestowed by the United States Senate. Ms. van Kampen was also honored in Princeton, New Jersey by her high school alma mater, Stuart Country Day School, in its 2018 Distinguished Alumnae Gallery for her humanitarian and *pro bono* efforts on behalf of women and children afflicted by war in Iraq and Syria.

Ms. van Kampen clerked for the Honorable Mary M. McVeigh in the Superior Court of New Jersey, where she was also trained as a court-certified mediator. While in law school, she was a legal intern at the Center for Social Justice's Immigration Law Clinic at Seton Hall University School of Law.

EDUCATION: Indiana University, B.A., Political Science, 1988. Seton Hall University School of Law, J.D., 1998.

BAR ADMISSION: New Jersey

LANGUAGES: Dutch, German

JAKE NACHMANI (former Associate) practiced out of the New York office, where he prosecuted securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients. He was a member of the teams that prosecuted *In re*

Wilmington Trust Securities Litigation, *General Motors Securities Litigation*, *Fernandez et al. v. UBS AG et al.*, *In re Tower Group International, Ltd. Securities Litigation* and *Levy v. Gutierrez et al.* (GT Advanced Technologies, Inc.).

Prior to joining the firm, Mr. Nachmani represented clients in complex commercial litigation, consumer class actions, and False Claims Act cases. He also briefly served as Special Counsel and Policy Advisor in the Office of the Chief Advisor to Mayor Michael Bloomberg for Policy and Strategic Planning. During law school, Mr. Nachmani clerked for the Head Deputy District Attorney in the Major Crimes Division of the Office of the District Attorney in Los Angeles.

Mr. Nachmani left the firm in May 2017.

EDUCATION: Brown University, B.A., *magna cum laude*, History, 2002; Phi Beta Kappa. Georgetown University Law Center, J.D., 2010; Farrell Scholarship.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

ROSS SHIKOWITZ, a former associate of the firm, practiced out of the firm's New York office. Mr. Shikowitz focused his practice on securities litigation and was a member of the firm's New Matter group, in which he, as part of a team attorneys, financial analysts, and investigators, counseled institutional clients on potential legal claims.

Mr. Shikowitz served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's significant cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS") and has recovered hundreds of millions of dollars on behalf of injured investors. He successfully represented Allstate Insurance Co., Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, Bayerische Landesbank, Dexia SA/NV, Sealink Funding Limited, and Landesbank Baden-Württemberg against various issuers of RMBS in both state and federal courts.

While in law school, Mr. Shikowitz was a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, and as a legal intern for the Major Narcotics Investigations Bureau of the Kings County District Attorney's Office.

EDUCATION: Skidmore College, B.A., Music, *cum laude*, 2003. Indiana University-Bloomington, M.M., Music, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2010; Notes/Comments Editor, *Brooklyn Law Review*; Moot Court Honor Society; Order of Barristers Certificate; CALI Excellence for the Future Award in Products Liability, Professional Responsibility.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

STAFF ATTORNEYS

KEVIN BAUM has worked on several matters at BLB&G, including *In re BP p.l.c. Securities Litigation* and *In re SunEdison, Inc., Securities Litigation.*

Prior to joining the firm in 2018, Mr. Baum was an associate at Windels Marx Lane & Mittendorf, LLP. Previously, Mr. Baum was Of Counsel to Baum & Bailey, PC, and an associate at Katten

Muchin Rosenman LLP. Mr. Baum has also served as an Adjunct Professor of Law at St. John's University School of Law, where he taught Introduction to Bankruptcy Practice.

EDUCATION: Stony Brook University, B.S., Mathematics, 2003. Queens College, M.S. Ed., *with* Honors, 2007. St. John's University School of Law, J.D., *with Dean's List* Honors, 2010; LL.M. in Bankruptcy, 2011.

BAR ADMISSIONS: New York.

ANDREW BORUCH has worked on numerous matters at BLB&G, including *Lord Abbett Affiliated Fund, Inc., et al v. Navient Corporation, et al, In re Akorn, Inc., Securities Litigation, In re SunEdison, Inc., Securities Litigation, Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Allergan, Inc. Proxy Violation Securities Litigation, In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation, In re MF Global Holdings Limited Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re State Street Corporation Securities Litigation, SMART*

Prior to joining the firm in 2011, Mr. Boruch was an attorney at Morvillo, Abramowitz, Grand, Iason & Anello PC. Previously, Mr. Boruch was a litigation associate at DLA Piper, where he represented corporate clients involving securities and other complex issues.

EDUCATION: The Ohio State University, B.A., *magna cum laude*, 2004; Phi Beta Kappa. New York University Law School, J.D., 2007.

BAR ADMISSIONS: New York.

GIROLAMO BRUNETTO has worked on numerous matters at BLB&G, including *In re Altisource Portfolio Solutions, S.A., Securities Litigation, In re Genworth Financial Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation* and *In re JPMorgan Chase & Co. Securities Litigation*. Mr. Brunetto also works on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining the firm in 2014, Mr. Brunetto was a volunteer assistant attorney general in the Investor Protection Bureau at the New York State Office of the Attorney General.

EDUCATION: University of Florida, B.S.B.A. and B.A., *cum laude*, May 2007. New York Law School, J.D., *cum laude*, 2011.

BAR ADMISSIONS: New York.

CHRISTOPHER CLARKIN has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, In re SunEdison, Inc., Securities Litigation, Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Wilmington Trust Securities Litigation, In re Salix Pharmaceuticals, Ltd. Securities Litigation, West Palm Beach Police Pension Fund v. DFC Global Corp., In re NII Holdings, Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, SMART Technologies, Inc. Shareholder Litigation, In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Mr. Clarkin worked as a contract attorney on several large-scale litigations.

EDUCATION: Trinity College, B.A., 2000. New York Law School, J.D., 2006.

BAR ADMISSIONS: New York, Connecticut.

MONIQUE CLAXTON has worked on numerous matters at BLB&G, including *In re SunEdison, Inc., Securities Litigation, Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Allergan, Inc. Proxy Violation Securities Litigation, In re Wilmington Trust Securities Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc.* and *JPMorgan Mortgage Pass-Through Litigation.*

Prior to joining the firm in 2013, Ms. Claxton clerked for the Honorable Reggie B. Walton of the United States District Court for the District of Columbia and the Honorable Virginia E. Hopkins of the United States District Court for the Northern District of Alabama. Previously, Ms. Claxton was an associate at Swidler Berlin Shereff Friedman, LLP, where she worked on corporate securities transactions.

EDUCATION: New York University, B.A., *cum laude*, 1997. University of Virginia School of Law, J.D., 2003.

BAR ADMISSIONS: New York.

ALEX DICKIN has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation* and *In re Wilmington Trust Securities Litigation.*

Prior to joining the firm in 2014, Mr. Dickin was an attorney at Labaton Sucharow, where he focused on residential mortgage-backed securities litigation. Previously, Mr. Dickin was an associate at Herbert Smith Freehills, where he worked on M&A, private equity and corporate restructuring agreements, among other responsibilities.

EDUCATION: Macquarie University, B.B.A. 2005; L.L.B. 2008, with *Honors*.

BAR ADMISSIONS: New York.

STEFFANIE KEIM has worked on several matters at BLB&G, including *In re McKesson Corporation Derivative Litigation, In re SunEdison, Inc., Securities Litigation, Hefler et al. v. Wells Fargo & Company et al., In re Volkswagen AG Securities Litigation, 3-Sigma Value Financial Opportunities LP et al. v. Jones et al. ("CertusHoldings, Inc."), In re Allergan, Inc. Proxy Violation Securities Litigation* and *In re Altisource Portfolio Solutions, S.A., Securities Litigation*.

Prior to joining the firm in 2016, Ms. Keim was a senior associate at Ernst & Linder LLC and corporate associate at Dewey & LeBoeuf LLP.

EDUCATION: Ruprecht-Karls-University of Heidelberg Law School, First Juristic Examination (J.D. equivalent), 1999. Fordham University School of Law, LL.M., *cum laude*, 2007.

BAR ADMISSIONS: New York, Germany.

JED KOSLOW has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al, In re Akorn, Inc., Securities Litigation, In re SunEdison, Inc., Securities Litigation, In re NII Holdings, Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Wilmington Trust Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan* and *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*.

Prior to joining the firm in 2009, Mr. Koslow was Of Counsel at Lebowitz Law Office, LLC.

EDUCATION: Wesleyan University, B.A., 1999. Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New York.

LAURA LEFKOWITZ has worked on numerous matters at BLB&G, including *In re Qualcomm Inc. Securities Litigation, In re SunEdison, Inc., Securities Litigation, Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al, In re Salix Pharmaceuticals, Ltd. Securities Litigation, In re NII Holdings, Inc. Securities Litigation, West Palm Beach Police Pension Fund v. DFC Global Corp., In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, SMART Technologies, Inc. Shareholder Litigation, In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation.*

Prior to joining the firm in 2010, Ms. Lefkowitz worked as a litigation associate at Morgenstern Fisher & Blue, LLC, where she worked on bankruptcy and commercial litigation. Ms. Lefkowitz began her legal career as an associate at Stavis & Kornfeld, LLP, where she represented clients in civil and criminal actions, including criminal trials and appeals.

EDUCATION: University of Michigan, B.A., 1998. American University, Washington College of Law, J.D., *cum laude*, 2001.

BAR ADMISSIONS: New York.

DANIELLE LEON has worked on numerous matters at BLB&G, including *In re MF Global Holdings Limited Securities Litigation and In re Merck & Co., Inc. Securities Litigation (VIOXX-related).* Prior to joining the firm in 2013, Ms. Leon was a staff attorney at Brower Piven.

EDUCATION: University of Florida, B.A., *magna cum laude*, 2007. The George Washington University Law School, J.D., 2010.

BAR ADMISSIONS: New York.

MATTHEW MULLIGAN has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al*, *In re SunEdison, Inc., Securities Litigation*, *In re Green Mountain Coffee Roasters, Inc. Securities Litigation*, *In re Wilmington Trust Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*, *In re State Street Corporation Securities Litigation*, *Dexia Holdings, Inc. v. JP Morgan*, *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.*, *In re Pfizer Inc. Shareholder Derivative Litigation* and *In re The Mills Corporation Securities Litigation.*

Prior to joining the firm in 2008, Mr. Mulligan worked as a contract attorney on numerous complex matters, including securities fraud litigation.

EDUCATION: Trinity University, B.A, 2001. Tulane Law School, J.D., 2004.

BAR ADMISSIONS: New York.

COMFORT ORJI has worked on several matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation* and *In re SunEdison, Inc., Securities Litigation.* Prior to joining the firm in 2018, Ms. Orji worked as a staff attorney at Labaton Sucharow LLP. Ms. Orji previously worked as an associate at Stavis & Kornfeld, LLP, where she represented clients in civil and criminal actions, including criminal trials and appeals.

EDUCATION: University of Benin, Bachelor of Laws (LL.B.), 1998. Nigerian Law School, B.L., 1999.

BAR ADMISSIONS: New York.

STEPHEN ROEHLER has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al*, *In re Akorn, Inc., Securities Litigation*, *In re SunEdison, Inc., Securities Litigation*, *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2010, Mr. Roehler was an attorney at Milberg LLP, where he worked on several complex securities and antitrust litigations. Previously, Mr. Roehler was an associate at Latham & Watkins LLP.

EDUCATION: University of California, San Diego, B.A., 1993. University of Southern California Law School, J.D., 1999.

BAR ADMISSIONS: California, New York.

JOEL SHELTON has worked on several matters at BLB&G, including *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al* and *In re SunEdison, Inc., Securities Litigation.*

Prior to joining the firm in 2018, Mr. Shelton was a staff attorney at Simpson, Thacher & Bartlett, where he was a member of the Residential Mortgage-Backed Securities Group.

EDUCATION: Warren Wilson College, B.A., 1996. Benjamin N. Cardozo School of Law, J.D., 2001.

BAR ADMISSIONS: New York.

ANDREW TOLAN has worked on numerous matters at BLB&G, including *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al*, *In re SunEdison, Inc., Securities Litigation*, *Hefler et al. v. Wells Fargo & Company et al.*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re Genworth Financial Inc. Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *SMART Technologies, Inc. Shareholder Litigation*, *In re Bank of America Securities Litigation*, *In re The Mills Corporation Securities Litigation* and *In re Nortel Networks Corporation Securities Litigation*.

Prior to joining the firm in 2005, Mr. Tolan was an associate at Pomerantz Haudek Block Grossman & Gross LLP.

EDUCATION: New York University, College of Arts & Sciences, B.A., 1987. Brooklyn Law School, J.D., May 1990. New York University, Stern School of Business, M.B.A., Finance, 1997.

BAR ADMISSIONS: New Jersey, New York.

KESAV WABLE has worked on several matters at BLB&G, including *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al*, *In re SunEdison, Inc., Securities Litigation*, *In re Wilmington Trust Securities Litigation* and *Bear Stearns Mortgage Pass-Through Litigation*.

Prior to joining the firm in 2014, Mr. Wable was a contract attorney at Quinn Emanuel Urquhart & Sullivan, LLP. Previously, Mr. Wable was an associate at Lowey Dannenberg Cohen & Hart, P.C., where he worked on securities and anti-trust class action litigation.

EDUCATION: Haverford College, B.A., 2002. Brooklyn Law School, J.D., *cum laude*, 2008.

BAR ADMISSIONS: New York.

SAUNDRA YAKLIN has worked on numerous matters at BLB&G, including *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al*, *In re SunEdison, Inc., Securities Litigation*, *Hefler et al. v. Wells Fargo & Company et al.*, *Medina, et al v. Clovis Oncology, Inc., et al*, *In re Virtus Investment Partners, Inc. Securities Litigation*, *In re Washington Mutual, Inc. Securities Litigation* and *In re Bristol-Myers Squibb Co. Securities Litigation*.

Prior to joining the firm, Ms. Yaklin was an associate at Reed Smith, LLP, and Assistant General Counsel at Exelon Corporation (PECO Energy Co.).

EDUCATION: Western Michigan University, M.F.A, *cum* laude, 1991. University of Pennsylvania Law School, J.D., 1996.

BAR ADMISSIONS: New York.

Exhibit 5B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF JOHN H. DRUCKER IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF COLE SCHOTZ P.C.

I, JOHN H. DRUCKER, hereby declare under penalty of perjury as follows:

1. I am a former shareholder of the law firm of Cole Schotz P.C. ("Cole Schotz" or the "Firm"), one of Plaintiffs' Counsel in the above-captioned action (the "Action")[1]. I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered by Plaintiffs' Counsel in the Action[2], as well as for reimbursement of expenses incurred in connection with the Action (the "Fee Application").

2. The Firm, as one of Plaintiffs' Counsel, provided services as special bankruptcy law counsel. At the request and under the supervision of Lead Counsel, Cole Schotz commenced

[1] For the period of January 1, 2006, through December 31, 2017, I was a shareholder of Cole Schotz. During the period commencing with the retention of the Firm in April 2016, through December 2017, I had primary responsibility for and involvement on behalf of the Firm in the services being provided as special bankruptcy law counsel for the Plaintiffs and the Class. Although I ceased being a shareholder of the Firm as of January 1, 2018, so as to not adversely affect the representation of the Plaintiffs' and the Class's interests, I continued to work together with the Firm and Lead Counsel in the representation of the interests of the Plaintiffs and the Class. Neither any of the time I expended, nor any expenses I incurred, from and after January 1, 2018, is being sought in connection with the Fee Application.

[2] All capitalized terms that are not otherwise defined herein have the meanings set forth in the Stipulation and Agreement of Settlement, dated July 11, 2019 (the "Stipulation").

providing services in April 2016. In its capacity as special bankruptcy law counsel, from and after its retention, Cole Schotz had primary responsibility with regard to identifying and addressing bankruptcy law related issues that might affect the rights, interests and claims of the Plaintiffs and the Class in the jointly administered chapter 11 cases (the "Bankruptcy Cases") of *Sun Edison, Inc, et al.,* Case No.: 16-10992 (smb) ("SunEdison") then pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Bankruptcy Cases, which included approximately 26 SunEdison related entities, were commenced in the Bankruptcy Court on April 21, 2016, and with the filing of subsequent chapter 11 petitions would expand to include approximately 58 related entities.

3. From their inception, and throughout a substantial portion of the period covered by the Fee Application, the Bankruptcy Cases were active and required almost daily diligence to determine whether the actions proposed to be taken would affect the rights and interests of the Plaintiffs. The interests of the parties in the Bankruptcy Cases who were, or who were potentially, adverse to the interests of the Plaintiffs and the Class in the Action were represented by sophisticated counsel, including Skadden, Arps, Slate, Meagher & Flom; Weil, Gotshal & Manges LLP; Morrison & Foerster LLP, the attorneys for the Office of the United States Attorney, the Securities and Exchange Commission, and the United States Trustee, among several others.

4. Numerous issues were in fact raised in the Bankruptcy Court or that were related to the Bankruptcy Cases that required the active involvement of Cole Schotz and Lead Counsel. These issues addressed, among other things, the *sua sponte* motion of the District Court in which the Action had been originally commenced, extending the automatic stay under the Bankruptcy Code that serves to protect the Debtors in the Bankruptcy Cases to the non-debtor defendants in the Action; rights in and to directors and officers insurance policies and proceeds (the "D&O

Insurance"); discovery rights and protocols; allocation of estate assets; the preparation and filing of proofs of claim; document preservation; protecting the rights, interests and claims of the Plaintiffs and the Class under and with respect to the then proposed chapter 11 plan of reorganization of the Debtors (the "Plan" or " Chapter 11 Plan") (modified several times, often with short notice and opportunity for consideration and response), and in particular with respect to classification and subordination of the claims of the Plaintiffs in the Action and the applicability and effect of proposed third-party releases under the Plan. Attached hereto as Exhibit 1 is a list of certain of the objections, responses, correspondence and reservations of rights prepared by the Firm in coordination with Lead Counsel that were filed in the Bankruptcy Cases in order to protect the rights, claims and interests of the Plaintiffs. Several other pleadings were prepared but not filed due to the changes in circumstances, including because of the negotiated resolution of disputed issues and initiatives, obviating the necessity of such other potential filings in the Bankruptcy Cases.

5. More fully and by example only, contemporaneously with its retention and thereafter, Cole Schotz was called upon to review and consider a substantial number of pleadings that had been, and that continued to be, filed in the Bankruptcy Cases. The tone and pace of the Bankruptcy Cases was set from the very inception of the Bankruptcy Cases, where the hearing on the "first day motions" was scheduled to be heard on the day following the commencement of the Bankruptcy Cases and the filing of such first day motion pleadings, with no notice other than a posting on the docket in the Bankruptcy Court. As with other matters thereafter arising in the Bankruptcy Cases, the Firm was required to review and to coordinate, on an expedited basis, with Lead Counsel in considering the effect of such pleadings, and whether a response and or active participation was necessary. Shortly after the commencement of the Bankruptcy Cases, issues

arose with regard to access to and application of the D&O Insurance, requiring the active involvement of the Firm, particularly with regard to issues concerning whether the D&O Insurance was property of the estate and whether the Debtors, their estates or other parties had interests superior to the Plaintiffs and the Class. In that regard, among other matters relating to the D&O Insurance, the Official Committee of Unsecured Creditors appointed in the Bankruptcy Cases (the "Creditors' Committee") filed a complaint commencing an adversary proceeding, together with a related motion for expedited injunctive relief. Such complaint and motion sought a declaration regarding rights to and interests in the D&O Insurance and for the extension of the bankruptcy automatic stay against litigation involving certain then current and former directors and officers of the Debtors, including the defendants in the Action (the "Committee Injunction Action"). In the Committee Injunction Action, the Creditors' Committee sought, *inter alia,* to stay the Action and all other litigation pending before this Court in the multi-district litigation of which the Action is included. The Committee Injunction Action required extensive participation by the Firm in the Bankruptcy Court and the coordination with Lead Counsel to address those aspects that crossed over into the Action before this Court.

6. The Firm had to carefully review and consider the initially proposed Chapter 11 Plan of Reorganization (the "Plan") and disclosure statement filed with respect thereto (the "Disclosure Statement"). These documents were substantive and substantial, and required extensive time to consider and confirm how the provisions of the Plan might affect the rights, interests and claims of the Plaintiffs and the Class. By way of example, the Plan as initially filed included broad language that could have been interpreted as providing for substantial third-party releases of claims by individuals and entities who were not "debtors" in the Bankruptcy Case against other non-debtors. The beneficiaries of these non-debtor releases arguably included certain

of the named defendants in the Action, and arguably affected the right to recoveries funded by the D&O Insurance. Such releases, if approved, would arguably have eliminated the ability of the Plaintiffs to recover on behalf of their claims against such third parties in the Action. The ability of a debtor in a bankruptcy case to obtain releases of claims by third parties against other third parties was, and continues to be, a developing area of bankruptcy law, and required Cole Schotz to actively participate in the Plan process in order to protect the interests of the Plaintiffs and the Class. The Plan and Disclosure Statement went through several iterations, and Cole Schotz had to be diligent in its efforts to consider the effect the various changes might have on the rights and claims of the Plaintiffs. Cole Schotz researched the relevant issues and prepared a substantial objection to the approval of the Disclosure Statement (the "Objection"), primarily as concerned the extent of the proposed third-party releases and the failure of the Plan to adequately provide for the preservation of documents that may relate to the Action.

7. Ultimately, through the efforts of Cole Schotz and Lead Counsel, the language of the Plan was modified to make it clear that the confirmation of the Plan would not affect the rights of the Plaintiffs to pursue the non-Debtor defendants named in the Action, and to obtain recovery from applicable insurance. Agreed language was also negotiated with respect to the preservation of discoverable information. In summary, Cole Schotz, working together with Lead Counsel, was successful in protecting the interests of the Plaintiffs and the Class in the Bankruptcy Cases necessary to pursue the claims of the Plaintiffs and the Class, and, ultimately, the settlement of the Action, while at the same time not delaying the ability of the Debtors to be able to confirm their chapter 11 Plan.

8. Cole Schotz continued to assist Lead Counsel following confirmation of the Plan. Specifically, Cole Schotz and declarant continued to monitor the Bankruptcy Cases, and to report

to Lead Counsel with respect to any disclosure and filings that might affect the rights, interests or claims of the Plaintiffs and the Class, and to respond to requests for information by Lead Counsel. By way of example, several months following the entry of the order of the Bankruptcy Court confirming the Chapter 11 Plan, the Debtors sought relief and the entry of a proposed order (the "Proposed Order") proposing to subordinate and to reclassify certain proofs of claim asserting damages arising from the purchase or sale of certain securities of the Debtors or their affiliates (the "Subordination Motion"). As this arguably could have included and affect the claims filed by the Firm on behalf of the Plaintiffs, the Firm was called upon to address the issues raised in the Subordination Motion. The Firm was able to negotiate language to be included in a revised Proposed Order resolving the concerns of the Firm and of Lead Counsel. Again, it was the diligent efforts of the Firm and Lead Counsel, even after the Plan had been confirmed that resulted in the protection of the Plaintiffs and the Class in the Bankruptcy Cases.

9. The information in this declaration regarding the Firm's time, including in the schedule attached hereto as Exhibit 2, was prepared from daily time records regularly prepared and maintained by the Firm in the ordinary course of business. I, together with attorneys and other staff working under my direction, reviewed the Firm's daily time records to confirm their accuracy and reasonableness. Time expended in preparing the application for fees and expenses has not been included in this report, and time for timekeepers who had worked only a *de minimis* amount of total time on this case (*e.g.*, less than 10 hours) was also removed from the time report.

10. I believe that the time reflected in the Firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of this litigation. The total number of hours expended on this Action by the Firm's attorneys and professional support staff employees through August 15, 2019 was 1059.30. The total resulting

lodestar is $719,931.50. The schedule attached hereto as Exhibit 2 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of the Firm who was involved in this Action, and the lodestar calculation based on their current hourly rates. For personnel who are no longer employed by the Firm, the lodestar calculation is based upon the hourly rates of such personnel in his or her final year of employment by the Firm.

11. The hourly rates for the attorneys and professional support staff included in Exhibit 2 are the same as their rates used in non-contingent matters where the Firm bills clients by the hour. These hourly rates are the same as, or comparable to, rates submitted by the Firm and accepted by courts for lodestar cross-checks in other class action litigation fee applications in this District or nationwide. *See, e.g.*, *In re MF Global; In re Adelphia Communications Corporation; In re Tower Automotive; and In re Advanta Corp.*

12. The Firm's lodestar figures are based upon the Firm's hourly rates, which do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in the Firm's hourly rates. Cole Schotz has incurred a total of $9,129.87 in unreimbursed expenses in connection with the prosecution of this Action, which are detailed in Exhibit 3.

13. The expenses reflected in Exhibit 3 are the expenses incurred by the Firm, which are further limited by "caps" based on the application of the following criteria:

a. Internal Copying – capped at $0.10 per page.

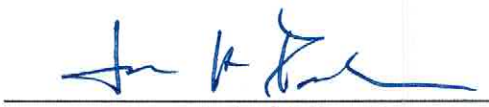
b. On-Line Research – Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

14. The expenses incurred in this Action are reflected in the records of the Firm, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

15. With respect to the standing of the Firm, attached hereto as Exhibit 4 is a brief biography of the Firm, and my biography as the attorney who, while a shareholder of the Firm, had primary responsibility for the services rendered in connection with this matter.

I declare, under penalty of perjury, that the foregoing facts are true and correct to the best of my knowledge and belief.

Executed on: September 19, 2019.



John H. Drucker

EXHIBIT 1

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

Pleadings Filed in Bankruptcy Court on Behalf of Class Action Plaintiffs

DOCKET NO.	DOCUMENT DESCRIPTION	DATED FILED
173	Response to Motion /Response with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to the Debtors' Motion for Order Authorizing Modification of the Automatic Stay, to the Extent Applicable, to Allow for Reimbursement and/or Payment of Defense Costs Under Directors' and Officers' Insurance Policies (related document(s)33) filed by John H. Drucker on behalf of Court-Appointed Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 5/10/2016 at 10:00 AM at Courtroom 723 (SMB)	05/03/2016
1673	Objection to Motion /Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to the Motion of the Creditors' Committee for (I) a Declaration and (2) Enforcement of Automatic Stay Against Litigation Involving Certain Current and Former Directors and Officers of Debtors filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 12/6/2016 at 10:00 AM at Courtroom 723 (SMB)	11/28/2016

DOCKET NO.	DOCUMENT DESCRIPTION	DATED FILED
1675	Declaration /Declaration of John H. Drucker in Support of Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to the Motion of the Creditors' Committee for (I) a Declaration and (2) Enforcement of Automatic Stay Against Litigation Involving Certain Current and Former Directors and Officers of Debtors (related document(s) 1534,1673) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 12/6/2016 at 10:00 AM at Courtroom 723 (SMB)	11/28/2016
1676	Letter (related document(s)1534, 1673, 1644, 1675) Filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 12/6/2016 at 10:00 AM at Courtroom 723 (SMB)	11/28/2016
1718	Objection /Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees Retirement System of Michigan to Debtors (A) Response to Committees (I) D&O Standing Motion and (II) D&O Litigation Stay Motion, and (B) Request for Relief Pursuant to Bankruptcy Code Sections 105, 362, Bankruptcy Rule 4001, and Local Bankruptcy Rules 4001-1 and 9019-1 (I) Granting Limited Relief from Automatic Stay (II) Compelling Relevant Parties to Participate in Mediation, and (III) Temporarily Extending Stay with Respect to Debtors Current and Former Directors and Officers Pending the Outcome of Mediation (related document(s)1534, 1676, 1673, 1675) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class.	12/01/2016

DOCKET NO.	DOCUMENT DESCRIPTION	DATED FILED
1720	Declaration /Declaration of John H. Drucker in Support of Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees Retirement System of Michigan to Debtors (A) Response to Committees (I) D&O Standing Motion and (II) D&O Litigation Stay Motion, and (B) Request for Relief Pursuant to Bankruptcy Code Sections 105, 362, Bankruptcy Rule 4001, and Local Bankruptcy Rules 4001-1 and 9019-1 (I) Granting Limited Relief from Automatic Stay (II) Compelling Relevant Parties to Participate in Mediation, and (III) Temporarily Extending Stay with Respect to Debtors Current and Former Directors and Officers Pending the Outcome of Mediation (related document(s) 1534, 1676, 1673, 1675, 1718) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)	12/01/2016
3034	Objection /Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to Debtors' Disclosure Statement and Related Motion Seeking its Approval and Related Relief (related document(s)2672, 2671, 2722) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 5/19/2017 at 10:00 AM at Courtroom 723 (SMB)	05/11/2017
3407	Statement /Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to Debtors' Motion for Authorization and Approval of D&O Mediation Settlement Agreement and D&O Insurance Cooperation Agreement (related document(s)3296) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 6/28/2017 at 10:00 AM at Courtroom 723 (SMB) Objections due by 6/21/2017	06/21/2017

DOCKET NO.	DOCUMENT DESCRIPTION	DATED FILED
3583	Objection to Motion /Limited Objection with Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan to Confirmation of the Joint Plan of Reorganization of SunEdison, Inc. and Its Debtor Affiliates (related document(s)2671,3290) filed by John H. Drucker on behalf of Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class, with hearing to be held on 7/20/2017 at 10:00 AM at Courtroom 723 (SMB) Objections due by 7/13/2017,	07/13/2017
4125	Statement /Reservation of Rights of the Court-Appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan with Respect to the Debtors' Motion Pursuant to Sections 105(A) and 510(B) of the Bankruptcy Code and the Terms and Conditions of the Debtors' Confirmed Plan of Reorganization, for Entry of an Order Subordinating and Reclassifying Claims Based on the Purchase or Sale of Securities of the Debtors or Their Affiliates (related document(s)3907) filed by John H. Drucker on behalf of Court-Appointed Lead Plaintiff Municipal Employees Retirement System of Michigan and the Class.	10/12/2017

EXHIBIT 2

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**

COLE SCHOTZ P.C.
TIME REPORT
Inception through August 15, 2019

NAME	TOTAL HOURS	CURRENT RATE	VALUE AT CURRENT RATE
Shareholders			
John H. Drucker	741.2	$820	$607,784.00
Associates			
Mark Tsukerman	118.0	$405	$47,790.00
Myles R. MacDonald	133.2	$335	$44,622.00
Paralegals			
Suhailah Sallie	66.9	$295	$19,735.50
TOTALS	**1059.3**		**$719,931.50**

EXHIBIT 3

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**

COLE SCHOTZ P.C.
EXPENSE REPORT
Expenses Incurred from Inception through August 15, 2019

CATEGORY	**AMOUNT**
Court Fees, Filing Fees	$85.20
On-Line Legal & Factual Research	$1,593.93
Conference calls	$76.87
Postage & Express Mail	$1,824.92
Hand Delivery Charges	$69.65
Transportation	$122.50
Internal Copying & Printing	$4,220.00
Court Reporters and Transcripts	$1,136.80
TOTAL EXPENSES:	**$9,129.87**

EXHIBIT 4

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**

FIRM RESUME AND ATTORNEY BIOGRAPHY

Cole Schotz P.C. ("Cole Schotz") serves clients throughout the United States with offices in New Jersey, New York, Delaware, Maryland, Texas and Florida. Founded in 1928, Cole Schotz brings together over 130 attorneys across a wide range of practice areas including 10 primary areas of practice: Bankruptcy & Corporate Restructuring; Litigation, Real Estate; Tax, Trusts & Estates; Corporate, Finance & Business Transactions; Employment; Environmental; and Construction Services. The firm's clientele consists of a wide array of private and public business enterprises, ranging from closely held to Fortune 500 companies. Over the years, the firm has grown in size and practice diversity to assure clients the level of specialization required to meet today's challenges. With over 25 attorneys in the bankruptcy and corporate restructuring practice group, Cole Schotz is recognized as having a sophisticated corporate restructuring practice, possessing the expertise to represent clients in any insolvency-related matter throughout the country. The firm represents debtors, creditors' committees, institutional and individual creditors, class action plaintiffs, secured parties, venture capitalists, equity holders, trustees, receivers, acquiring entities and parties with substantial interests in insolvency proceedings throughout the United States.

John H. Drucker - From January 1, 2006, through December 31, 2017, John Drucker was a member in the firm's Bankruptcy & Corporate Restructuring Practice. From 1986 until its merger with the firm in the beginning of 2006, John was a member of Angel & Frankel, P.C., a nationally recognized corporate reorganization and bankruptcy boutique firm. Mr. Drucker has a national reputation in bankruptcy matters through his representation of debtors, debtors in possession, class action plaintiffs and other parties in interest in sophisticated Chapter 11 proceedings and in non-judicial corporate reorganization and restructurings. He frequently represents domestic and international businesses and individuals in a wide range of matters involving formal bankruptcy, out-of-court restructuring and workouts of financially troubled companies. Mr. Drucker has served, or is currently serving, as lead special bankruptcy law counsel on behalf of class action plaintiffs in a number of sophisticated Bankruptcy Court Cases including, *Drexel Burnham Lambert Capital Group, Adelphia Communications Corporation, Calpine Corp., Lone Star Industries, Tower Automotive, Old Carco LLC (f/k/a Chrysler LLC), Advanta Corp, K V. Pharmaceutical, Central European Distribution Corporation, et al., The Great Atlantic & Pacific Tea Company, I., et al. (In re Dudley v Haub), ARCP Securities Litigation (In re: American Realty Capital Properties, Inc. Litigation), and MF Global Holdings Limited Securities Litigation*. He also has substantial experience and expertise in the representation of creditors, creditors' committees, asset purchasers, landlords, secured creditors, shareholders, class-action claimants, Chapter 11 trustees, liquidating trustees, plan administrators, and governmental units and agencies. Mr. Drucker has served as lead debtors counsel, or has represented significant parties in interest in numerous chapter 11 Bankruptcy Court Cases, including *The Lionel Corporation, The Athlete's Foot Stores, LLC, Wedtech Corp, ANC Rental Corp (parent company of Alamo and National Car Rental), Delta Airlines, Tricom S.A., Residential Capital, LLC, et al*. and many others. John is also a trained and

experienced mediator, providing mediation services with respect to bankruptcy and non-bankruptcy related disputes. He serves on the authorized panels of mediators maintained by the U.S. District Court for the Southern District of New York, the U.S. Bankruptcy Courts for the Southern District of New York and the District of Delaware and the American Arbitration Association. He has also served as a party-appointed neutral arbitrator of bankruptcy law-related matters under the American Arbitration Association's rules for large complex commercial disputes. Martindale-Hubbell, the publisher of the premier directory of legal professionals, awarded John an AV rating, the highest possible, for his professionalism and the quality of his legal work. He has also been selected by his peers for inclusion in the prestigious Best Lawyers in America in Bankruptcy and Creditor-Debtor Rights Law in 2007-2019 and New York Super Lawyers in Bankruptcy and Creditor/ Debtor Rights in 2007-2019.

Exhibit 5C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: SUNEDISON, INC. SECURITIES LITIGATION This Document Relates To: *Horowitz et al. v. SunEdison, Inc. et al.*, Case No. 1:16-cv-07917-PKC	Civil Action No. 1:16-md-2742-PKC

DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF SCOTT+SCOTT ATTORNEYS AT LAW LLP

I, WILLIAM C. FREDERICKS, hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm of Scott+Scott Attorneys at Law LLP ("Scott+Scott"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered by Plaintiffs' Counsel in the above-captioned class action (the "Action"), as well as for payment of litigation expenses incurred by my firm in connection with the Action.[1] I have personal knowledge of the matters set forth herein, and if called upon, could and would testify thereto.

2. Scott+Scott acted as counsel in this matter for Charles Bloom and Shannon Bernstein, who filed the first securities class action related to SunEdison preferred stock, and as one of the Plaintiffs' Counsel performing work for the benefit of the Class under the direction of Lead Counsel. In those capacities, my firm performed the following tasks, among others: investigating, analyzing, and researching potential claims related to SunEdison preferred stock, including claims under the Securities Act of 1933; drafting an initial complaint asserting those claims; working on the transfer of the Action to the Southern District of New York; responding to

[1] All capitalized terms that are not otherwise defined have the meanings set forth in the Stipulation and Agreement of Settlement, dated July 11, 2019 (the "Stipulation").

an adversarial complaint filed by the Official Committee of Unsecured Creditors in SunEdison's bankruptcy case; and communicating with clients and Lead Counsel regarding case management issues, mediation, and other matters in the litigation.

3. The information in this declaration regarding my firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy and reasonableness. Time expended in preparing the application for fees and expenses has not been included in this report, and time for timekeepers who had worked only a *de minimis* amount of total time on this case (*e.g.*, less than 10 hours) was also removed from the time report.

4. I believe that the time reflected in my firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of this litigation. The total number of hours expended on this Action by the firm's attorneys and professional support staff employees through August 15, 2019 was 246.3. The total resulting lodestar is $169,238.00. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in this Action, and the lodestar calculation based on their current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly rates of such personnel in his or her final year of employment by my firm.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the same as, or comparable to, rates submitted by Scott+Scott and accepted by courts for lodestar cross-checks in other class action litigation fee applications in this District and nationwide. *See, e.g., In re Foreign Exchange Benchmark Rates Antitrust Litigation,* Case No. 13-cv-7789,

2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018); *Alaska Electrical Pension Fund v. Bank of America,* Case No. 14-cv-7126, 2018 WL 6250657 (S.D.N.Y. Nov. 29, 2018); *In re LendingClub Securities Litigation,* Case No. 16-cv-2627, 2018 WL 4586669 (N.D. Cal. Sept. 24, 2018).

6. My firm's lodestar figures are based upon the firm's hourly rates, which do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.

7. Scott+Scott has incurred a total of $8,846.53 in unreimbursed expenses in connection with the prosecution of this Action, which are detailed in Exhibit 2.

8. The expenses reflected in Exhibit 2 are the expenses incurred by my firm, which are further limited by "caps" based on the application of the following criteria:

a. Out-of-town travel – airfare is capped at coach rates, hotel rates are capped at $250 for lower-cost cities and $350 for higher-cost cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

b. Out-of-Office Working Meals – capped at $25 per person for lunch and $50 per person for dinner.

c. In-Office Working Meals – capped at $20 per person for lunch and $30 per person for dinner.

d. Internal Copying – capped at $0.10 per page.

e. On-Line Research – Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred in this Action are reflected in the records of my firm, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on: September 11, 2019

William C. Fredericks

EXHIBIT 1

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

SCOTT+SCOTT ATTORNEYS AT LAW LLP
TIME REPORT

From Inception Through August 15, 2019

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
William Fredericks	20.1	$900	$ 18,090.00
Geoffrey Johnson	112.7	$900	$ 101,430.00
John Jasnoch	36.4	$600	$ 21,840.00
Senior Counsel			
Joseph Pettigrew	17.0	$650	$ 11,050.00
Paralegals			
Renata McGraw	60.1	$280	$ 16,828.00
TOTAL LODESTAR	**246.3**		**$ 169,238.00**

EXHIBIT 2

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

SCOTT+SCOTT ATTORNEYS AT LAW LLP
EXPENSE REPORT

CATEGORY	AMOUNT ($)
PSLRA Notice Costs/Press Release	$ 492.50
Service of Process	$ 3,611.80
On-Line Legal Research	$ 1,212.47
Telephone/Faxes	$ 261.10
Postage & Express Mail	$ 254.37
Internal Copying & Printing	$ 905.40
Out-of-Town Travel*	$ 1,512.97
Working Meals	$ 202.67
Court Reporters and Transcripts	$ 393.25
TOTAL EXPENSES:	**$ 8,846.53**

* This includes only coach fares and includes hotels in the following higher-cost cities capped at $350 per night: San Francisco.

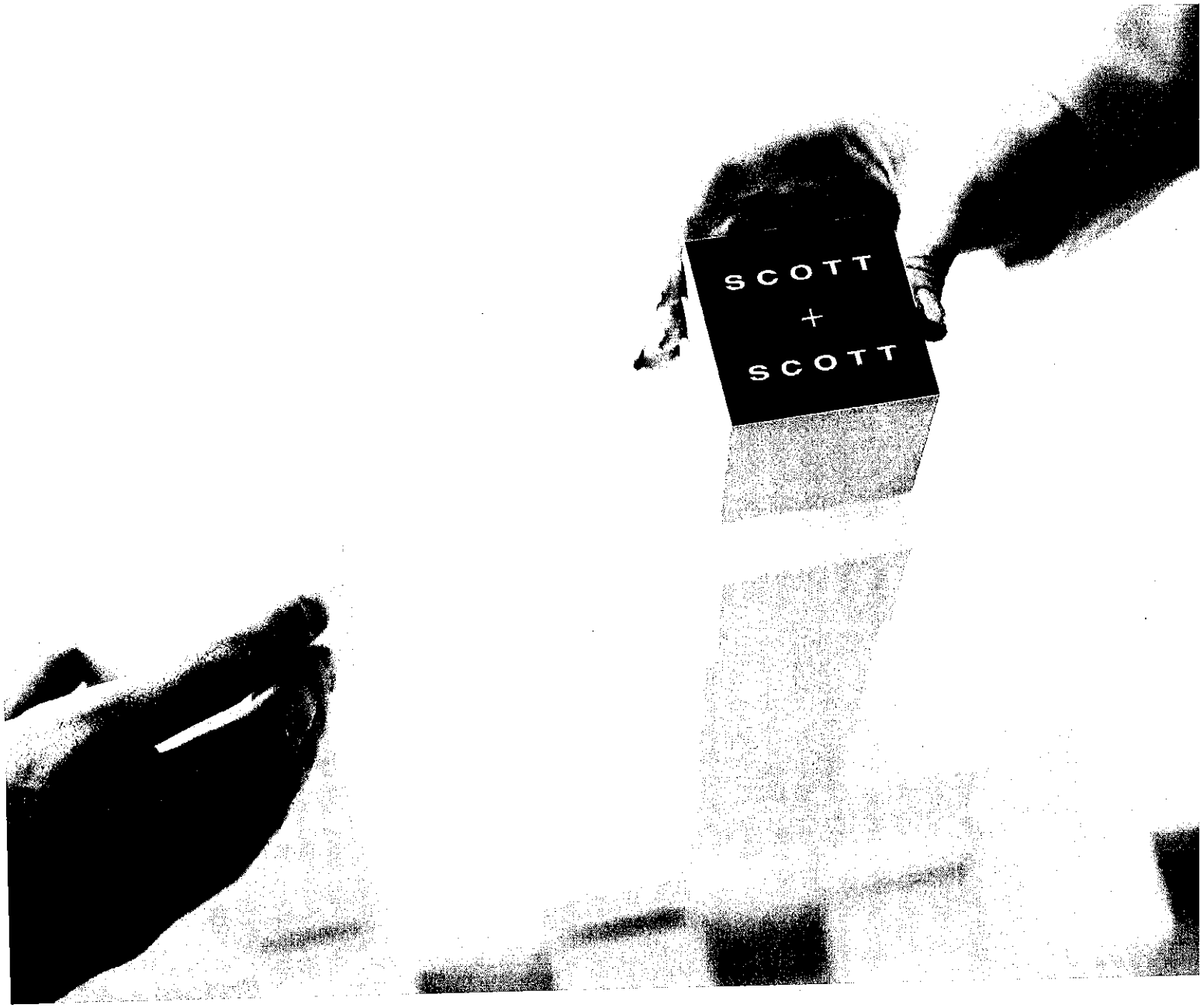
EXHIBIT 3

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

SCOTT+SCOTT ATTORNEYS AT LAW LLP
FIRM BIOGRAPHY

Scott+Scott Attorneys at Law LLP

Firm Profile



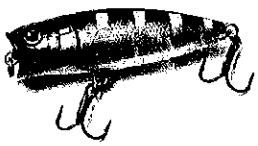
New York + London + Amsterdam + California + Connecticut + Ohio

scott-scott.com

SCOTT + SCOTT

MISSION STATEMENT

Founded in 1975, Scott+Scott Attorneys at Law LLP is an internationally recognized law firm with offices located in New York, London, Amsterdam, California, Connecticut, and Ohio. The Firm represents public pension funds, Taft-Hartley funds, Fortune 500 companies, and individuals victimized by securities fraud, anticompetitive conduct, and corporate wrong-doing. The Firm has successfully prosecuted diverse, complex cases and recovered billions of dollars on behalf of its clients — promoting corporate social responsibility while achieving precedent-setting reforms in corporate governance.



SCOTT + SCOTT ATTORNEYS AT LAW LLP

SPECIALTIES

+ SECURITIES AND CORPORATE GOVERNANCE

Scott+Scott represents individuals and institutional investors that have suffered from stock fraud and corporate malfeasance. Scott+Scott's philosophy is simple – directors and officers should be truthful in their dealings with the public markets and honor their duties to their shareholders. The Firm has successfully prosecuted numerous class actions under the federal securities laws, resulting in the recovery of hundreds of millions of dollars for shareholders.

Representative cases prosecuted by Scott+Scott under the federal securities laws include:

- *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-01884 (D. Conn. July 19, 2007) ($80 million settlement);
- *Irvine v. ImClone Sys., Inc.*, No. 1:02-cv-00109 (S.D.N.Y. July 29, 2005) ($75 million settlement);
- *Cornwell v. Credit Suisse Grp.*, No. 1:08-cv-03758 (S.D.N.Y. July 20, 2011) ($70 million settlement);
- *Policemen's Annuity & Benefit Fund of the City of Chi. v. Bank of Am.*, NA, No. 1:12-cv-02865 (S.D.N.Y. Nov. 10, 2014) ($69 million settlement);
- *Weston v. RCS Capital Corp.*, No. 1:14-cv-10136 (S.D.N.Y. Dec. 29, 2014) ($31 million settlement);
- *Schnall v. Annuity & Life Re (Holdings) Ltd.*, No. 3:02-cv-02133 (D. Conn. June 13, 2008) ($26.5 million settlement);
- *In re: Wash. Mut. Mortg.-Backed Sec. Litig.*, No. 2:09-cv-00037 (W.D. Wash. Jan. 7, 2014) ($26 million settlement);
- *In re Conn's, Inc. Sec. Litig.*, No. 4:14-cv-00548 (S.D. Tex.) ($22.5 million settlement);
- *In re King Digital, Entm't plc S'holder Litig.*, No. CGC-15-544770 (Cal. Super. Ct., S.F. Cty. Nov. 8, 2016) ($18.5 million settlement);
- *Arkansas Teacher Ret. Sys. v. Insulet Corp.*, No. 1:15-cv-12345 (D. Mass. Apr. 6, 2018) ($19.5 million settlement);
- *Birmingham Ret. & Relief Sys. v. S.A.C. Capital Advisors LLC*, No. 1:12-cv-09350 (S.D.N.Y. June 17, 2013) ($10 million settlement);
- *Hamel v. GT Solar Int'l, Inc.*, No. 217-2010-CV-05004 (N.H. Super. Ct., Merrimack Cty. May 10, 2011) ($10.25 million settlement); and
- *St. Lucie Cty. Fire Dist. Firefighter's Pension Tr. Fund v. Oilsands Quest Inc.*, No. 1:11-cv-01288 (S.D.N.Y. Dec. 6, 2013) ($10.23 million settlement).

SCOTT + SCOTT ATTORNEYS AT LAW LLP

Since its inception, Scott+Scott's securities and corporate governance litigation department has developed and maintained a reputation of excellence and integrity recognized by state and federal courts across the country.

N.Y.U. v. Ariel Fund Ltd., No. 603803/08, slip. op. at 9-10 (N.Y. Sup. Ct. Feb. 22, 2010): "It is this Court's position that Scott+Scott did a superlative job in its representation, which substantially benefited Ariel...For the record, it should be noted that Scott+Scott has demonstrated a remarkable grasp and handling of the extraordinarily complex matters in this case...They have possessed a knowledge of the issues presented and this knowledge has always been used to the benefit of all investors."

In re Priceline.com, Inc. Sec. Litig., No. 3:00-CV-01884(AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007): "The quality of representation here is demonstrated, in part, by the result achieved for the class. Further, it has been this court's experience, throughout the ongoing litigation of this matter, that counsel have conducted themselves with the utmost professionalism and respect for the court and the judicial process."

In addition to prosecuting federal securities class actions, Scott+Scott has a proven track record of handling corporate governance matters through its extensive experience litigating shareholder derivative actions.

Scott+Scott has been singularly successful in its shareholder derivative appellate practice, and as a result, has been instrumental in fashioning the standards in this area of law. Examples of this include:

- *W.moreland Cty. Emp. Ret. Sys. v. Parkinson*, No. 12-3342 (7th Cir. Aug. 16, 2013): the Seventh Circuit clarified the parameters of demand futility in those instances where a majority of directors of a corporation are alleged to have breached the fiduciary duty of loyalty by consciously disregarding positive law;
- *Cottrell v. Duke*, No. 12-3871 (8th Cir. Dec. 28, 2013): the Eighth Circuit, in a case of first impression, clarified that the Colorado River stay is virtually never appropriate where there are exclusive federal claims; and
- *King v. Verifone Holdings, Inc.*, No. 330, 2010 (Del. Jan. 28, 2011): the Supreme Court of Delaware has clarified the availability of the Delaware Corporate Code §220 "books and records" demands to a shareholder whose original plenary action was dismissed without prejudice in a federal district court.

Representative shareholder derivative actions prosecuted by Scott+Scott include:

- *In re DaVita Healthcare Partners Derivative Litig.*, No. 1:12-cv-02074 (D. Colo. Jan. 8, 2015) (corporate governance reforms valued at $100 million);
- *Buffalo Grove Police Pension Fund v. Diefenderfer*, No. 2:19-cv-00062 (E.D. Pa. Jan. 23, 2019) (settlement of derivative claims against Navient Corporation and its officers and directors providing for corporate governance reforms valued at $139 million);
- *Tharp v. Acacia Commc'ns, Inc.*, No 1:17-cv-11504 (D. Mass. Sept. 17, 2018) (settlement of derivative claims against Acacia Communications, Inc. and its officers and directors providing for corporate governance reforms valued at $57 million to $71 million);
- *N. Miami Beach Gen. Emps. Ret. Fund v. Parkinson*, No. 1:10-cv-06514 (N.D. Ill. Nov. 26, 2014) (corporate governance reforms valued between $50 million and $60 million);
- *In re: Marvell Tech. Grp. Ltd. Derivative Litig.*, No. 5:06-cv-03894 (RS) (N.D. Cal. May 21, 2009) ($54.9 million settlement and corporate governance reforms);

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- *In re Qwest Commc'ns Int'l, Inc.*, No. 1:01-cv-01451 (D. Colo. June 15, 2004) ($25 million settlement and corporate governance reforms);
- *Plymouth Cty. Contributory Ret. Fund v. Hassan*, No. 2:08-cv-01022 (D.N.J. Jan. 10, 2012) (settlement of derivative claims against Merck Schering Plough and its officers and directors providing for corporate governance reforms valued between $50 million and $75 million);
- *Carfagno v. Schnitzer*, No. 1:08-cv-00912 (S.D.N.Y. May 18, 2009) (modification of terms of preferred securities issued to insiders valued at $8 million); and
- *Garcia v. Carrion*, No. 3:09-cv-01507 (D.P.R. July 8, 2011) (settlement of derivative claims against Popular, Inc. and its officers and directors providing for corporate governance reforms valued between $10.05 million and $15.49 million).

+ ANTITRUST

Scott+Scott Attorneys at Law LLP represents investors, businesses, and consumers in price-fixing, bid-rigging, monopolization, and other restraints of trade cases on both a class-wide and individual basis. The firm's work for its clients helps ensure that markets remain free, open, and competitive.

Scott+Scott has been recognized by the American Antitrust Institute in receiving an Outstanding Antitrust Litigation Achievement in Private Law Practice award in 2018 and an honorable mention in 2014. The firm's success is reflected in the money recovered for its clients. *The 2018 Antitrust Annual Report: Class Action Filings in Federal Court* co-authored by the University of San Francisco School of Law and The Huntington National Bank found that from 2013 to 2018, Scott+Scott ranked second nationally in total value of set-tlements for antitrust class actions, recovering over $3.4 billion. Scott+Scott's dedicated team of antitrust partners have built one of the nation's top plaintiffs' firms for antitrust actions. Furthermore, Scott+Scott's opening of offices in Europe reflects its commitment and ability to pursue its clients' claims on a global basis. Scott+Scott stands ready to take on its clients' complex legal problems and prevail.

Representative actions in which Scott+Scott currently serves as a lead counsel include:

- *In re: Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.) (challenging price-fix-ing of foreign exchange rates (over $2.3 billion in final-approved settlements)); **The largest antitrust settlement of 2018 according to the American Antitrust Institute;**
- *In re Disposable Contact Lens Antitrust Litig.*, No. 3:15-md-2626 (M.D. Fla.) (class action alleging illegal anticompetitive policies to eliminate discount pricing by the major manufacturers and distributors of disposable contact lenses);
- *In re European Government Bonds Antitrust Litig.*, No. 1:19-cv-2601 (S.D.N.Y) (challenging manipulation in the market for European Government Bonds); and
- *In re GSE Bonds Antitrust Litig.*, No. 1:19-cv-01704 (S.D.N.Y.) (challenging manipulation in the market for bonds issued by Government-Sponsored Entities, *e.g.*, Freddie Mac and Fannie Mae);
- *In re ICE LIBOR Antitrust Litig.*, No. 1:19-cv-02002 (S.D.N.Y.) (class action alleging anticompetitive conduct in the setting of the ICE LIBOR benchmark rate);

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- *Deslandes v. McDonalds USA, LLC*, No. 1:17-cv-04857 (N.D. Ill.) (class action challenging no-hire agreement among McDonald's franchisees);
- *Butler v. Jimmy John's Franchise, LLC*, No. 3:18-cv-00133 (S.D. Ill.) (class action challenging no-hire agreement among Jimmy John's franchisees); and
- *Blanton v. Domino's Pizza Franchising LLC*, No. 2:18-cv-13207 (E.D. Mich.) (class action challenging no-hire agreement among Domino's franchisees).

Representative cases in which Scott+Scott has previously served as court-appointed co-lead counsel include:

- *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.) (challenging bid rigging and market allocation of leveraged buyouts by private equity firms ($590.5 million in settlements));
- *Alaska Electrical Pension Fund v. Bank of America Corp.*, No. 14-cv-7126 (S.D.N.Y.) (challenging price-fixing of the ISDAfix benchmark interest rate ($504.5 million in settlements)) **The 3rd largest antitrust settlement of 2018 according to the American Antitrust Institute;**
- *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, MDL No. 1891, No. CV 07-06542 (C.D. Cal.) (challenging price-fixing/illegal surcharge of ticket prices ($86 million in cash and travel voucher settlements)); and
- *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Co.*, No. 12-cv-03824 (E.D. Pa.) (challenging monopolization in the sale of name-brand pharmaceutical on behalf of indirect purchaser class ($8 million settlement)).

When not serving as lead counsel, Scott+Scott has aided in the recovery for class members by serving on the executive leadership committees in numerous other class action cases, including:

- *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 1:05-md-1720 (E.D.N.Y.) (challenging price-fixing in the payment cards industry ($6.24 billion settlement preliminarily approved));
- *Kleen Products LLC v. Int'l Paper Co.*, No. 1:10-cv-05711 (N.D. Ill.) (challenging price-fixing of container-board products (over $376 million in settlements));
- *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR (N.D. Cal.) (challenging price-fixing of lithium-ion batteries on behalf of indirect purchaser class (over $113 million in settlements)); and
- *In re Mexican Government Bonds Antitrust Litig.*, 18-cv-02830 (S.D.N.Y.) (an antitrust class action by eight institutional investors prosecuting 10 global financial institutions for colluding to fix the prices of debt securities issued by the Mexican Government between 2006 and 2017).

When not serving as lead counsel, Scott+Scott has served on the executive leadership committees in numerous class action cases, including:

- *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 1:05-md-1720 (E.D.N.Y.) (challenging price-fixing in the payment cards industry (p to $6.24 billion settlement preliminarily approved);
- *Kleen Products LLC v. Int'l Paper Co.*, No. 1:10-cv-05711 (N.D. Ill.) (challenging price-fixing of container-board products ($376,400,000 settlement);
- *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR (N.D. Cal.) (challenging price-fixing of lithium-ion batteries); and

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- *In re Mexican Government Bonds Antitrust Litig.*, 18-cv-02830 (S.D.N.Y.) (an antitrust class action by eight institutional investors prosecuting 10 global financial institutions for colluding to fix the prices of debt securities issued by the Mexican Government between 2006 and 2017).

Scott+Scott's class action antitrust experience includes serving as co-trial counsel in:

- *In re Scrap Metal Antitrust Litig.*, 02-cv-0844 (N.D. Ohio), where it helped obtain a $34.5 million jury verdict, which was subsequently affirmed by the United States Court of Appeals for the Sixth Circuit (see *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 524 (6th Cir. 2008); and
- *Ross v. Bank of America N.A.*, No. 05-cv-7116, MDL No. 1409 (S.D.N.Y.), and *Ross v. American Express Co.*, No. 04-cv-5723, MDL No. 1409 (S.D.N.Y.) (bench trial involving agreement among payment cards to impose arbitration terms on cardholders).

In addition to its class action work, Scott+Scott also represents clients in opt-out antitrust litigation. The firm's success in class actions allows it to provide its opt-out clients unique and valuable insights.

Representative clients include Parker Hannifin Corporation, PolyOne Corporation, Eastman Kodak Company, and Fujifilm Manufacturing U.S.A., Inc., in the following matters:

- *In re: Aluminum Warehousing Antitrust Litig.*, MDL No. 2481 (S.D.N.Y.);
- *In re Rubber Chemicals Antitrust Litig.*, MDL No. 1648 (N.D. Cal.);
- *In re Polychloroprene Rubber (CR) Antitrust Litig.*, MDL No. 1642 (D. Conn.); and
- *In re Plastic Additives Antitrust Litigation (No. II)*, MDL No. 1684 (E.D. Pa.).

+ CONSUMER RIGHTS

Scott+Scott and its attorneys have a proven track record of obtaining significant recoveries for consumers in class action cases. Scott+Scott is one of the premier advocates in the area of consumer protection law and has been appointed to a number of prominent leadership positions.

Cases where Scott+Scott has played a leading role in the area of consumer protection litigation include:

- *In re Providian Financial Corp. Credit Card Terms Litig.*, MDL No. 1301 (E.D. Pa.) ($105 million settlement was achieved on behalf of a class of credit card holders who were charged excessive interest and late charges on their credit cards);
- *In re Prudential Ins. Co. SGLI/VGLI Contract Litig.*, MDL No. 2208 (D. Mass.) ($40 million settlement was achieved on behalf of a class of military service members and their families who had purchased insurance contracts);
- *In re Target Corp. Customer Data Security Breach Litig.*, MDL No. 2522 (D. Minn.) ($59 million settlement achieved on behalf of financial institutions involving data breach of personal and financial information of approximately 40 million credit and debit card holders);

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- *Greater Chautauqua Federal Credit Union v. Kmart Corp.*, No. 15-cv-02228 (N.D. Ill.) ($18 million monetary and injunctive relief settlement on behalf of financial institutions involving data breach of credit and debit card information);
- *Winsouth Credit Union v. Mapco Express Inc.*, No. 3:14-cv-1573 (M.D. Tenn.) (largest dollar-per-card settlement obtained on behalf of financial institutions involving data breach of credit and debit card information);
- *Gunther v. Capital One, N.A.*, No. 09-2966 (E.D.N.Y.) (a net settlement resulting in class members receiving 100% of their damages was obtained);
- *In re Pre-Filled Propane Tank Marketing and Sales Practices Litig.*, MDL No. 2086 (W.D. Mo.) ($37 million settlement obtained on behalf of class of propane purchasers who alleged defendants overcharged the class for under-filled propane tanks);
- *Murr v. Capital One Bank (USA), N.A.*, No. 1:13-cv-1091 (E.D. Va.) ($7.3 million settlement on behalf of class of consumers who were misled into accepting purportedly 0% interest offers); and
- *Howerton v. Cargill, Inc.*, No. 13-cv-00336 (D. Haw.) ($6.1 settlement obtained on behalf of a class of consumers who purchased Truvia, purported to be deceptively marketed as "all-natural").

Moreover, Scott+Scott is currently serving in a leadership capacity in a number of class action consumer protection cases, including:

- *In re Equifax, Inc. Customer Data Security Breach Litig.*, MDL No. 2800 (N.D. Ga.) (co-lead counsel on behalf of financial institutions that have been injured because their customers' personal information was compromised when Equifax's systems were breached);
- *In re The Home Depot, Inc., Customer Data Security Breach Litig.*, MDL No. 2583 (N.D. Ga.) (co-lead counsel, $27.25 million settlement on behalf of financial institutions involving data breach and the theft of the personal and financial information of over 40 million credit and debit card holders);
- *First Choice Federal Credit Union v. The Wendy's Co.*, No. 2:16-cv-00506 (W.D. Pa.) (co-lead counsel, pre-liminary approval of $50 million settlement on behalf of financial institutions involving data breach of personal and financial information of millions of credit and debit card holders);
- *Negron v. Cigna Corp.*, No. 3:16-cv-1702 (D. Conn.) (Chair of Executive Committee, claims on behalf of plan participants involving overcharge of copayments for prescription drugs); and
- *Midwest America Federal Credit Union v. Arby's Restaurant Group, Inc.*, No. 1:17-cv-00514 (N.D. Ga.) (member of Executive Committee, claims on behalf of financial institutions involving data breach of credit and debit card information).

SCOTT + SCOTT ATTORNEYS AT LAW LLP

GEOFFREY M. JOHNSON

PRACTICE EMPHASIS

Geoffrey M. Johnson's practice focuses on shareholder derivative, corporate governance, and securities class action litigation.

ADMISSIONS

United States District Court: Northern and Southern Districts of Ohio, Eastern District of Michigan and Western District of Texas; **United States Court of Appeals:** Second, Third, Sixth, Seventh, Eighth and Ninth; **State Supreme Courts:** Ohio

EDUCATION

University of Chicago Law School (J.D., with Honors, 1999); **Grinnell College** (B.A., Political Science, with Honors, 1996)

HIGHLIGHTS

Mr. Johnson is a partner in the Ohio office and active in the firm's settlement and appellate practice groups. He has served as lead or co-lead counsel in several securities class action cases brought under Section 11 of the Securities Act of 1933, including ***In re King Digital Entertainment plc S'holder, Litig.***, No. 15-544770 (Superior Court of California, San Francisco County), a shareholder lawsuit that settled for $18.5 million after surviving two separate motions to dismiss, and **Rosenberg v. Cliffs Natural Resources, Inc.**, No. 14-1531 (Court of Common Pleas, Cuyahoga County, Ohio), a shareholder lawsuit that settled for $10 million after the firm had engaged in extensive litigation and motion practice.

Mr. Johnson has been active in the firm's mortgage-backed securities litigation practice, serving as lead or co-lead counsel in mortgage-backed securities class action cases. ***In re Washington Mutual Mortgage-Backed Securities Litig.***, 2:09-cv-00037 (W. D. Wash.) and ***Putnam Bank v. Countrywide Financial, Inc.***, No. 10-cv-302 (C.D. Cal.). Mr. Johnson also helped develop the theories that the firm's pension fund clients have used to pursue class action cases against mortgage-backed security trustees. – ***Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago v. Bank of New York Mellon*** No. 11-cv-05459 (S.D.N.Y.); and ***Oklahoma Police Pension & Retirement System v. U.S. Bank NA*** No. 11-cv-8066 (S.D.N.Y.).

Mr. Johnson has also served as lead or co-lead counsel in other major securities and ERISA cases, including: ***In re Royal Dutch/Shell Transport ERISA Litig.***, No. 04-1398 (D.N.J.), which settled for $90 million and is one of the three largest recoveries ever obtained in an ERISA class action case; ***In re Priceline Securities Litig.***, 00-cv-1884 (D. Conn.), which settled for $80 million and is the largest class action securities settlement ever obtained in the State of Connecticut; and ***In re General Motors ERISA Litig.***, 05-cv-71085 (E.D. Mich.), a case that settled for $37.5 million and ranks among the largest ERISA class settlements ever obtained.

Prior to joining Scott+Scott, Mr. Johnson clerked for the Honorable Karen Nelson Moore, United States Court of Appeals for the Sixth Circuit.

SCOTT + SCOTT

ATTORNEY BACKGROUND/ EXPERIENCE

WILLIAM C. FREDERICKS

PRACTICE EMPHASIS

William Fredericks' practice focuses primarily on litigating securities and other complex commercial class actions.

ADMISSIONS

United States Supreme Court; United States Court of Appeals: First, Second, Third, Sixth, and Tenth Circuits;
United States District Court: Southern and Eastern Districts of New York, and Colorado

EDUCATION

Columbia University Law School, (J.D., 1988); **University of Oxford** (M. Litt. in International Relations, 1985);
Swarthmore College (B.A. in Political Science, high honors, 1983)

HIGHLIGHTS

Mr. Fredericks is a partner in the firm's New York office. In addition to serving as lead counsel on behalf of investors in several pending securities fraud actions, he also represents investors in the pending FX antitrust litigation brought against over a dozen leading banks based on their involvement in manipulating foreign exchange ("FX") rates and spreads, and in pending proceedings relating to data security breaches at FaceBook, Inc.

At Columbia Law School, Bill was a three-time Harlan Fiske Stone Scholar, a Columbia University International Fellow, Articles Editor of The Columbia Journal of Transnational Law, and winner of Columbia's Beck Prize (property law), Toppan Prize (advanced constitutional law) and Greenbaum Prize (written advocacy). A three-judge panel chaired by the late Justice Antonin Scalia also awarded him the Thomas E. Dewey Prize for best oral argument in the final round of Columbia's Stone Moot Court Honor Competition. After clerking for the Hon. Robert S. Gawthrop III (E.D. Pa.) in Philadelphia, Mr. Fredericks spent seven years practicing securities and complex commercial litigation at Simpson Thacher & Bartlett LLP and Willkie Farr & Gallagher LLP in New York before moving to the plaintiffs' side of the bar in 1996.

Mr. Fredericks has represented investors as a lead or co-lead counsel for plaintiffs in dozens of securities class actions, including ***In re Wachovia Preferred Securities and Bond/Notes Litig.*** (S.D.N.Y.) (total settlements of $627 million, reflecting the largest recovery ever in a pure Securities Act case not involving any parallel government fraud claims); ***In re Rite Aid Securities Litig.*** (E.D. Pa.) (total settlements of $323 million, including the then-second largest securities fraud settlement ever against a Big Four accounting firm); ***In re Sears Roebuck & Co. Sec. Litig.*** (N.D. Ill.) ($215 million settlement, representing the then-largest §10(b) class action recovery in an action that did not involve either a financial restatement or parallel government fraud claims); ***In re State Street Bank and Trust Co. ERISA Litig.*** (S.D.N.Y.) (one of the largest ERISA class settlements to date); ***In re King Digital Sec. Enter. PLC Shareholder Litig.*** (Super. Ct. San Fran. Cty.) ($18.5 million settlement, representing one of the largest state court §11 class action recoveries to date); and ***Irvine v. ImClone Systems, Inc.*** (S.D.N.Y.) ($75 million settlement). A consortium of plaintiffs' counsel also chose Mr. Fredericks to present the (successful) oral argument in opposition to defendants' efforts to dismiss (on grounds of standing) over fifteen separate securities fraud cases before a three judge panel in ***In re Mutual Fund Investing Litig.*** (see 519 F. Supp. 2d 580 (D.Md. 2007)), which later settled for a combined total of several hundred million dollars. Mr. Fredericks also played a leading role on the team that obtained a rare 9-0 decision for securities fraud plaintiffs in the U.S. Supreme Court in ***Merck & Co., Inc. v. Reynolds*** (which later settled for $1.052 billion), and he has also coauthored amicus briefs on behalf of clients in a number of other Supreme Court cases (including Halliburton, Amgen, ANZ Securities and Cyan) involving various significant securities law issues.

SCOTT + SCOTT

ATTORNEY BACKGROUND/ EXPERIENCE

Mr. Fredericks has also represented clients in litigating claims in federal bankruptcy court proceedings, and has obtained substantial recoveries from a bankrupt corporation's officers, law firm and outside auditors on behalf of a court-appointed Trustee of a creditor's trust. See ***In re Friedman's, Inc.***, 394 B.R. 623 (S.D. Ga.2008). He also currently represents a putative class of large commercial customers of a bankrupt utility in breach of contract proceedings pending before the U.S. Bankruptcy Court for the Northern District of Ohio.

William Fredericks has been recognized in the 2012-19 editions of "America's Best Lawyers" in the field of commercial litigation, in "Who's Who in American Law" (Marquis), and in the New York City "SuperLawyers" listings for securities litigation (2013-19). He has been a frequent panelist on various securities litigation programs sponsored by the Practising Law Institute (PLI) – including ten years as a panelist on civil liabilities under the federal Securities Act – and has lectured overseas on American class action litigation on behalf of the American Law Institute/American Bar Association (ALI/ABA). He is also the former chairman of the New York City Bar Association's Committee on Military Affairs and Justice, and a member of the Federal Bar Council.

JOHN T. JASNOCH

PRACTICE EMPHASIS

John Jasnoch's practice areas include securities and antitrust class actions, shareholder derivative actions, and other complex litigation.

ADMISSIONS

State of California; United States Court of Appeals: Ninth Circuit; **United States District Court:** Southern, Central, and Northern Districts of California

EDUCATION

University of Nebraska, College of Law (J.D., 2011); **Creighton University** (B.A., Political Science and International Relations, cum laude, 2007)

HIGHLIGHTS

Mr. Jasnoch is a partner in the San Diego office. He represents clients in complex litigations in state and federal courts across the county.

Mr. Jasnoch has been counsel of record in numerous successful cases where Scott+Scott served in a leadership capacity, including: ***In re LendingClub Corp. Shareholder Litig.***, No. CIV537300 (Cal. Super. Ct. San Mateo Cty) ($125 million federal and state settlement); ***In re King Digital Entertainment plc Shareholder Litig.***, No. CGC-15-544770, (Cal. Super. Ct. San Francisco Cty.) ($18.5 million settlement); ***In re FireEye, Inc. Securities Litig.***, Case No. 1:14-cv-266866 (Cal. Super. Ct. Santa Clara Cty.) ($10.3 million settlement); ***In re Pacific Coast Oil Trust Securities Litig.***, Case No. BC550418 (Cal. Super. Ct. Los Angeles Cty.) ($7.6 million settlement); and ***In re MobileIron, Inc., Shareholder Litig.***, Case No. 1-15-284001 (Cal. Super. Ct. Santa Clara Cty) ($7.5 million settlement).

In 2015, Mr. Jasnoch was a member of the trial team in ***Scorpio Music S.A. v. Victor Willis***, (No. 11-cv-1557 (S.D. Cal.)) a landmark copyright jury trial concerning the copyright ownership of hit songs by The Village People. In that suit, Scott+Scott client and Village People lyricist Victor Willis obtained a declaratory judgment confirming his copyright termination and giving him a 50% copyright interest in "YMCA" and compositions.

SCOTT + SCOTT ATTORNEYS AT LAW LLP

JOSEPH A. PETTIGREW

PRACTICE EMPHASIS

Joseph A. Pettigrew's practice areas include securities, antitrust, shareholder derivative litigation, and other complex litigation.

ADMISSIONS

States of California and Maryland; United States Supreme Court; United States District Court: Central District of California; District of Maryland

EDUCATION

University of San Diego School of Law (J.D., 2004); **Carleton College** (B.A., Art History, cum laude, 1998)

HIGHLIGHTS

Mr. Pettigrew is an attorney who works across multiple S+S offices. His work includes the following cases: ***Dahl v. Bain Capital Partners, LLC***, No. 07-cv-12388 (D. Mass.); ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.***, MDL No. 1720 (E.D.N.Y); and ***Marvin H. Maurras Revocable Trust v. Bronfman***, 12-cv-3395 (N.D. Ill.).

Mr. Pettigrew has served on the board and as legal counsel to several nonprofit arts organizations.

Exhibit 6

EXHIBIT 6

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

BREAKDOWN OF PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES BY CATEGORY

CATEGORY	AMOUNT
Court/Filing Fees	$900.20
Service of Process	$8,123.55
PSLRA Notice Costs/Press Release	$492.50
On-Line Legal and Factual Research	$200,084.00
Telephone/Conference Calls/Faxes	$505.77
Postage & Express Mail	$11,540.01
Hand Delivery	$2,000.55
Local Transportation	$13,521.13
Internal Copying/Printing	$57,431.30
Outside Copying	$54,049.16
Out of Town Travel	$29,584.94
Working Meals	$22,286.03
Court Reporting & Transcripts	$53,923.34
Specialty Publications	$1,316.10
Document Storage & Retrieval	$116.61
Experts	$724,157.56
Mediation	$143,513.10
Discovery/Document Management	$201,809.68
TOTAL EXPENSES:	**$1,525,355.53**

Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LARRY FREUDENBERG, Individually and On Behalf of All Others Similarly Situated, Plaintiff, - against - E*TRADE FINANCIAL CORPORATION, MITCHELL H. CAPLAN, ROBERT J. SIMMONS and DENNIS E. WEBB, Defendants.	Civil Action No. 07 Civ. 8538 (JPO) (MHD)

FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter came before the Court for hearing pursuant to this Court's Order Granting Preliminary Approval of Settlement, Granting Conditional Class Certification, and Providing for Notice dated June 12, 2012 ("Preliminary Approval Order"), and the Court having received declarations attesting to the mailing of the Notice and the publication of the Summary Notice in accordance with the Preliminary Approval Order, on the application of the Settling Parties for approval of the settlement ("Settlement") set forth in the Stipulation of Settlement dated as of May 17, 2012 ("Stipulation"), the proposed Plan of Allocation of the Settlement proceeds, Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, and interim reimbursement of notice and administration expenses and, following a hearing on October 11, 2012 before this Court to consider the applications, all supporting papers and arguments of the Settling Parties, the objections, supporting papers and arguments submitted by Paul Liles, Leon Behar, Chris Andrews, and Eldon Ventris, and other proceedings held herein, and good cause appearing therefore,

IT IS HEREBY ADJUDGED, DECREED AND ORDERED:

1. This Final Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully incorporated in this Final Judgment as if set forth fully herein.

2. The Court has jurisdiction over the subject matter of this Action and all parties to the Action, including all Settlement Class Members.

3. This Court finds that due and adequate notice was given of the Settlement, the Plan of Allocation of the Settlement proceeds, and Plaintiffs' Counsel's application for an award of attorneys' fees and/or reimbursement of expenses, as directed by this Court's Preliminary Approval Order, and that the forms and methods for providing such notice to Settlement Class Members:

(a) constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort;

(b) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this class action and the right to exclude themselves from the Settlement Class; (ii) their right to object to any aspect of the proposed Settlement, including the terms of the Stipulation and the Plan of Allocation; (iii) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense, if they are not excluded from the Settlement Class; and (iv) the binding effect of the proceedings, rulings, orders and judgments in this

Action, whether favorable or unfavorable, on all persons who are not excluded from the Settlement Class;

(c) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all the applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws.

4. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court hereby grants final certification of the Settlement Class consisting of all Persons (other than those Persons who timely and validly request exclusion from the Settlement Class) who purchased or otherwise acquired E*TRADE securities between April 19, 2006 and November 9, 2007, inclusive. Excluded from the Settlement Class are Defendants, members of the Individual Defendants' immediate families, the directors, officers, subsidiaries, and affiliates of E*TRADE, any firm, trust, corporation, or other entity in which any Defendant has a controlling interest, and the legal representatives, affiliates, heirs, successors-in-interest or assigns of any such excluded person or entity.

5. The Settlement Class excludes those Persons who timely and validly filed requests for exclusion from the Settlement Class pursuant to the Notice sent to Settlement Class Members as provided in this Court's Preliminary Approval Order. A list of such Persons who filed timely, completed and valid requests for exclusion from the Settlement Class is attached hereto as Exhibit 1. Persons who filed timely, completed and valid requests for exclusion from the Settlement Class are not bound by this Final Judgment or the terms of the Stipulation, and may pursue their own individual remedies against Defendants and the Released Persons. Such

Persons are not entitled to any rights or benefits provided to Settlement Class Members by the terms of the Stipulation.

6. With respect to the Settlement Class, the Court finds that:

(a) the Settlement Class Members satisfy all of the requirements of Rule 23(a) of the Federal Rules of Civil Procedure because:

i. the members of the Settlement Class are so numerous that joinder of all members is impracticable;

ii. there are questions of law and fact common to the Settlement Class;

iii. the claims and defenses of the representative parties are typical of the Settlement Class; and

iv. the representative parties will fairly and adequately protect the interests of the Settlement Class.

(b) In addition, the Court finds that the Action satisfies the requirement of Federal Rule of Civil Procedure 23(b)(3) in that there are questions of law and fact common to the Settlement Class Members that predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

(c) The Court finds that Plaintiffs, Kristen Management Limited, Straxton Properties, Inc., Javed Fiyaz, Ira Newman, Peter Farah and Andrea Frascaroli, possess claims that are typical of the claims of Settlement Class Members and that they have and will adequately represent the interest of Settlement Class Members and appoints them as the representatives of the Settlement Class, and appoints Lead Counsel, Brower Piven, A

Professional Corporation, and Co-Lead Counsel, Levi & Korsinsky, LLP, as counsel for the Settlement Class ("Plaintiffs' Counsel").

7. The Court hereby finds that objectors Liles and Andrews lack standing to object to the Settlement. The Court further finds that the objections of objectors Liles, Behar, and Andrews to the Notice and/or the Settlement are without factual or legal merits and hereby overrules them in their entirety.

8. Pursuant to Fed. R. Civ. P. 23(e), this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement, and all transactions preparatory and incident thereto, is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Plaintiffs and all Settlement Class Members based on, among other things: the Settlement resulted from arm's-length negotiations between the Settling Parties and/or their counsel; the amount of the recovery for Settlement Class Members being within the range of reasonableness given the strengths and weaknesses of the claims and defenses thereto and the risks of non-recovery and/or recovery of a lesser amount than is represented through the Settlement by continued litigation through all pretrial, trial and appellate procedures; the recommendation of the Settling Parties, in particular experienced Plaintiffs' Counsel, and the absence of objections from any Settlement Class Member to the Settlement. All objections to the proposed Settlement, if any, are overruled in their entirety. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in accordance with its terms and conditions. The Settling Parties are hereby directed to perform the terms of the Stipulation, and the Clerk of the Court is directed to enter and docket this Class Judgment in this Action.

9. The Court hereby finds that objector Andrews lacks standing to object to the Plan of Allocation. The Court further finds that the objections of objectors Behar and Andrews to the Plan of Allocation are without factual or legal merits and hereby overrules them in their entirety.

10. This Court hereby approves the Plan of Allocation as set forth in the Notice as fair and equitable, and overrules all objections to the Plan of Allocation, if any, in their entirety. The Court directs Plaintiffs' Lead Counsel to proceed with the processing of Proofs of Claim and the administration of the Settlement pursuant to the terms of the Plan of Allocation and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Settlement Fund to eligible Settlement Class Members, as provided in the Stipulation and Plan of Allocation.

11. The Court hereby finds that objectors Liles and Andrews lack standing to object to Plaintiffs' Counsel's request for an award of attorneys' fees and request for reimbursement of litigation expenses. The Court further finds that the objections of objectors Liles, Behar, and Andrews to the Plaintiffs' request for an award of attorneys' fees and request for reimbursement of litigation expenses are without factual or legal merits and hereby overrules them in their entirety.

12. This Court hereby awards Plaintiffs' Counsel reimbursement of their out-of-pocket expenses in the amount of $ 554,950.23, and attorneys' fees equal to 28 % percent of the balance of the Settlement Fund, with interest to accrue on all such amounts at the same rate and for the same periods as has accrued by the Settlement Fund from the date of this Final Judgment to the date of actual payment of said attorneys' fees and expenses to Plaintiffs' Counsel as provided in the Stipulation. The Court finds the amount of attorneys' fees awarded herein are fair and reasonable based on: (a) the work performed and costs incurred

by Plaintiffs' Counsel; (b) the complexity of the case; (c) the risks undertaken by Plaintiffs' Counsel and the contingent nature of their employment; (d) the quality of the work performed by Plaintiffs' Counsel in this Action and their standing and experience in prosecuting similar class action securities litigation; (e) awards to successful plaintiffs' counsel in other, similar litigation; (f) the benefits achieved for Settlement Class Members through the Settlement; and (g) the absence of a significant number of objections from Settlement Class Members to either the application for an award of attorneys' fees or reimbursement of expenses to Plaintiffs' Counsel. The Court also finds that the requested reimbursement of expenses is proper as the expenses incurred by Plaintiffs' Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Settlement Class Members.

13. Based on the foregoing, the Court finds that the objection by Mr. Ventris has been resolved and is moot. The attorneys' fees awarded and expenses reimbursed above shall otherwise be paid to Plaintiffs' Counsel as provided in the Stipulation.

14. Plaintiffs' Counsel may apply, from time to time, for any fees and/or expenses incurred by them solely in connection with the administration of the Settlement and distribution of the Net Settlement Fund to Settlement Class Members.

15. All payments of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel in the Action shall be made from the Settlement Fund, and the Released Persons shall have no liability or responsibility for the payment of any of Plaintiffs' or Plaintiffs' Counsel's attorneys' fees or expenses except as expressly provided in the Stipulation with respect to the cost of Notice and administration of the Settlement.

16. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Settlement Class Members who have not filed timely, completed and valid requests for exclusion from the

Settlement Class are thus Settlement Class Members who are bound by this Final Judgment and by the terms of the Stipulation.

17. The Released Persons are hereby released and forever discharged from any and all of the Released Claims. All Settlement Class Members are hereby forever barred and enjoined from asserting, instituting or prosecuting, directly or indirectly, any Released Claim in any court or other forum against any of the Released Persons. All Settlement Class Members are bound by paragraph 4.4 of the Stipulation and are hereby forever barred and enjoined from taking any action in violation of that provision.

18. The Court hereby dismisses with prejudice the Action and all Released Claims against each and all Released Persons and without costs to any of the Settling Parties as against the others.

19. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (c) is admissible in any proceeding except an action to enforce or interpret the terms of the Stipulation, the settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein. Defendants and/or the other Released Persons may file the Stipulation and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit,

release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

21. Without affecting the finality of this Final Judgment in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Settlement Fund or Net Settlement Fund; (b) disposition of the Settlement Fund or Net Settlement Fund; (c) determining applications for payment of attorneys' fees and/or expenses incurred by Plaintiffs' Counsel in connection with administration and distribution of the Net Settlement Fund; (d) payment of taxes by the Settlement Fund; (e) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation; and (f) any other matters related to finalizing the Settlement and distribution of the proceeds of the Settlement.

22. Neither appellate review nor modification of the Plan of Allocation set forth in the Notice, nor any action in regard to the motion by Plaintiffs' Counsel for attorneys' fees and/or reimbursement of expenses and the award of costs and expenses to Plaintiffs, shall affect the finality of any other portion of this Final Judgment, nor delay the Effective Date of the Stipulation, and each shall be considered separate for the purposes of appellate review of this Final Judgment.

23. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Final Judgment shall be

rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

24. This Final Judgment and Order is a final judgment in the Action as to all claims asserted. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

Dated: Oct. 20, 2012

HONORABLE J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE

Exhibit A – Exclusions

1. Robert F Lentes Jr TOD

2. Ronald M Tate, Trustee

3. George Avakian

4. Jaehong Park

5. Kenneth L. Kientz

6. Luis Aragon & Michelle Aragon

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC. SECURITIES, DERIVATIVE AND ERISA LITIGATION	:	Master File No. 07-cv-9633 (JSR)(DFE)
This Document Relates To: ERISA Action, 07-cv-10268 (JSR)(DFE)	:	

ORDER AND FINAL JUDGMENT

This is a case brought under the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"), claiming breach of fiduciary duty. Named Plaintiffs Carl Esposito, Barbara Boland, Alan Maltzman, and Mary Gidaro filed a Consolidated Supplemental Complaint For Violations of the Employee Retirement Income Security Act (the "Complaint") (Dkt. No. 64) on September 23, 2008. The Stipulation and Agreement of Settlement ERISA Action, dated February 27, 2009 ("Settlement Stipulation"), a copy of which is attached hereto as Exhibit 1, was submitted to the Court on February 27, 2009. Before the Court are: (1) Plaintiffs' Motion For Final Approval of Class Action Settlement and Plan of Allocation ("Final Approval Motion"); and (2) Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Case Contribution Awards ("Fee Motion").[1]

[1] All capitalized terms used in this Order and Final Judgment and not defined herein shall have the meanings assigned to them in the Settlement Stipulation.

On March 17, 2009, the Court entered its Order Preliminarily Approving Settlement, Preliminarily Certifying Settlement Class, Approving Notice Plan, and Setting Fairness Hearing Date ("Preliminary Approval Order"). ("Dkt. No. 91). The Court has received the declaration attesting to the mailing of the Notice and publication of the Publication Notice in accordance with the Preliminary Approval Order. *See* Declaration of Jennifer M. Keough re: Notice Dissemination and Publication ("Keough Decl."), attached as Exhibit A to the Joint Declaration of Lynn L. Sarko and Marc I. Machiz in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation and Motion for Award of Attorneys' Fees, Expenses, and Case Contribution Awards ("Joint Decl."). A hearing was held on July 27, 2009 to: (i) determine whether to grant the Final Approval Motion; (ii) determine whether to grant the Fee Motion; and (iii) rule upon such other matters as the Court might deem appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action, all members of the Class, and all Settling Defendants pursuant to 29 U.S.C. § 1132(e).

2. In accordance with Federal Rule of Civil Procedure 23 and the requirements of due process, the Class has been given proper and adequate notice of the Settlement, the Fairness Hearing, and the Plan of Allocation, such notice having been carried out in accordance with the Preliminary Approval Order. The Notice, Publication Notice and notice methodology implemented pursuant to the Settlement Stipulation and the Court's Preliminary Approval Order (a) were appropriate and reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (b) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law.

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3. The Settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had fully briefed motions to dismiss and engaged in extensive negotiations. The parties exchanged information during the settlement negotiations, and have engaged in confirmatory discovery. Co-Lead Counsel and Defendants' Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

4. The Court finds that the requirements of the United States Constitution, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and any other applicable laws have been met as to the "Class" defined below, in that:

a. The Class is cohesive and well defined;

b. The members of the Class are ascertainable from records kept with respect to the Plans, and the members of the Class are so numerous that their joinder before the Court would be impracticable;

c. Based on allegations in the Complaint, the Court preliminarily finds that there are one or more questions of fact and/or law common to the Class;

d. Based on allegations in the Complaint that the Defendants engaged in misconduct affecting members of the Class in a uniform manner, the Court finds that the claims of the Named Plaintiffs are typical of the claims of the Class;

e. The Named Plaintiffs will fairly and adequately protect the interests of the Class in that: (i) the interests of Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Class; (ii) there appear to be no conflicts between or among Named Plaintiffs and the Class; and (iii) Named Plaintiffs and the members of the Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions;

f. The prosecution of separate actions by individual members of the Class would create a risk of (i) inconsistent or varying adjudications as to individual Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the ERISA Action or (ii) adjudications as to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede the ability of those persons to protect their interests; and

g. Based on allegations in the Complaint that Defendants have acted or refused to act on grounds generally applicable to the Class, final injunctive, declaratory, or other equitable relief is appropriate with respect to the Class as a whole.

5. Based on the findings set out in paragraph 4 above, the Court certifies the following class (the "Class") for settlement purposes under Fed. R. Civ. P. 23(b)(1) and (2):

> (a) All current and former participants and beneficiaries of any of the Plans whose individual Plan account(s) included investments in Merrill Lynch stock at any time between September 30, 2006 and December 31, 2008, inclusive and (b) as to each Person within the scope of

subsection (a) of this Paragraph, his, her or its beneficiaries, alternate payees (including spouses of deceased Persons who were participants of one or more of the Plans), Representatives and Successors-In-Interest, provided, however, that the Class shall not include any Defendant or any of their Immediate Family, beneficiaries, alternate payees (including spouses of deceased Persons who were Plan participants), Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves are or were participants in any of the Plans, who shall be considered members of the Class with respect to their own Plan accounts.

6. The Court confirms the appointment of Named Plaintiffs as class representatives for the Class, and Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll PLLC as Co-Lead Counsel for the Class.

7. The Settlement warrants final approval pursuant to Federal Rule of Civil Procedure 23(e)(1)(A) and (C) because it is fair, adequate, and reasonable to the Class and others whom it affects based upon (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the Class to the Settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through the trial; (7) the ability of the Defendants to withstand a greater judgment; (8) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (9) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation.

8. The Settlement was intended by the parties thereto to be a contemporaneous exchange of value, and in fact constitutes such a contemporaneous exchange.

9. The Final Approval Motion is GRANTED, and the Settlement hereby is APPROVED as fair, reasonable, adequate to members of the Class, and in the public interest. The settling parties are directed to consummate the Settlement in accordance with the terms of the Settlement Stipulation.

10. The Plan of Allocation, a copy of which is attached hereto as Exhibit 2, is hereby APPROVED as fair, adequate, and reasonable. Upon or after the Effective Date of the Settlement, the Custodian shall, at the direction of Co-Lead Counsel, disburse the Net Settlement Fund to the Plans for distribution by the Plans' trustee(s) in accordance with the Plan of Allocation, subject to any amounts withheld by the Custodian for the payment of taxes and related expenses as authorized in the Settlement Stipulation, and attorneys fees and expenses and case contribution awards to Named Plaintiffs as authorized by this Order. The Court finds payments and distributions made in accordance with such Plan of Allocation to be "restorative payments" as defined in IRS Revenue Ruling 2002-45. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

11. A case contribution award of $ 5,000.- payable from the Gross Settlement Fund is awarded to each Named Plaintiff. Such award may be distributed to each Named Plaintiff by the Custodian upon the Effective Date of the Settlement.

12. Co-Lead Counsel are hereby awarded attorneys' fees of $ 18,750,000.- and expenses of $ 372,312.94. Such award may be distributed to Co-Lead Counsel by the Custodian only after all other payments and distributions ~~upon the Effective Date of the Settlement.~~ of any kind have been made.

13. The Court retains jurisdiction over this action and the Parties, the Plans, and members of the Class for all matters relating to this action, including (without limitation) the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to members of the Class.

14. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

15. Named Plaintiffs and all members of the Class, on behalf of themselves, and the Class, and their personal representatives, heirs, executors, administrators, trustees, successors, and assigns, with respect to each and every Settled Claim, fully, finally and forever release, relinquish and discharge, and are forever enjoined from prosecuting, any Settled Claim against any of the Released Parties, provided that, no Released Party shall seek any remedy for violation of the foregoing injunction by any Class Member other than a Named Plaintiff until at least thirty (30) days after having provided such Class Member with written notice of such injunction and demand to desist from any conduct in violation thereof.

16. The Defendants fully, finally, and forever release, relinquish, and discharge, and are forever enjoined from prosecuting, the Settled Defendants' Claims against Named Plaintiffs, all members of the Class, and their respective counsel.

17. All counts asserted in the ERISA Action are DISMISSED WITH PREJUDICE, without further order of the Court, pursuant to the terms of the Settlement Stipulation.

18. In the event that the Settlement is terminated in accordance with the terms of the Settlement Stipulation, this Judgment shall be null and void and shall be vacated nunc pro tunc, and paragraph 8.5 of the Settlement Stipulation shall govern the rights of the Parties thereto.

SO ORDERED this 21st day of August, 2009.

HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC. SECURITIES, DERIVATIVE & ERISA LITIGATION	Master File No. 07-cv-9633 (JSR)(DFE)
This Document Relates To: ERISA Action, 07-cv-10268 (JSR)(DFE)	

STIPULATION AND AGREEMENT OF SETTLEMENT
ERISA ACTION

This Stipulation and Agreement of Settlement – ERISA Action (the "*Stipulation*") is submitted in the above-captioned *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No. 07-cv-9633 (JSR)(DFE), Case No. 07-cv-10268 (JSR)(DFE) (hereinafter, the "*ERISA Action*"), pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the United States District Court for the Southern District of New York (the "*Court*"), this *Stipulation* is entered into among named plaintiffs Carl Esposito, Barbara Boland, Alan Maltzman, and Mary Gidaro (together, "*Named Plaintiffs*") on behalf of themselves and the *Class* (as defined in Paragraph 1.3), on the one hand, and Merrill Lynch & Co., Inc. ("*Merrill Lynch*"), on the other.

A separate consolidated class action brought under the federal securities laws coordinated in the above-captioned *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No. 07-cv-9633 (JSR)(DFE), identified as *In re Merrill Lynch & Co., Inc. Securities Action*, 07-cv-9633 (JSR)(DFE) (the "*Securities Action*"), is also pending in this *Court*. The

Securities Action is being settled contemporaneously herewith pursuant to a separate stipulation of settlement. It is a condition to the *Settlement* (as defined in Paragraph 1.43) that the *ERISA Action* and the *Securities Action* be settled contemporaneously and that the *Settlement* and the settlement of the *Securities Action* be approved by the *Court*.

WHEREAS:

A. Beginning on November 9, 2007, several putative class actions were filed in the *Court* against *Merrill Lynch* and various other defendants alleging violations of the Employee Retirement Income Security Act ("ERISA"). On March 12, 2008, the *Court* consolidated these actions into the *ERISA Action*, and appointed Keller Rohrback, L.L.P., and Cohen, Milstein, Sellers & Toll, PLLC[1] as interim co-lead counsel ("*Co-Lead Counsel*") to manage the prosecution of the *ERISA Action* on behalf of the putative class.

B. *Named Plaintiffs* filed a Consolidated Amended Complaint for Violations of the Employee Retirement Income Security Act on May 21, 2008, and a Consolidated Supplemental Complaint for Violations of the Employee Retirement Income Security Act (the "*Complaint*") on September 23, 2008. The *Complaint* asserts, on behalf of all persons, other than *Defendants*, who were participants in or beneficiaries of the Merrill Lynch & Co., Inc. 401(k) Savings and Investment Plan, the Merrill Lynch & Co., Inc. Retirement Accumulation Plan, or the Merrill Lynch & Co., Inc. Employee Stock Ownership Plan at any time between September 25, 2006 to the present, and whose accounts included investments in *Merrill Lynch* stock, claims under Sections 502(a)(2) and 502(a)(3) of ERISA, including claims for breaches of the fiduciary duties of prudence and loyalty, failure to monitor and co-fiduciary liability.

C. *Defendants* deny any wrongdoing whatsoever, and this *Stipulation* shall in no event

[1] Known at the time of appointment as Cohen, Milstein, Hausfeld & Toll P.L.L.C.

be construed or deemed to be evidence of or an admission or concession, on the part of any *Defendant* with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the *Defendants* have asserted or would assert.

D. The parties to this *Stipulation* recognize that the *ERISA Action* has been filed by the *Named Plaintiffs* and defended by the *Defendants* in good faith, that the *ERISA Action* is being voluntarily settled upon advice of counsel, and that the terms of the *Settlement* are fair, reasonable and adequate. This *Stipulation* shall not be construed or deemed to be a concession by *Named Plaintiffs* or any *Class Member* of any infirmity in the claims asserted in the *ERISA Action* or any other action, or deemed to be evidence of any such infirmity.

E. *Co-Lead Counsel* have conducted investigations relating to the claims and the underlying events and transactions alleged in the *ERISA Action*. *Co-Lead Counsel* have analyzed the evidence adduced in connection with the *ERISA Action,* including during confirmatory discovery, and have researched the applicable law with respect to the claims of the *Named Plaintiffs* and the *Class* against the *Defendants* and the potential defenses thereto.

F. *Named Plaintiffs* in the *ERISA Action,* through *Co-Lead Counsel,* conducted personal and telephonic discussions and arm's-length negotiations with *Defendants'* counsel with respect to a compromise and settlement of the *ERISA Action.* These discussions and negotiations resulted in the execution of a Settlement Term Sheet on January 7, 2009 (the "*Term Sheet*"), which set forth the principal terms of the settlement of the *ERISA Action*, subject to confirmatory discovery to assess the adequacy and reasonableness of such settlement.

G. *Merrill Lynch* considers that, in order for it to achieve an end to litigation, it is a necessary condition to the settlement of the *ERISA Action* that the *Court* contemporaneously approve the separate settlement reached with respect to the *Securities Action*.

H. Based upon their investigation as well as informal and confirmatory discovery, *Named Plaintiffs* and *Co-Lead Counsel* have concluded that the terms and conditions of this *Stipulation,* which include the terms contained in the *Term Sheet* together with supplementary terms and conditions set forth herein, are fair, reasonable and adequate to *Named Plaintiffs* and the *Class,* and are in their best interests, and *Named Plaintiffs* have agreed to settle the claims raised in the *ERISA Action* pursuant to the terms and provisions of this *Stipulation*, after considering (a) the substantial benefits that the members of the *Class* will receive from settlement of the *ERISA Action*, (b) the attendant risks of litigation, and (c) the desirability of permitting the *Settlement* to be consummated as provided by the terms of this *Stipulation*.

NOW THEREFORE, without any admission or concession on the part of *Named Plaintiffs* of any lack of merit of the *ERISA Action* whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by *Defendants*, it is hereby STIPULATED AND AGREED, by and between the parties to this *Stipulation*, through their respective counsel, subject to approval of the *Court* pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the *Settlement* herein set forth, that all *Settled Claims* (as defined herein), as against the *Released Parties* (as defined herein), and all *Settled Defendants' Claims* (as defined herein) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. Definitions.

As used in this *Stipulation,* italicized and capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1 "*Agreement Execution Date*" means the date on which this *Stipulation* is fully executed, as provided in Paragraph 10.19 below.

1.2 "*Alternative Judgment*" has the meaning set forth in Paragraph 8.1.5.

1.3 "*Class*" means, for the purposes of this *Settlement* only, a non-opt-out class consisting of (a) all current and former participants and beneficiaries of any of the *Plans* whose individual *Plan* account(s) included investments in *Merrill Lynch* stock at any time during the *Class Period* and (b) as to each *Person* within the scope of subsection (a) of this Paragraph 1.3, his, her or its beneficiaries, alternate payees (including spouses of deceased *Persons* who were participants of one or more of the Plans), *Representatives* and *Successors-In-Interest*, provided, however, that the *Class* shall not include any *Defendant* or any of their *Immediate Family*, beneficiaries, alternate payees (including spouses of deceased *Persons* who were *Plan* participants), *Representatives* or *Successors-In-Interest*, except for spouses and immediate family members who themselves are or were participants in any of the *Plans*, who shall be considered members of the *Class* with respect to their own *Plan* accounts.

1.4 "*Class Member*" means a member of the *Class*.

1.5 "*Class Notice*" means the forms of notice appended as Exhibits 1 and 2 to the form of *Order for Notice and Hearing*, attached hereto as Exhibit A.

1.6 "*Class Period*" means, for the purposes of this *Settlement* only, the period of time between September 30, 2006 and December 31, 2008, inclusive.

1.7 "*Co-Lead Counsel*" means Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll, PLLC.

1.8 "*Complaint*" means the Consolidated Supplemental Complaint for Violations of the Employee Retirement Income Security Act in the *ERISA Action*, filed September 23, 2008.

1.9 "*Court*" means the United States District Court for the Southern District of New York.

1.10 "*Custodian*" means (a) two or more individuals, one designated in writing by each *Co-Lead Counsel*, who execute an undertaking to be bound by the provisions of this *Stipulation* pertaining to the duties of the *Custodian*, or (b) a federally-insured financial institution proposed by *Co-Lead Counsel* and acceptable to *Defendants' Counsel*. Either *Co-Lead Counsel* may change its designation at any time (and shall do so in the event the designee ceases to be a member of, partner in, or employee of, said *Co-Lead Counsel*) by executing a written instrument reflecting such change and delivering it to the other *Co-Lead Counsel*, with notice of such change provided to *Defendants' Counsel*.

1.11 "*Defendants*" means (a) *Merrill Lynch* and (b) all persons named as defendants in the *Complaint*, whether named personally or fictitiously, who execute and deliver the *Individual Defendants Letter Agreement*.

1.12 "*Defendants' Counsel*" means the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, and *Individual Defendants' Counsel*.

1.13 "*Derivative Actions*" means all actions consolidated into docket number 07-cv-9696 by order of the *Court* dated March 12, 2008.

1.14 "*Effective Date*" means the date, established pursuant to Paragraph 8.1, on which all of the conditions to settlement set forth in Paragraph 8.1 of this *Stipulation* have been fully satisfied or waived.

1.15 "*Fairness Hearing*" means the hearing to be held by the *Court* to determine, among other things, whether to grant final approval to the *Settlement*, as contemplated by the form of *Order for Notice and Hearing* attached hereto as Exhibit A.

1.16 "*Final*" or "*Finality*," with respect to any *Judgment* or *Alternative Judgment* (both as defined herein) or any other order or judgment of a court of competent jurisdiction, means: (a) if no appeal is filed, the expiration date of the time provided by the corresponding rules of the applicable court or legislation for filing or noticing of any appeal therefrom; or (b) if there is an appeal therefrom, the date of (i) final dismissal of such appeal, or the final dismissal of any proceeding on certiorari or otherwise to review the *Judgment, Alternative Judgment*, judgment or order; or (ii) the date of final affirmance on an appeal thereof, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review thereof, and, if certiorari or other form of review is granted, the date of final affirmance thereof following review pursuant to that grant. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to (i) any application for attorneys' fees, costs or expenses, and/or (ii) the *Plan of Allocation*, shall not in any way delay or preclude the *Judgment* or *Alternative Judgment* from becoming *Final*.

1.17 "*Gross Settlement Fund*" shall have the meaning set forth in Paragraph 3.2.

1.18 "*Immediate Family*" means parents, grandparents, children and grandchildren.

1.19 "*Independent Fiduciary*" means a *Person* who may, at the election of *Merrill Lynch*, be appointed by the appropriate named fiduciary of the *Plan* or designated by an amendment to the applicable governing *Plan* document, whose fees and expenses (including the cost of counsel and other advisors) shall be paid by *Merrill Lynch* to consider whether to approve and authorize in writing the *Settlement* in accordance with Department of Labor Prohibited Transaction Class Exemption 2003-39.

1.20 "*Individual Defendants*" means all *Defendants* other than *Merrill Lynch*.

1.21 "*Individual Defendants' Counsel*" means the law firms of Shearman & Sterling LLP and Simpson Thacher & Bartlett LLP.

1.22 "*Individual Defendants Letter Agreement" or "Letter Agreement*" means a letter agreement, in a form satisfactory to *Co-Lead Counsel* and *Individual Defendants' Counsel*, to be executed within thirty (30) days of the date the *Court* grants preliminary approval to the *Settlement*, between, on the one hand, *Named Plaintiffs* on behalf of themselves and the *Class*, and on the other, *Individual Defendants*, through counsel for the foregoing, in which the *Individual Defendants* agree to be bound by the provisions of Paragraphs 1.49, 2.3, 5.1, 8.5, 9.1, 10.2, 10.3 and 10.14 of this *Stipulation*; acknowledge that they will be identified as "*Defendants*" (and not by name) in the *Class Notice*; consent that *Co-Lead Counsel* may identify them by name to any *Class Member* upon request, provided, however, that prior to disclosure, *Plaintiffs' Counsel* has obtained written agreement from such *Class Member* to be bound by the terms of confidentiality agreements and orders that are binding on *Named Plaintiffs* and *Co-Lead Counsel*; and consent that they will not be included in the *Class* nor will they participate in any recovery pursuant to the *Settlement*, and in which *Named Plaintiffs*, on behalf of themselves and the *Class*, agree to be bound by Paragraphs 1.49, 2.2, 3.6, 8.5, 9.1, 10.2, 10.3, 10.14 of this *Stipulation*.

1.23 "*Judgment*" shall mean the Judgment contemplated by Paragraph 7.1. A proposed form of the *Judgment* is attached hereto as Exhibit B.

1.24 "*Merrill Lynch*" means Merrill Lynch & Co., Inc.

1.25 "*Named Plaintiffs*" means Plaintiffs Carl Esposito, Barbara Boland, Alan Maltzman, and Mary Gidaro.

1.26 "*Net Settlement Fund*" has the meaning defined in Paragraph 3.3 hereof.

1.27 "*Notice*" means the "Notice of Proposed Settlement With Defendants, Motions for Attorneys' Fees and Reimbursement of Expenses and Fairness Hearing", which is to be sent to members of the *Class* substantially in the form attached hereto as Exhibit 1 to Exhibit A.

1.28 "*Order for Notice and Hearing*" means the order preliminarily approving the *Settlement* and directing notice thereof to the *Class* substantially in the form attached hereto as Exhibit A.

1.29 "*Parties*" means the *Plaintiffs* and the *Defendants*.

1.30 "*Person*" means an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.31 "*Plaintiffs*" means *Named Plaintiffs* and each member of the *Class*.

1.32 "*Plaintiffs' Counsel*" means *Co-Lead Counsel* and any other counsel representing *Plaintiffs* and *Class Members*.

1.33 "*Plans*" shall mean the Merrill Lynch & Co., Inc. 401(k) Savings and Investment Plan; the Merrill Lynch & Co., Inc. Retirement Accumulation Plan; and the Merrill Lynch & Co., Inc. Employee Stock Ownership Plan, together with their *Predecessors* and *Successors-in-Interest*, and any trust created under such plans.

1.34 "*Plan of Allocation*" means a plan of allocation of the *Net Settlement Fund* as proposed by *Co-Lead Counsel* and approved by the *Court*.

1.35 "*Plan of Allocation Implementation Expenses*" means all expenses of implementing the *Plan of Allocation*, including the costs of gathering required data, performing required calculations and establishment of accounts in the *Plans* to receive allocations made with respect to former participants. *Plan of Allocation Implementation Expenses* will be paid by (or reimbursed

from) the *Gross Settlement Fund* to the extent of the first $350,000 thereof, with any excess above such amount paid promptly by *Merill Lynch.*

1.36 "*Predecessor*" means as to any *Person* (the "Subject Person"), another *Person* as to whom the Subject Person is a *Successor in Interest.*

1.37 "*Publication Notice*" means the summary notice of proposed *Settlement* and hearing for publication substantially in the form attached as Exhibit 2 to Exhibit A.

1.38 "*Released Parties*" means any and all of the *Defendants,* every *Person* who, at any time during the *Class Period,* was a director, officer, employee or agent of *Merrill Lynch* or a trustee or fiduciary of any of the *Plans,* together with, for each of the foregoing, any *Predecessors, Successors-In-Interest,* present and former *Representatives,* direct or indirect parents and subsidiaries, affiliates, insurers, co-insurers, re-insurers, consultants, administrators, employee benefit plans, investment advisors, investment bankers, underwriters, and any *Person* that controls, is controlled by, or is under common control with any of the foregoing.

1.39 "*Representatives*" means attorneys, agents, directors, officers, and employees.

1.40 "*Securities Action*" means all actions consolidated into docket number 07-cv-9633 by order of the *Court* dated March 12, 2008.

1.41 "*Settled Claims*" means any and all claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and *Unknown Claims* (as defined herein), against any of the *Released*

Parties (i) that have been asserted in the *ERISA Action*, or (ii) that could have been asserted in any forum by any *Class Member* or their successors and assigns which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions out of which the claims asserted in the *ERISA Action* arise. Notwithstanding the foregoing, "*Settled Claims*" does not include any claims, rights or causes of action or liabilities whatsoever (i) related to the enforcement of the *Settlement*, including, without limitation, any of the terms of this *Stipulation* or orders or judgments issued by the courts in connection with the *Settlement* or confidentiality obligations; (ii) asserted in the *Securities Action* and not the subject of the settlement of the *ERISA Action*; or (iii) under ERISA Section 502(a)(1)(B) for individual or vested benefits brought by an individual *Plan* participant or beneficiary where such claims are unrelated to any claim, matter or cause of action that has been asserted in the *ERISA Action* or that could have been asserted in the *ERISA Action* or arising out of or based upon the allegations, transactions, facts, matters or occurrences, representations or omissions out of which the claims asserted in the *ERISA Action* arise.

1.42 "*Settled Defendants' Claims*" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and *Unknown Claims*, that have been or could have been asserted in the *ERISA Action* or any forum by the *Defendants* or any of them or the successors and assigns of any of them against any of the *Named Plaintiffs*, any *Class Member* or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the *ERISA Action*. *Settled Defendants' Claims* does not include all claims, rights or causes of action or liabilities whatsoever related to the enforcement of the *Settlement*, including, without

limitation, any of the terms of this *Stipulation* or orders or judgments issued by the courts in connection with the *Settlement* or confidentiality obligations.

1.43 "*Settlement*" means the settlement of the *ERISA Action* contemplated by this *Stipulation*.

1.44 "*Settlement Amount*" means $75,000,000.

1.45 "*Settlement Fund*" has the meaning set forth in Paragraph 3.1.

1.46 "*Stipulation*" means this Stipulation and Agreement of Settlement – ERISA Action.

1.47 "*Successor-In-Interest*" means a *Person*'s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.48 "*Taxes*" means (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, (A) with respect to the income or gains earned by or in respect of the *Gross Settlement Fund*, including, without limitation, any taxes that may be imposed upon *Defendants* or their counsel with respect to any income or gains earned by or in respect of the *Gross Settlement Fund* for any period during which it does not qualify as a Qualified Settlement Fund for federal or state income tax purposes; or (B) by way of withholding as required by applicable law on any distribution by the *Custodian* of any portion of the *Gross Settlement Fund* to any persons entitled thereto pursuant to this *Stipulation*; and (ii) any and all expenses, liabilities and costs incurred in connection with the taxation of the *Gross Settlement Fund* (including without limitation, expenses of tax attorneys and accountants). For the purposes of clause (i)(A) of this paragraph, taxes imposed on *Defendants* shall include amounts equivalent to taxes that would be payable by *Defendants* but for the existence of relief from taxes by virtue of loss carryforwards or other tax

attributes, determined by *Defendants*, acting reasonably, and accepted by the *Custodian*, acting reasonably.

1.49 "*Unknown Claims*" means any and all *Settled Claims* which any of the *Named Plaintiffs* or *Class Members* does not know or suspect to exist in his, her or its favor as of the *Effective Date* and any *Settled Defendants' Claims* which any *Defendant* does not know or suspect to exist in his, her or its favor as of the *Effective Date*, which if known by him, her or it might have affected his, her or its decision(s) with respect to the *Settlement*. With respect to any and all *Settled Claims* and *Settled Defendants' Claims*, the parties hereto, and the *Individual Defendants* in their *Letter Agreement*, stipulate and agree that upon the *Effective Date*, the *Named Plaintiffs* and the *Defendants* shall expressly waive, and each *Class Member* shall be deemed to have waived, and by operation of the *Judgment* shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiffs and *Defendants* (in the case of *Individual Defendants* by the execution of their *Letter Agreement)* acknowledge, and *Class Members* by operation of law shall be deemed to have acknowledged, that the inclusion of "*Unknown Claims*" in the definition of *Settled Claims* and *Settled Defendants' Claims* was separately bargained for and was a key element of the Settlement.

2. **<u>SCOPE AND EFFECT OF SETTLEMENT</u>**

2.1 The obligations incurred pursuant to this *Stipulation* shall be in full and final disposition of the *ERISA Action* as part of the *Settlement* and any and all *Settled Claims* as against all *Released Parties* and any and all *Settled Defendants' Claims*.

2.2 Upon the *Effective Date* of the *Settlement*, *Named Plaintiffs* and all *Class Members* on behalf of themselves, their personal representatives, heirs, executors, administrators, trustees, successors and assigns, with respect to each and every *Settled Claim*, release and forever discharge, and are forever enjoined from prosecuting, any *Settled Claim* against any of the *Released Parties*, and shall not institute, continue, maintain or assert, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person or any of the *Plans*, any action, suit, cause of action, claim or demand against any *Released Party* or any other *Person* who may claim any form of contribution or indemnity from any *Released Party* in respect of any *Settled Claim* or any matter related thereto, at any time on or after the *Effective Date*. With respect to the injunction provided for in this Paragraph 2.2, no *Released Party* shall seek any remedy for violation thereof by any *Class Member* other than a *Named Plaintiff* until at least thirty (30) days after providing such *Class Member* with written notice of such injunction and demand to desist from any conduct in violation thereof.

2.3 Upon the *Effective Date* of the *Settlement*, *Merrill Lynch*, on behalf of itself, its trustees, successors and assigns, releases and forever discharges each and every one of the *Settled Defendants' Claims* against *Named Plaintiffs*, all *Class Members* and their respective counsel. Likewise, *Individual Defendants* in their *Letter Agreement* have agreed to release the *Settled Defendants Claims*, as a condition of the *Settlement*.

2.4 Amounts paid under the *Settlement* shall not constitute an offset or credit with respect to amounts to be paid in settlement of the *Securities Action*, nor shall amounts paid in settlement of the *Securities Action* constitute an offset or credit with respect to amounts payable in the *Settlement*.

3. **SETTLEMENT CONSIDERATION**

3.1 In consideration for the release and discharge provided for in Paragraph 2.2 hereof, on or before the tenth (10th) day following the date the *Stipulation* is fully executed, *Merrill Lynch* shall deliver by wire transfer $75,000,000 into an interest-bearing escrow account established by *Co-Lead Counsel* for the *Settlement Amount* (the "*Settlement Fund*").

3.2 The *Settlement Fund*, together with all interest earned from the date of preliminary approval of the *Settlement*, shall constitute the *Gross Settlement Fund.*

3.3 The *Gross Settlement Fund* shall be used to pay (i) all costs of *Notice, Publication Notice*, and administration costs referred to in Paragraph 4.2 hereof; and (ii) the attorneys' fee and expense award referred to in Paragraph 5.1 hereof, and the *Named Plaintiff* case contribution awards, if any, referred to in Paragraph 5.1 hereof. The balance of the *Gross Settlement Fund* (inclusive of interest earned) after the matters described in clauses (i) and (ii) of this Paragraph, and after the payment of any *Taxes* (as defined herein) shall be the *Net Settlement Fund.*

3.4 At a time following the *Effective Date*, the *Net Settlement Fund* shall be transferred by the *Custodian* to the *Plans*, subject to a plan of allocation (the "*Plan of Allocation*") to be proposed by *Co-Lead Counsel* and approved by the *Court*. All funds held by the *Custodian* shall be deemed to be in the custody of the *Court* held exclusively for the purposes described in Paragraphs 3.3 and 3.4 of this *Stipulation* until such time as the funds shall be distributed to the *Plans* or otherwise disbursed pursuant to this *Stipulation* and/or further order of the *Court*. The *Custodian* shall invest any funds in excess of $250,000 in U.S. Treasury securities, securities issued by United States agencies or fully insured by the FDIC, deposits and certificates of deposit fully insured by the FDIC and backed by the full faith and credit of the U.S. Treasury, and short term debt or commercial paper fully guaranteed by the FDIC under the Temporary Liquidity

Guaranty Program and backed by the full faith and credit of the U.S. Treasury, and shall collect and reinvest in the *Net Settlement Fund* all earnings accrued thereon. Any funds held by the *Custodian* in an amount of less than $250,000 may be held in a bank account or Certificates of Deposit insured by the Federal Deposit Insurance Corporation ("FDIC") or may be invested as funds in excess of $250,000 are invested. The parties hereto agree that the *Gross Settlement Fund* is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that the *Custodian* as administrator of the Gross Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the *Gross Settlement Fund* and paying from the *Gross Settlement Fund* any *Taxes* owed with respect to the *Gross Settlement Fund*. The parties hereto agree that the *Gross Settlement Fund* shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the *Gross Settlement Fund* as a Qualified Settlement Fund from the earliest date possible. *Merrill Lynch* agrees to provide promptly to the *Custodian* the statement described in Treasury Regulation § 1.468B-3(e).

3.5 All *Taxes* (as defined herein) shall be paid out of the *Gross Settlement Fund*, shall be considered to be a cost of administration of the *Settlement* and shall be timely paid by the *Custodian* without prior order of the *Court*. The *Custodian* shall, to the extent required by law, be obligated to withhold from any distributions to any person entitled thereto pursuant to this *Stipulation* any funds necessary to pay *Taxes* including the establishment of adequate reserves for *Taxes* as well as any amount that may be required to be withheld under Treasury Reg. 1.468B-(1)(2) or otherwise under applicable law in respect of such distributions. *Co-Lead Counsel* shall provide to *Defendants' Counsel* copies of all tax returns filed with respect to the *Gross Settlement Fund* promptly upon the filing thereof, and evidence of the payment of *Taxes* as

and when all such payments are made. Further, the *Gross Settlement Fund* shall hold harmless the *Defendants* and their counsel for *Taxes* (including, without limitation, taxes payable by reason of any such indemnification payments).

3.6 None of the *Defendants*, the *Released Parties* or their respective counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of *Co-Lead Counsel* or the *Custodian*, or any of their respective designees or agents, in connection with the administration of the *Settlement* or otherwise; (ii) the management, investment or distribution of the *Gross Settlement Fund*; (iii) the formulation, design or terms of the *Plan of Allocation*; (iv) the determination, administration, calculation or payment of any claims asserted against the *Gross Settlement Fund*; (v) any losses suffered by, or fluctuations in the value of, the *Gross Settlement Fund*; or (vi) the payment or withholding of any *Taxes*, expenses and/or costs incurred in connection with the taxation of the *Gross Settlement Fund* or the filing of any returns.

4. ADMINISTRATION

4.1 The *Custodian*, acting solely in its capacity as *Custodian*, shall be subject to the jurisdiction of the *Court*.

4.2 Following entry of the *Order for Notice and Hearing*, the *Custodian* may pay from the *Gross Settlement Fund*, without further approval from the *Court* or *Defendants*, (a) all reasonable costs and expenses up to the amount of $250,000 associated with identifying and notifying the *Class Members* and effecting mailing of the *Notice* and publication of the *Publication Notice* as ordered by the *Court*, and the administration of the *Settlement*, including without limitation, the actual costs of printing and mailing the *Notice* and publication of the *Publication Notice*, and (b) *Taxes*. Notwithstanding the foregoing, the *Custodian* shall not make

any payment pursuant to clause (a) of the immediately preceding sentence that would cause the aggregate payments made under such clause (a) exceed $150,000 without first providing seven days' prior written notice to *Defendants' Counsel* of each such payment; if *Defendants' Counsel* shall object to any such payment, the *Custodian* shall not make the payment without further approval from the *Court*. In the event that the *Settlement* is terminated as provided for herein, the amounts expended pursuant to the first two sentences of this Paragraph 4.2 shall not be returned to the *Persons* who paid the *Settlement Amount*.

4.3 *Merrill Lynch* shall cooperate with *Co-Lead Counsel* to accomplish the *Notice* in accordance with the *Order for Notice and Hearing*. If *Merrill Lynch* is or its designee is the most cost effective provider of notice to the *Class*, the *Custodian* will utilize *Merrill Lynch* or its designee to provide notice unless there is good cause not to do so. If the mailing of *Notice* is to be performed by a third party vendor, *Merrill Lynch* shall cooperate reasonably to provide address information to such vendor in an electronic format accessible by such vendor, to the extent the address information exists in such a format or otherwise can be readily obtained.

4.4 The *Custodian* may rely upon any notice, certificate, instrument, request, paper or other document reasonably believed by it to be genuine and to have been made, sent or signed by an authorized signatory in accordance with this *Stipulation*, and shall not be liable for (and will be indemnified from the *Gross Settlement Fund* and held harmless from and against) any and all claims, actions, damages, costs (including reasonable attorneys' fees) and expenses claimed against or incurred by the *Custodian* for any action taken or omitted by it, consistent with the terms hereof concerning the *Gross Settlement Amount*, in connection with the performance by it of its duties pursuant to the provisions of this *Stipulation* or order of the courts, except for its gross negligence or willful misconduct. If the *Custodian* is uncertain as to its duties hereunder, the

Custodian may request that *Named Plaintiffs* (and, prior to the *Effective Date, Merrill Lynch*) sign a document which states the action or non-action to be taken by the *Custodian*. In the event the *Settlement* is terminated, as provided for herein, indemnified amounts and expenses incurred by the *Custodian* in connection with this paragraph shall not be returned to the *Persons* who paid the *Settlement Amount*.

4.5 *Plan of Allocation Implementation Expenses* shall be borne as described in Paragraph 1.35.

5. ATTORNEYS' FEES AND EXPENSES

5.1 *Co-Lead Counsel* will apply to the *Court* for an award of attorneys' fees not to exceed 27.5% of the *Gross Settlement Fund*, and reimbursement of expenses payable from the *Gross Settlement Fund*, and shall further provide to the *Court*, as part of the motion for approval of the *Settlement*, all necessary information required by the *Court* concerning the total award of attorneys' fees and reimbursement of expenses to be payable from the *Gross Settlement Fund*. Such application shall be made prior to the deadline for objections to the *Settlement* and in accordance with such schedule as the *Court* may establish. *Co-Lead Counsel* may also apply to the *Court* for case contribution awards to *Named Plaintiffs* in an amount not to exceed $5,000 per *Named Plaintiff*. *Defendants* will take no position with respect to any such applications for attorneys' fees or expenses, or *Named Plaintiffs* case contributions awards. Such amounts as are awarded by the *Court* to *Co-Lead Counsel* from the *Gross Settlement Fund* shall be payable by the *Custodian* immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the *Settlement* or any part thereof, subject to *Plaintiffs' Counsel's* obligations to make appropriate refunds or repayments to the *Gross Settlement Fund* plus accrued interest at the same rate as is earned by the *Gross Settlement Fund*, if

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and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed or for whatever reason the *Settlement* is terminated pursuant to Paragraphs 8.2 or 8.3 hereof; provided that *Plaintiffs' Counsel* other than *Co-Lead Counsel* shall, as a condition to receiving payment, execute an undertaking in a form satisfactory to *Co-Lead Counsel* and *Defendants' Counsel* acknowledging such refund or repayment obligation and providing adequate security therefor. *Defendants* shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by *Plaintiffs' Counsel*, which shall be payable solely from the *Gross Settlement Fund*.

6. **TERMS OF ORDER FOR NOTICE AND HEARING**

6.1 Promptly after this *Stipulation* has been fully executed, *Co-Lead Counsel* shall apply to the *Court* for entry of the *Order for Notice and Hearing*, substantially in the form annexed hereto as Exhibit A, which Order shall, among other provisions, certify the *Class* for settlement purposes only.

6.2 The mailing or publication of the *Notice* and *Publication Notice* shall not occur until the *Order for Notice and Hearing* has been entered by the *Court*.

7. **TERMS OF ORDER AND FINAL JUDGMENT**

7.1 If the *Settlement* contemplated by this *Stipulation* is approved by the *Court*, *Co-Lead Counsel* and *Defendants' Counsel* shall request that a *Judgment* be entered substantially in the form annexed hereto as Exhibit B.

8. **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

8.1 The "*Effective Date*" of the *Settlement* shall be the date when all the following conditions of settlement shall have occurred:

8.1.1 deposit into the *Settlement Fund* of the *Settlement Amount* in accordance with the provisions of Paragraph 3.1;

8.1.2 execution of the *Individual Defendants Letter Agreement* in a form acceptable to *Co-Lead Counsel*;

8.1.3 *Co-Lead Counsel's* written confirmation after completion of such additional confirmatory discovery as may be agreed to by the parties that the confirmatory discovery was adequate and that the *Settlement* is fair, reasonable and adequate.

8.1.4 final approval by the *Court* of the *Settlement*, following notice to the *Class* and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

8.1.5 entry by the *Court* of the *Judgment* in all material respects in the form set forth in Exhibit B, and the *Judgment* becoming *Final*, or, in the event that the *Court* enters a judgment in a form other than that provided above ("*Alternative Judgment*") and none of the parties hereto elect to terminate this *Settlement*, the date that such *Alternative Judgment* becomes *Final*;

8.1.6 approval by the *Court* of the settlement in the *Securities Action*, entry of judgment, and such judgment becoming *Final*;

8.1.7 If the circumstances described in Paragraph 8.2 or 8.3 occur, the expiration of the time to exercise the termination rights provided in the applicable Paragraph(s) without the termination right being exercised.

8.2 *Named Plaintiffs* and *Defendants* shall each have the right to terminate the *Settlement* and thereby this *Stipulation* by providing written notice of their election to do so to one another within thirty (30) days of any of the following: (a) the *Court* declining to enter the *Order for Notice and Hearing* in any material respect; (b) the *Court* refusing to approve this *Settlement* as

set forth in this *Stipulation*; (c) the *Court* declining to enter the *Judgment* in any material respect or entering an *Alternative Judgment*; (d) the date upon which the *Judgment* or *Alternative Judgment* is modified or reversed in any material respect by any level of appellate court; or (e) the date upon which the settlement in the *Securities Action* is terminated.

8.3 Notwithstanding anything else in this *Stipulation*, *Merrill Lynch* may, in its sole and unfettered discretion, elect in writing to terminate the *Settlement* and this *Stipulation* on or before the tenth (10^{th}) business day prior to the *Fairness Hearing* if the *Independent Fiduciary* has determined that it does not approve the *Settlement* or that it will not authorize the *Settlement* in writing as contemplated by Department of Labor Prohibited Transaction Class Exemption 2003-39.

8.4 If, prior to the ninety-first (91^{st}) day after the *Effective Date*, a case is commenced by or against *Merrill Lynch* as debtor under Chapters 7 or 11 of Title 11 of the United States Code, then *Named Plaintiffs* shall have the right, exercisable by written notice from *Co-Lead Counsel* to *Defendants' Counsel* within fifteen (15) days after commencement of such case, to terminate the *Settlement*, whereupon the provisions of Paragraph 8.5 shall apply.

8.5 Except as otherwise provided herein, in the event the *Settlement* is terminated, the parties to this Stipulation and all *Released Persons* including *Individual Defendants* as agreed to in their *Letter Agreement* shall be deemed to have reverted to their respective status in the *ERISA Action* as of January 7, 2009, and the parties shall proceed in all respects as if this *Stipulation* and any related orders had not been entered. Furthermore, within ten (10) business days following any termination of this *Settlement*, the *Custodian* shall return to *Merrill Lynch* the *Settlement Amount* previously paid by *Merrill Lynch* together with any interest or other income earned thereon or in respect thereof, less any *Taxes* paid or due with respect to such income, less any amounts required

to be paid to the *Custodian* pursuant to this *Stipulation*, less any reasonable costs of administration and notice actually incurred and paid or payable from the *Settlement Fund* (as described in Paragraph 3.3 hereof), and less any applicable withholding taxes.

9. **NO ADMISSION OF WRONGDOING**

9.1 This *Stipulation*, whether or not consummated, and any proceedings taken pursuant to it:

9.1.1 shall not be offered or received against any of the *Defendants* as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of those *Defendants* with respect to the truth of any fact alleged by any of the *Plaintiffs* or the validity of any claim that has been or could have been asserted in the *ERISA Action* or in any litigation, or the deficiency of any defense that has been or could have been asserted in the *ERISA Action* or in any litigation, or of any liability, negligence, fault, or wrongdoing of the *Defendants*;

9.1.2 shall not be offered or received against the *Defendants* as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the *Defendants*;

9.1.3 shall not be offered or received against the *Defendants* as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the *Defendants*, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this *Stipulation*; provided, however, that if this *Stipulation* is approved by the *Court*, the *Released Parties* may refer to it to effectuate the liability protection granted them hereunder;

9.1.4 shall not be construed against any of the *Defendants* as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

9.1.5 shall not be construed as or received in evidence as an admission, concession or presumption against *Named Plaintiffs* or any of the *Class Members* that any of their claims are without merit, or that any defenses asserted by the *Defendants* have any merit, or that damages recoverable under the *ERISA Action* would not have exceeded the *Gross Settlement Fund.*

10. MISCELLANEOUS PROVISIONS

10.1 All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

10.2 If the *Court* requests or orders *Named Plaintiffs* or *Defendants* to supply non-privileged information in their possession as part of the *Court*'s review of the *Settlement*, the *Named Plaintiffs* and *Merrill Lynch* agree to promptly provide such information to the *Court*. The *Individual Defendants* have agreed to do likewise in their *Letter Agreement.* If *Named Plaintiffs* deem it necessary for the *Defendants* to supply non-privileged information in their possession, and not otherwise available to the *Named Plaintiffs*, in order to respond to any timely filed objection or *Court* request/order, *Merrill Lynch* agrees to promptly provide such non-privileged information that has been reasonably requested. The *Individual Defendants* have agreed to do likewise in their *Letter Agreement.* If *Defendants* deem it necessary for the *Named Plaintiffs* to supply non-privileged information in their possession in order to respond to any objection or any inquiry from the *Independent Fiduciary* or the Department of Labor, the *Named Plaintiffs* agree to promptly provide such non-privileged information that has been reasonably requested.

10.3 The parties to this *Stipulation* intend the *Settlement* to be a final and complete resolution of all disputes asserted or which could be asserted by the *Class Members* against the *Released Parties* with respect to the *Settled Claims*. Accordingly, the *Parties* agree not to assert in any forum that the *ERISA Action* was brought by the *Plaintiffs* or defended by *Defendants* in bad faith or without a reasonable basis. The *Parties* hereto agree, and pursuant to a *Letter Agreement* the *Plaintiffs* and the *Individual Defendants* have also agreed, that they shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the *ERISA Action*. The *Parties* agree that the amount paid and the other terms of the *Settlement* were negotiated at arm's-length in good faith by the *Parties*, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

10.4 This *Stipulation* may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all *Parties* or their successors-in-interest.

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

10.6 The administration and consummation of the *Settlement* as embodied in this *Stipulation* shall be under the authority of the *Court*, and that *Court* shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to *Co-Lead Counsel* and enforcing the terms of this *Stipulation*.

10.7 The waiver by one party of any breach of this *Stipulation* by any other party shall not be deemed a waiver of any other prior or subsequent breach of this *Stipulation*.

10.8 This *Stipulation* and its exhibits, and the *Individual Defendant Letter Agreement* constitute the entire agreement concerning the *Settlement* of the *ERISA Action*, and no

representations, warranties, or inducements have been made by any party hereto concerning this *Stipulation* or its exhibits other than those contained and memorialized in such documents.

10.9 This *Stipulation* may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

10.10 This *Stipulation* shall be binding upon, and inure to the benefit of, the successors and assigns of the *Parties*.

10.11 The construction and interpretation of this *Stipulation* shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law of the United States requires that federal law governs.

10.12 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 *Parties*, it being recognized that it is the result of arm's-length negotiations between the *Parties* and all *Parties* have contributed substantially and materially to the preparation of this *Stipulation*.

10.13 All counsel and any other person executing this *Stipulation* and any of the exhibits hereto, or any related *Settlement* documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the *Stipulation* to effectuate its terms.

10.14 The parties hereto agree to cooperate fully with one another in seeking *Court* approval of the *Order for Notice and Hearing*, the *Stipulation* and the *Settlement* and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the *Court* of the *Settlement*.

10.15 Any notice, demand, or other communication under this *Stipulation* (other than the *Class Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be

deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO *NAMED PLAINTIFFS:*

Lynn Sarko
Gary Gotto
Derek Loeser
Erin Riley
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Marc I. Machiz
Cohen, Milstein, Sellers & Toll, PLLC
255 South 17th Street
Suite 1307
Philadelphia, PA 19103
Telephone: (267) 773-4682
Facsimile: (267) 773-4690

Michelle C. Yau
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue NW
Suite 500, West Tower
Washington, D.C. 20005
Telephone: 202.408.4600
Facsimile: 202.408.4699

IF TO *Merrill Lynch:*

Jay B. Kasner
Scott D. Musoff
Skadden, Arps, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

10.16 This *Stipulation* and the *Individual Defendant Letter Agreement* contain the entire agreement among the *Parties* thereto relating to this *Settlement*, and specifically supersede any settlement terms or settlement agreements relating to the *Defendants* that were previously agreed upon orally or in writing by any of the *Parties*.

10.17 This *Stipulation* may be executed by exchange of faxed or scanned executed signature pages, and any signature thereby transmitted for the purpose of executing this *Stipulation* shall be deemed an original signature for purposes of this *Stipulation*. This *Stipulation* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.18 This *Stipulation* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

10.19 The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

IN WITNESS WHEREOF, the *Parties* have executed this *Stipulation* on the dates set forth below.

FOR THE PLAINTIFFS:

By: _____ Dated: 2-27-09
FOR Lynn Sarko
Gary Gotto
Derek Loeser
Erin Riley
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

By: _____ Dated: February 27, 2009
Marc I. Machiz
Michelle C. Yau
Cohen, Milstein, Sellers & Toll, PLLC
255 South 17th Street
Suite 1307
Philadelphia, PA 19103
Telephone: (267) 773-4680
Facsimile: (267) 773-4690

1100 New York Avenue NW
Suite 500, West Tower
Washington, D.C. 20005
Telephone: 202.408.4600
Facsimile: 202.408.4699

Co-Lead Counsel for the Plaintiffs

SO ORDERED:

_____
U.S.D.J.

3-16-09

DEFENDANTS

By: _____ Dated: February 27, 2009

Jay B. Kasner
Scott D. Musoff
Skadden, Arps, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Attorneys for Merrill Lynch & Co., Inc.

Acknowledged By:

_____ Dated: February 27, 2009

Adam S. Hakki
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

Attorneys for Individual Defendants Other than E. Stanley O'Neal

Acknowledged By:

_____ Dated: February 27, 2009

Michael J. Chepiga
Simpson, Thacher & Bartlett LLP
425 Lexington Ave
New York, NY 10017-3954
Phone: 212-455-2519
Facsimile: 212-455-2502

Attorneys for E. Stanley O'Neal

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC. SECURITIES, DERIVATIVE AND ERISA LITIGATION	Master File No.: 07cv9633 (JSR) (DFE) **CLASS ACTION**
This Document Relates To: ERISA ACTION	Case No.: 07-CV-10268 (JSR) (DFE)

PLAN OF ALLOCATION

I. Definitions.

Capitalized terms used herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement– ERISA Action dated February 27, 2009, or in this Plan of Allocation.

II. Amount to Be Distributed.

The total amount to be distributed to the Class Members (the "Distribution Amount") shall be the Net Settlement Fund as defined in ¶ 3.3 of the Stipulation, minus up to $350,000 of Plan of Allocation Implementation Expenses, as provided for in ¶ 1.35 of the Stipulation.

III. Calculation of Each Member's Share of the Distribution Amount.

For each Class Member there shall be calculated a Net Loss, which shall be calculated as follows:

1. Each Class Member's Net Loss shall be equal to A + B – C– D, provided that if A + B – C– D is less than zero for a Class Member, such Class Member's Net Loss will be zero.

A = eighty-four percent (84%) of the dollar amount of the Class Member's Plan account balance invested in the Merrill Lynch common stock at the beginning of the Class Period.

B = the dollar amount added to the Class Member's Plan account balance invested in Merrill Lynch common stock during the Class Period.

C = the dollar amount credited to the Class Member's Plan account balance resulting from dispositions of Merrill Lynch common stock during the Class Period.

D = the dollar amount of the Class Member's account balance invested in Merrill Lynch common stock Fund immediately after the end of the Class Period.

2. To the extent data is not available to determine the account balances of Class Members at the beginning or end of the Class Period, the foregoing calculations may be performed using data as of the nearest date after the beginning or end of the Class Period that is available.

3. There shall be calculated for each Class Member his or her "Preliminary Net Loss Fractional Share" by dividing each Class Member's Net Loss by the aggregate of all Class Members' Net Losses.

4. There shall then be calculated for each Class Member his "Preliminary Dollar Recovery" by multiplying the Class Member's Preliminary Net Loss Fractional Share by the Distribution Amount.

5. All Class Members whose Preliminary Dollar Recovery is less than the De Minimis Amount shall receive an allocation of zero, and the Preliminary Dollar Recovery otherwise allocable to such Class Members shall be reallocated among the other Class Members proportionately in accordance with their Preliminary Dollar Recoveries (the "Reallocation"). As used herein, the "De Minimis Amount" shall be ten dollars ($10.00) in the case of "Current Members" (as defined in Paragraph IV 1 below), and twenty-five dollars ($25.00) in the case of "Former Members" (as defined in Paragraph IV 2 below).

6. The Preliminary Dollar Recoveries shall then be recalculated to take into account the Reallocation, and such recalculation shall produce the "Final Dollar Recovery" for each Class Member. If there is no Reallocation, the Preliminary Fractional Recoveries shall be the Final Dollar Recoveries. The sum of the Final Dollar Recoveries must equal the Distribution Amount.

7. The Final Dollar Recoveries shall be allocated among the Plans by allocating to each Plan the Final Dollar Recoveries of the Class Members who are (or were) participants or beneficiaries in that Plan. As soon as practicable thereafter, the Final Dollar Recoveries allocable to each Plan shall be deposited in that Plan.

8. All calculations required to implement this Plan of Allocation shall be performed by Merrill Lynch, or by such other person who shall be designated to do so by the Court.

IV. Distribution of the Allocated Amounts.

1. Class Members who are current Plan participants ("Current Members"). As soon as practicable after the deposit of the Final Dollar Recoveries into the Plans, there shall be deposited into each Current Member's account his or her Final Dollar Recovery. The deposited amount shall be allocated among the Current Member's investment options in accordance with the existing investment elections for current contributions into the Plan then in effect and treated thereafter for all purposes under the Plan as assets of the Plan properly credited to that Current Member's account.

2. Members who are former Plan participants or beneficiaries thereof ("Former Members"). The Plan Administrator for each Plan shall invest each Former Member's Final Dollar Recovery in a suitable short term investment vehicle, the primary purpose of which is the preservation of assets, pending distribution to the former Member. The deposited amount, plus interest, shall then, as soon as is practical, be distributed to the Former Member in the same manner as a qualified distribution from the Plan pursuant to ERISA and the Internal Revenue Code.

V. Continuing Jurisdiction

The Court will retain jurisdiction over this Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.

Exhibit 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION

No. 04-cv-9866 (LTS)(HBP)

ECF CASE

ORDER GRANTING LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

WHEREAS:

A. On December 21, 2016, a hearing was held before this Court to consider, among other things: (1) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses (the "Fee and Expense Application"); and (2) the fairness and reasonableness of the Fee and Expense Application;

B. All interested Persons were afforded the opportunity to be heard;

C. The maximum amount of fees and litigation expenses that would be requested by Lead Counsel, including the maximum amount of costs and expenses to Plaintiffs incurred in connection with representing the Class, was set forth in the Notice of Proposed Settlement of Securities Class Action, Application for Attorneys' Fees and Expenses, and Settlement Fairness Hearing (the "Notice") that was disseminated to the Class in accordance with the Court's September 16, 2016 Order Preliminarily Approving Settlement, Directing Notice to Class Members, and Setting Hearing for Final Approval of Settlement (ECF No. 703, the "Preliminary Approval Order");

D. The Notice advised Class Members of their right to object to the Fee and Expense Application and that any objections to the Fee and Expense Application were required to be filed with the Court no later than November 28, 2016, and served on designated counsel for the Parties;

E. On November 11, 2016, Lead Counsel filed its Fee and Expense Application;

F. All objections relating to the Fee and Expense Application have been considered, and the Court has overruled all such objections; and

G. This Court has duly considered Lead Counsel's Fee and Expense Application, the declarations and memoranda of law submitted in support thereof, and all the submissions and arguments presented with respect thereto.

NOW, THEREFORE, after due deliberation and for the reasons stated on the record of the December 21, 2016 hearing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**:

1. This Order hereby incorporates by reference the definitions in the Stipulation and Agreement of Settlement (*see* ECF No. 700, Ex. 1) (the "Settlement Agreement"), and all initial capitalized terms, unless otherwise defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. Lead Counsel is hereby awarded 28% of the $486 million Settlement Amount, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

3. Lead Counsel is hereby awarded the sum of $20,005,879.33 in litigation expenses, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

4. Lead Counsel shall allocate the attorneys' fees and expenses awarded amongst Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contribution of such counsel to the prosecution and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $486 million in cash that has been funded into escrow pursuant to the terms of the Settlement Agreement, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Class Representatives, including the institutional investor Lead Plaintiff, that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 4.1 million potential Class Members and nominees stating that Lead Counsel, on behalf of Plaintiffs' Counsel, would ask the Court for an award of attorneys' fees not to exceed 30% of the Settlement Fund and expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against Defendants in an amount not to exceed $25 million, plus interest, to be paid from the Settlement Fund;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted more than 290,000 hours, with a lodestar value of over $120 million, to achieve the Settlement; and

(h) The amount of attorneys' fees and expenses awarded from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Teachers' Retirement System of Louisiana is hereby awarded $4,015, Class Representative Christine Fleckles is hereby awarded $7,500, Class Representative Julie Perusse is hereby awarded $5,000, and Class Representative Alden Chace is hereby awarded $5,000, for reimbursement of their costs and expenses directly related to their representation of the Class, to be paid from the Settlement Fund.

7. The Notice provided the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the fee and litigation expense request, to all Persons entitled to such Notice, and said Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, §21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and all other applicable law and rules.

8. Any appeal or any challenge affecting this Court's approval of any attorneys' fees and expense application will in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. There is no just reason for delay in entry of this Order Granting Lead Counsel's Motion for an Award of Attorneys' Fee and Reimbursement of Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: New York, New York
December 21, 2016

LAURA TAYLOR SWAIN
United States District Judge

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE: SUNEDISON, INC.
SECURITIES LITIGATION 16 MD 2742 (PKC)

------------------------------x
FIR TREE REF III MASTER FUND,
LLC, *ET AL*,

Plaintiffs,

v. 18 CV 1754 (PKC)

AHMAD CHATILA, BRIAN WUEBBELS,

Defendants. CONFERENCE

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New York, N.Y.
April 17, 2018
2:45 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD
Attorneys for Omega Plaintiffs
BY: DENNIS J. HERMAN

BERNSTEIN LITOWITZ BERGER & GROSSMANN
Attorneys for Plaintiff Municipal Employees' Retirement System of Michigan
BY: ADAM D. HOLLANDER
SALVATORE J. GRAZIANO

QUINN EMANUEL
Attorneys for Canyon Plaintiffs
BY: ANDREW J. ROSSMAN
JESSE BERNSTEIN
-AND-
THE LAW OFFICE OF FRANK J. BROCCOLO
BY: FRANK J. BROCCOLO

APPEARANCES (continued)

LOWENSTEIN SANDLER
Attorneys for Fir Tree Plaintiffs
BY: BRANDON M. FIERRO

SIDLEY AUSTIN
Attorneys for Defendants
BY: SARA B. BRODY
JAIME A. BARTLETT
-AND-
SHEARMAN & STERLING
BY: ADAM S. HAKKI
DANIEL C. LEWIS
-AND-
WILMER CUTLER PICKERING HALE & DORR
BY: BRADLEY M. BAGLIEN
-AND-
O'MELVENY & MYERS
BY: KATHERINE A. BETCHER

(Case called)

THE COURT: The first thing I want to do to get oriented here is as follows: We have a class action complaint, followed by a motion to dismiss, followed by the Court's ruling. And there have been amendments to the -- or the opportunity to amend the complaints in the individual actions.

What I'd like to find out is whether the newly filed complaints are an attempt to replead claims that were dismissed -- and from my earlier review I don't think they are, but maybe they are -- or whether it's an effort to conform the pleading to the rulings in the motion to dismiss or maybe it's some third possibility.

So let me hear -- maybe, Mr. Herman, you can enlighten me.

MR. HERMAN: Sure, your Honor. Thank you.

We repled the complaints. We had not had an opportunity to amend since our original complaint was filed. We were the first ones on file with the Section 11 claims. And that's all our clients have ever filed.

What we have done is we've added some allegations that I think are unique to our suit and that will fall within your order upholding the claims arising from the omission of the margin loan or omission of the breach of the margin loan, debt covenants, and of the Goldman loan, what we call the 15 percent Goldman loan. Those, I think, our complaint conforms to that;

I think our complaint -- the prior allegations would have been upheld on the prior motion to dismiss following that.

We've also pled -- which we had only pled very circumspectly at the beginning -- the internal control claims, because a lot of the information that had come out at the time we filed our initial complaint was not available. And we also pled on the loss of use claims, both of those that you dismissed under Section 11. We would like an opportunity to take a run at you and convince you that under Section 11, that we believe both the internal control claims and the loss of use claims under the allegations that we pled in our complaint do state viable claims under the Securities Act with respect to the SunEdison preferred offering.

THE COURT: So the internal complaint and the --

MR. HERMAN: Loss of -- the use of the proceeds. I'm sorry, I said loss of use, your Honor. The use of proceeds; what the proceeds of the offering were going to be used for. You found that those were not actionable in your earlier ruling. We'd like the opportunity to convince you that on the facts that we allege and under the Securities Act, that those are viable claims.

THE COURT: Okay. Thank you.

Let me skip over Fir Tree for a moment and turn to Mr. Broccolo. Are you going to speak for -- or who's going to speak on behalf of the other group of plaintiffs?

MR. ROSSMAN: I'll speak on behalf of --

THE COURT: All right. Mr. Rossman.

MR. ROSSMAN: So we have, your Honor -- primarily our complaint is not -- amended complaint is not yet on file. It will be finalized and filed and served today, as I understand.

But I can preview for you, your Honor, that it will be tracking what we previously filed with respect to the Goldman loan and the margin loan. As your Honor has ruled in your opinion, those are sustainable claims under Sections 11 and 12. We also, of course, have the state law blue sky law claim under California law. But the facts that are alleged are based on the Goldman law and the margin loan, among other things I'll mention.

We also are adding allegations regarding the misclassification of debt as nonrecourse when, in fact, it was recourse, which --

THE COURT: So you're taking another run at a claim that was dismissed, right?

MR. ROSSMAN: No, no. That's a claim that you acknowledged in your opinion that we didn't have in our original complaint, so we're tracking your opinion on that, your Honor.

THE COURT: Okay.

MR. ROSSMAN: That was a sustained claim.

And then in terms of claims that were dismissed, we

have additional allegations with respect to three areas:

One is on the subject of liquidity disclosures; the other is on the internal control failures of SunEdison; and the last is the use of proceeds from the offering. And those are claims that, based on the class's complaint, your Honor had dismissed those claims. And we're making additional allegations that we hope will sustain a claim as to those three areas.

THE COURT: All right. Well, this helps me out quite a bit. What I had planned to do was something that I now won't do, which was to lean on the defendants to file a motion to dismiss so they can preserve the record as to any claims that I sustained and see whether we can get a stipulation that the ruling of the Court on the class action complaint is dispositive of the claim, subject, of course, to the preservation of the defendants' right to appeal.

In other words, as to something that I previously dismissed, the defendants can have a go at it -- or failed to dismiss, sustained, defendants can have a go at it, the plaintiffs can respond, the defendants can reply, and I can write another 40-page opinion. Or we can cut the nonsense out and agree that the ruling of the Court would be essentially the same and sustain the claim subject to the defendants' right to appeal, so it's preserved. I'm not trying to deprive anybody out of their right to appeal.

Likewise, it would be just fine with me if the plaintiffs wanted to enter into a similar claim, pleading a claim, and entering into a stipulation that, based on the Court's prior ruling, that claim would not be sustained and the plaintiffs have preserved their appellate rights that it would be governed by the Court's prior ruling.

But it sounds like it stops dead at the plaintiffs' table. Am I correct?

MR. HERMAN: I think, your Honor, speaking only for our clients, I think it does stop dead at the plaintiffs' table, at least until the premotion letters are on file. Once we've seen what the defendants are going to say in their premotion letters -- assuming that they are going to seek to dismiss -- and you see our response, it may be an appropriate time to re-raise that issue at that time, depending upon what the positions of the parties are.

Right now, I agree, it's dead in the water.

THE COURT: All right.

Let me hear from Mr. Rossman.

MR. ROSSMAN: I probably have a softer stance on the position, your Honor.

It occurred to me that on the three areas that your Honor has already sustained claims on, we can enter into a stipulation that would preserve the defendants' appellate rights on that and spare the Court any motion practice on those

three claims.

THE COURT: Well, it's more than that; it's getting your client out of the starting gate.

MR. ROSSMAN: Correct.

THE COURT: It's not less work for the judge as the goal, but it has potential benefits for your client.

MR. ROSSMAN: I agree, your Honor, and that's why it's attractive for us.

On the three, where we would take a run at trying to make additional allegations, my thought on that, your Honor, is that there probably is some benefit to seeing premotion letter practice on this to see if the parties can narrow their issues. But we certainly would be willing to entertain discussions with defendants about a way to preserve those issues.

So I don't think I'm quite as staunch on this issue as my colleague was a moment ago, but I do see your Honor's concern.

MS. BRODY: Your Honor, Sara Brody on behalf of the individual defendants.

There are a number of issues in the individual plaintiff cases that, in addition to questions about how things are pled following your Honor's ruling, that really need to be considered on premotion letters and potentially motions to dismiss.

THE COURT: So you want to raise everything that you

raised on the last round of briefing again, anew, afresh, directed to this pleading.

MS. BRODY: I'm not sure that we're going to retread everything that we've done previously, and we will very much take your Honor's prior order into account. But there are issues that are very specific to argue that have been pled in the plaintiffs' complaints with respect to Section 12, whether that can even be pled as to individuals; with respect to the Kearny complaint, there's an individual defendant who we think shouldn't be in the case at all, and it's very important that we resolve that, determine if someone shouldn't even be a defendant here in these actions.

And I believe -- and I'll let Mr. Hakki address this -- that there are certain issues with respect to the underwriters in the state law claims.

So I think, unfortunately, we appreciate the Court's position here and that you're trying to think of a way to set this so we can move forward, but we really do need to go through another round of motions to dismiss. And it's not simply to preserve issues for appeal.

THE COURT: Thank you.

Okay. Let me proceed with the figuring out a discovery schedule in the class action.

MR. GRAZIANO: Right.

Your Honor, I think, just kind of heard why we had to

write the Court and why we're here. We were appointed lead plaintiff more than two years ago. We have faced numerous stays and delays along the way. All we want to do is get started. We think a prompt schedule will lead to a prompt resolution of this case; we think that will actually help resolve the remaining cases.

One of the objections defendants put on the table was, Well, we served discovery requests, and they may face new discovery requests from the other plaintiffs on the table.

So one thing we've accomplished since the last time we wrote to the Court is we asked them to all look at our discovery. It's comprehensive. It's reasonable. I think they all agree that they would live with our discovery. So if we could get that started in the class case, I don't believe it would need to be duplicated when they have discovery in their cases.

THE COURT: When you use the word "discovery," you're referring to all the discovery devices under the Federal Rules of Civil Procedure?

MR. GRAZIANO: No. I showed them our document requests.

THE COURT: All right.

MR. GRAZIANO: I was referring to the document requests.

THE COURT: All right. The document requests.

MR. GRAZIANO: Yes.

THE COURT: That's what I thought it might have been.

MR. GRAZIANO: Yes.

THE COURT: All right.

MR. GRAZIANO: But that does raise a question, your Honor, depending on how long their cases take, what do we do about further discovery devices such as interrogatories and depositions.

THE COURT: This is not a new issue; this comes up in cases. My inclination is to say as follows. This is why I sequenced the questioning in this conference.

I believe you're entitled to be green-lighted on discovery; and that's what I propose to do today, is to give you a schedule on discovery. My present inclination is to stay discovery on the individual claims until there is a decision on the motion to dismiss. When there is a decision on the motion to dismiss, with respect to document requests and perhaps if there are interrogatories that are appropriate under the Court's local rules, same would go for interrogatories, maybe requests to admit, to the extent they are going to be used, that the individual actions would get the benefit of those.

And the same way with depositions. If the individual plaintiffs make a credible claim that they are entitled to further questioning of a witness, so be it. And that puts the defendants, the individual plaintiffs, and the class

plaintiffs, I suppose, all at odds with one another. But that's what I propose to do.

MR. GRAZIANO: We certainly have no objection to that, your Honor.

THE COURT: So let me see whether I can get a case management plan.

Yes, sir, Mr. Rossman, you want to go ahead with discovery full bore right away while the motions are being briefed; is that correct?

MR. ROSSMAN: We do, your Honor.

THE COURT: Okay. Go ahead.

MR. ROSSMAN: I have two points to make for you, your Honor.

One is we do think that there's substantial prejudice to the individual defendants -- individual plaintiffs here, rather, if we don't get to participate in discovery. We've been held in stasis for a long time. The idea, as we understood it, of staging the motions to dismiss made perfect sense because it preserved judicial economy. Your Honor wrote a decision; we all learned from the decision; and we've conformed to the decision. You didn't have to write multiple decisions.

THE COURT: Was that ruled over the objection of the individual plaintiffs, the sequencing?

MR. ROSSMAN: We did not object, your Honor. We

followed your Honor's lead because we thought it made evident sense, okay. And your Honor, my point is simply that the same logic doesn't apply when it comes to discovery because there's no burden on the Court. And here, where we have --

THE COURT: I don't care about burden on the Court. Don't worry about that.

MR. ROSSMAN: And there's no burden on the defendants either because what we have agreed with the plaintiffs, the class lead plaintiffs, is we will coordinate with them so there will be a uniform set of discovery requests. We've already looked at their discovery requests and have said we'll live with their document requests. So there's no additional need for any work on the part of defendants at all, except to make a copy of the documents that they are already providing to the class plaintiffs. And the burden would be on us to review those documents in the interim while your Honor takes up the motion to dismiss practice.

So the only burden that's visited here is visited upon us, which we are happy to take up so that we can keep up the pace of everyone else's case and not be lagging behind in a circumstance where we know, among other things, that there is a limited pool of D&O insurance assets that's available to resolve these cases, and we want to make sure that we're not prejudiced in the litigation or in potential settlement discussions regarding the case. So that's why we do very much

want to participate in discovery.

The other point that I would make and that I would ask your Honor for consideration on this, is it seemed that what you were heading towards, as you indicated, was that if we were willing to confine our claim at this stage to the three areas that your Honor has already green-lighted as claims, the Goldman loan, the margin loan, and the misclassification of debt as nonrecourse, that the logic would be compelling that we should be entitled to proceed with our case and we should be entitled to discovery on our case.

I'd at least like to have the opportunity to provide my client with that option. Now, the downside, of course, would be we wouldn't be further amending the complaint to try to resuscitate claims that your Honor dismissed.

THE COURT: I'm all in favor -- by the way, just so there's no dispute about this, I think it's fair and appropriate for you to assert those claims.

Now, you could say, I enter into a stipulation with the defendants that the outcome would be the same as on the original motion to dismiss, so that you have a preserved record of having asserted the claim, and the Court having dismissed the claims for the reasons stated in the original decision.

MR. ROSSMAN: Understood.

That's what we would anticipate.

If your Honor's inclination is to stay the individual

defendants on the grounds that they have additional claims that they are going to assert in their amended complaint, what I would ask, your Honor, is for a week's time to talk to my client so that they can make an educated decision about whether it's worth the candle to try to persuade your Honor of the other claims, as opposed to confining our claims to the scope of what your Honor green-lighted in your opinion, subject, of course, to whatever comes out in discovery, we can always come back under Rule 15.

THE COURT: Right.

Mr. Rossman, I think what you propose is reasonable. What I propose to do is to set -- in the first instance to set a schedule on the discovery, to end today with a schedule on the premotion letters, and my reaction is to say that in a couple of weeks' time, that you could let me know what your client's preference is and what your discussions are with the defendants, and then we can proceed from there.

My present inclination would be to say that you would be able to come onboard, for lack of a better term.

MR. ROSSMAN: Very good.

We will take up the issue -- we already are taking up the issue of that loan director. We just got the request; we don't have an answer yet, but we'll have an answer very shortly on that particular question.

THE COURT: I understand.

MR. ROSSMAN: Thank you, your Honor.

MS. BRODY: Your Honor, with respect to proceeding with discovery -- and I appreciate the fact that the plaintiffs are telling us that they are going to work together with respect to discovery, and that may resolve some of the concerns that the defendants have in terms of how to move forward on the document discovery. Because if we are dealing with single sets of requests, we can start the process, as we said in our letter, on document discovery produced to the class plaintiffs or we work things out with respect to the scope of the Quinn Emanuel complaints perhaps to those plaintiffs as well.

But I would ask the Court to rethink with respect to depositions. The idea of having depositions taken once and then follow-on depositions taken after that in this case is potentially very expensive and burdensome on these individuals. It may be that this is an academic question, depending on the timing of motions to dismiss, document production. We're prepared to move fairly quickly on motion to dismiss; but I think in terms of getting things organized and precedent, we should separate documents and depositions.

THE COURT: If I'm reading you correctly, you're consenting to a vacatur of the PSLRA stay; correct?

MS. BRODY: No, your Honor. What I was -- I'm sorry.

What I was consenting to was that we start the process of getting -- responding to requests propounded by the class

plaintiffs with the understanding that that would have been coordinated with all the other plaintiffs; that only the class plaintiffs, or in this situation, if we work things out with the Quinn Emanuel plaintiffs as well, we might start production because they are not going to be amending their complaint further. But not with respect to the Robbins Geller plaintiffs. And that once we get all the motions to dismiss resolved, then we move forward with depositions.

THE COURT: Let me see whether I can translate this.

In other words, you walk into this courtroom with a PSLRA stay as to the individual actions.

MS. BRODY: Correct.

THE COURT: And you would like the Court to take the fact that there is a stay as to the individual actions and now impose it on the class action.

MS. BRODY: Not with respect to documents, your Honor.

THE COURT: But only as to --

MS. BRODY: As to depositions.

THE COURT: -- the depositions.

MS. BRODY: Yes, your Honor, because this is an MDL and we are trying to get -- and as everyone has said, with respect to the individual defendants, we have a limited set of assets to deal with.

THE COURT: That's great.

And so then we can do depositions in maybe 2019 or so,

right?

MS. BRODY: I actually think we may be able to get to them sooner than that.

THE COURT: How do you get to that? This is going to be very interesting. So what was the timing on the last motion to dismiss, between the first notice of motion and the decision on the motion to dismiss?

MS. BRODY: So it did take a long time, your Honor. It occurred to us -- and we recognize that the Court has a lot on his plate as well and that that's why I don't want to impose on your schedule. But in terms of the briefing on behalf of the defendants, we think we can be done by early August.

THE COURT: So when do you think my decision should be ready by?

MS. BRODY: I don't know, your Honor. I can't -- that's your schedule. And so it may be that you're right and that that puts us into the beginning of 2019, which would be about eight months away from now.

THE COURT: When did SunEdison file in bankruptcy?

MS. BRODY: About two years ago.

THE COURT: And the MDL was in 2016 as well, right?

MS. BRODY: Correct.

THE COURT: Thank you.

Any other defendant want to be heard?

MR. HAKKI: Yes, your Honor. Adam Hakki for the

underwriter defendant.

Just a very quick point specific to my clients, which is Mr. Rossman's clients, the Canyon and Kearny plaintiffs, as he mentioned, have California blue sky law claims. And even if they were to decide to heed your Honor's admonition or suggestion to limit their claims to what has been sustained in the class case, in terms of the factual allegations, that would be one thing, but the California blue sky claim, which is asserted only against the underwriter defendants, your Honor, we will argue has different elements, a lot of different issues which were never presented to your Honor in the class action which would have to be heard on if they want to continue with those claims. If they want to drop those claims in light of your Honor's ruling, they can do that; but if they are going to continue to press the California claims, we have not had an opportunity to be heard on that, and we will argue that the standards are different.

THE COURT: Well, that was kind of self-evident in the discussion that we had about the plaintiffs' choice to stand on their pleading or to enter into some agreement and participate as a full participant in the discovery process.

MR. HAKKI: Your Honor, it could be, depending on how they present it. I think we'll certainly wait to see what they have to say.

THE COURT: All right.

Any other defendant want to be heard?

Okay. So now let me go back to the plaintiffs in this case. There was a statement made by class counsel that the Rule 34 request was circulated, and that the counsel for the individual plaintiffs are onboard with this as the exhaustive Rule 34 request. Is that accurate?

MR. HERMAN: Your Honor, it's accurate that we will live with that as the initial document request, so long as -- and I think you said this in your remarks, so long as we need additional documents or addition all custodians, additional production, we'd preserve the right to ask for additional documents for good cause after we've reviewed everything that has been produced to the class. But we are certainly willing to take the discovery to the class again gets at the first -- as a first production.

THE COURT: How is that going to be used by you and your client on the motion to dismiss?

MR. HERMAN: I don't think it will be used by our client on the motion to dismiss. I think the claims we've pled are sustainable based on the allegations in the complaint. I don't anticipate -- let me say two things. One, I wouldn't anticipate using any documents produced in discovery to sustain the motion to dismiss.

THE COURT: How about this: In the middle of the briefing on the motion to dismiss, running in and saying --

breathlessly saying, I want to amend my pleadings. Stop everything on the motion to dismiss.

MR. HERMAN: Well, if I find out new facts, your Honor, I have a duty to my clients to bring them to your attention. And if there are new facts that come to light, whether through discovery or through some other mechanism, I have a duty to bring it to your attention.

Now, you may tell me I can amend again; you may tell me I can use them; you may tell me to get out of your courtroom, that I've had plenty of time.

I would like to point out, your Honor, you asked earlier if anyone objected to the phase approach. We did object on behalf of the Cobalt plaintiffs. Because at the time we were removed Cobalt, had a fully briefed motion to dismiss, and there were also motions to dismiss pending in the *Glenview* and in the *Omega* cases. We were the ones, again, that started the Section 11 cases. We were out of the box and we were trying to move these cases forward, and everyone pulled out at the first stop, first by removing us from California state court; second, by removing us to the MDL; and third, by vacating the motions to dismiss that were briefed and ready for decision in 2016, your Honor.

This case could have been off and running two years ago in our case. It's at this point, now that we've been put on hold for two years, we want the opportunity to fully pursue

our claims, both at the pleading stage and through discovery. We are happy to take the class's discovery as the initial cut and then move forward.

One thing I would like to point out is the premotion letters right now are due May 22nd, I believe, in our cases. I haven't spoken with defendants yet; I don't know whether they would be willing to accelerate that deadline. It sounds like they've already looked at our complaint. They could file motions with your Honor in a relatively short period of time. We've thought through the issues; we've read your opinion. We could file responses in a short period of time. I think that that would at least tell us whether there is going to be a motion.

During this time, if document production is going forward, the documents are being produced, this may all be much ado about nothing. We may get to a point where our motion is either not brought or is in a narrow position that could be quickly resolved, so that by the time the documents are produced and people are ready for depositions, the case is ready to move forward.

So I think at this point it's just unknowable how long it's going to take. And I would suggest that if you can advance the motion to dismiss briefing, maybe we'll get to a point several months from now where everyone is kind of on the same page.

THE COURT: I think that's a fair suggestion and I'll take a look at it.

I want to point out though that one of the reasons for the PSLRA stay, one of them is to minimize frivolous securities actions in the hope either that the corporate defendants will settle those actions rather than bear the high cost of discovery. That's one of the goals in the stay.

But there's a second goal which seems to be applicable to our discussion or that the plaintiff will find during discovery some sustainable claim not alleged in the complaint. And that's what we are talking about here, is during the pendency of the motion to dismiss, there is a motion to amend to assert something that was not asserted in the original complaint, which, in effect, makes waste of all work done on the originally briefed motion to dismiss.

MR. HERMAN: I would submit to your Honor -- I recently briefed that precise issue. And I'd submit to your Honor the case law is actually overwhelmingly -- I haven't looked. It was in Texas; it was in the Fifth Circuit, it wasn't in the Second Circuit. So I'd have to take a look at the law in this Circuit.

But the case law that we looked at was overwhelmingly against what you are saying. It was that the PSLRA does not prevent -- nothing in the PSLRA prevents a plaintiff from using evidence discovered during discovery to try to amend complaints

that have previously been dismissed.

THE COURT: You misunderstood me. You totally misunderstood me.

MR. HERMAN: I apologize, your Honor.

THE COURT: No, no, I understand that.

I was not talking about your ability and your right to move to amend and have that motion to amend perhaps granted. I wasn't talking about that.

MR. HERMAN: Okay.

THE COURT: Because you said to me before, you threw it out in the challenge, you said Well, if you don't think the amendment is appropriate, you'll throw me out, or something like that, words to that effect.

MR. HERMAN: Correct. I did.

THE COURT: That's not the point of the stay, to turn down a motion to amend based on a document you obtain through discovery. That's not the argument at all.

The argument is that by lifting the PSLRA stay, you will discover documents that will cause you as a good, fine, ethical lawyer to then move to amend. And I will grant your motion to amend. That's the problem.

MR. HERMAN: See, okay, I understand, your Honor. I apologize for misunderstanding you.

I don't think that is really an issue. I think the primary purpose of the PSLRA discovery stay is to prevent

frivolous actions from going forward; for filing a complaint and looking for discovery to sustain a complaint that you have no basis. That policy is not implicated here. You've already found sustainable claims based on the statements in the offered documents. The class's discovery is designed to ferret out evidence to sustain those claims. I don't need any discovery, I don't think, to sustain those claims in my client's complaints.

So what you're talking about, your Honor, I don't think we're really going to discover evidence in a PSLRA stay by lifting the PSLRA stay that's going to helped me plead the claims that you dismissed that I have told you that I would like to take another run at to try to convince you that those claims are sustainable on behalf of our clients. Maybe I'm talking past you, maybe I'm still not understanding; if so, I apologize.

THE COURT: No, you're addressing it.

The only point -- and you said this yourself -- it may be that the law is different in the different circuits, but I direct you to the *WorldCom* decision at page 305 of 234 F. Supp. 2d. That's Judge Cote's decision, in which she goes into the legislative history of the PSLRA stay and concludes that it's a twin goal.

And so I recognize that this Circuit may have different views on it, that the Fifth Circuit may have

different views on it, the Eleventh Circuit, but that's fine. I think we are now on the same page as to what we are talking about.

MR. HERMAN: If I could allay further your concern, we are willing to wait our chance to look at the documents that are produced to the class until after you have ruled on our motion to dismiss. I think that's an easy way to solve the problem there. We don't have access to the discovery until a motion to dismiss is ruled on. And then at that point all bets are off.

THE COURT: I agree with you. That's a perfectly acceptable way around it. So I have no problem with that in particular.

So let's see whether we can come up with a case management plan.

I'm gathering you're not all consenting to have the case heard by the magistrate judge or -- you're welcome to, but there's no price if you don't. So I'll put that down as a no for now. I assume you're not waiving a jury?

MR. GRAZIANO: Correct, your Honor.

THE COURT: All right.

I'll set a date for further amendments of the pleadings 30 days from today's order. And this order is going to apply in the first instance to the class action. Then we'll talk about what kind of order to take up counsel's very helpful

suggestion about getting the documents at least gathered, collected, copied, if need be, or -- I don't know whether this is something where there's some other way of production. I assume most of this is stored electronically, but we can talk about that later.

Initial disclosures from the class action plaintiffs and from the defendants, 14 days. Will that work?

MR. GRAZIANO: That's fine, your Honor.

MS. BRODY: Your Honor, I think we'll need a little more time than 14 days.

THE COURT: How long have you had the complaint?

MS. BRODY: Well, the complaint is now a slightly different complaint. We have a lot of individuals to sign off on that.

THE COURT: It's a much narrower complaint; correct?

MS. BRODY: Yes.

THE COURT: And you've had my decision at least since March 6th.

MS. BRODY: Your Honor, I don't think we need months, but I think we need 30 days for the initial disclosure rather than 14, just because of the number of defendants that we'll need to sign off on that.

THE COURT: Have you done any work on it?

MS. BRODY: It's been started, but we don't have sign-off and it's not finished. So I think realistically 14

days would be -- will be tough.

THE COURT: 21 days.

MS. BRODY: Thank you, your Honor.

MR. GRAZIANO: Your Honor, I'm not going to quarrel with the 21 days, but if this concept comes up again, I just want to point out these individuals are individuals; they are not part of a corporation; they have what they have in their house, that's about it. So this shouldn't take a long time.

THE COURT: I understand. And I think your point is even better taken with regard to production of documents.

MR. GRAZIANO: Yes.

THE COURT: I understand with initial disclosures it may be some unusual circumstances that a layperson may not have encountered. But in terms of documents, they have what they have.

So plaintiffs propose that fact discovery be completed by July 5th, 2018. Is that acceptable to the defendants?

MS. BRODY: No, your Honor. That seems to be incredibly tight.

A lot of the documents here will be actually with others than just the individual defendants. So SunEdison, which has now emerged from bankruptcy, and I understand from their current counsel that the process of compiling and producing those documents will be complicated. And then when you say fact discovery, I take that also to include

depositions. Given the number of different defendants and different parties, it seems impractical to actually get documents produced and all the depositions taken by the beginning of July; that would be in two and-a-half months. So I think six months at the very minimum, probably nine is more realistic.

Again, I would renew my request that we start first with documents and we hold on depositions until we get the pleadings sorted out in the individual defendants' cases. And I recognize the pressure that has on the Court, but with respect to the defendants, we can move as quickly as possible on that.

THE COURT: With regard to the individual plaintiffs' claims, I assume good faith on the part of plaintiffs' counsel. I have no idea when the decision is going to come out on any motion to dismiss, if that's where we're headed.

But if depositions go forward, it would be an act of insanity on the part of plaintiffs' counsel in the individual actions to insist on redoing depositions for the sake of redoing them. There may be some key players where there will be additional lines of questioning that may be appropriate, but it does not mean that there will be any need to -- nor would I allow just a soup-to-nuts redo and replowing of territory.

It may be that this will be an academic question and maybe the individual plaintiffs will be sitting at the

deposition table. But I certainly wouldn't allow them, if they were at the deposition, to sit there during one counsel's examination of a witness and then proceed to reask essentially the same questions but in more elegant language. So I'm not going to worry about the depositions so much at this stage of the game.

It seems to me that July 5th is overly ambitious, and I'm going to set the close of fact discovery in this case for October 5th, 2018. I think that's ambitious, but I think it's doable.

Now, with regard to initial requests, when do you want to serve them by?

MR. GRAZIANO: We did that. So that part is covered.

THE COURT: They are served?

MR. GRAZIANO: Yes.

THE COURT: Interrogatories, June 5. Does that still work for you?

MR. GRAZIANO: One question on the table. Because fact discovery ends October 5th, assuming the documents are produced in some reasonable time, June 5 should be fine. But there's no deadline for documents and I'm just putting that on the table. So they have our requests. Assuming they act promptly, yeah, that should be fine.

THE COURT: All right. And expert discovery, how does November 16th sound?

MR. GRAZIANO: That's fine, your Honor.

MS. BRODY: Your Honor, is that for the exchange of reports or the completion of expert discovery?

THE COURT: Completion of expert discovery.

MS. BRODY: I think that's a little tight, if we're waiting till the close -- if we exchange reports after the close of fact discovery.

THE COURT: Well, you have to work out a schedule. So you'll be working on your experts -- if somebody wants to; represent to me that they have no plans to talk to an expert until after the close of fact discovery, that would be a little bit interesting. But it seems to me that it works in other cases, it can be made to work here, and it just means that counsel will have to work harder.

I should make it very plain for the record, why am I willing to go along with expedition here? The reason is I'm concerned that there will not be sufficient assets to satisfy anything close to a judgment. There may not even be assets or insurance proceeds available to have any kind of a meaningful settlement. But I don't want to contribute to that problem of having them all dissipated.

MS. BRODY: So your Honor, I appreciate that. And the reason why we are trying to do things in a way where we're not having the potential for duplication -- and I appreciate your admonition to the various plaintiffs here -- but I am afraid

that with this kind of schedule what's going to happen is a tremendous amount of insurance proceeds are going to be spent in a very short period of time; whereas if we did things in a way where we were -- everything was more coordinated and a little stretched out, it wouldn't be as quite a fast of a spend. So I actually think it may not be -- serve the same purpose.

THE COURT: Ms. Brody, I respect what you said. And I think what you said is right as far as it goes. The burn rate would be faster on a more accelerated schedule. But if you apply a slower burn rate over a longer period of time, you're essentially in the same place.

MS. BRODY: I understand that, your Honor.

But my concern is is that with that kind of a speed, the ability to do things like resolve some of these cases in the interim becomes more challenging. So it may be that we are just so focused on getting things completed that further mediations become impossible. So that is part of my concern.

MR. GRAZIANO: Your Honor, that last part I couldn't disagree with more strongly. In our experience the opposite is true.

THE COURT: I'm going to stick with November 16.

Length of trial to be determined.

I'm going to have you back -- I have a sneaking suspicion I will see you before this date, but I'm going to

have you back, if all else fails, in mid October, about two weeks after October 5th. We'll set a conference for October 26. At what time?

THE DEPUTY CLERK: 11 a.m.

THE COURT: As I say, I fully expect I will see you before then, but we'll put that down as a date for a case management conference.

Now, the schedule is the schedule that applies to the class action.

With regard to the individual actions, the documents should be gathered; and any privilege logs should be prepared; and they will be turned over to the plaintiffs in the individual actions immediately upon a decision on the motion to dismiss and will be sequestered until then.

MS. BRODY: Your Honor, excuse me.

I think we also need to put in briefing on the class certification.

THE COURT: All right.

Well, you're not moving for class certification, are you?

MS. BRODY: No, your Honor, I am not moving for class certification.

THE COURT: Okay.

So the thought I had is you have a schedule here. And I would propose to give the plaintiffs a little bit of

flexibility on when they file that motion, as long as the briefing is completed -- that means the opening brief, answering brief, and reply -- by August 31st.

MR. GRAZIANO: That's fine with us, your Honor.

Thank you.

THE COURT: All right.

So I'm not prohibiting you from moving sooner, but I prefer to set the outside date on full briefing.

Let me hear from Fir Tree first. When was your complaint served? When is an answer due?

MR. FIERRO: Your Honor, Brandon Fierro from Lowenstein Sandler for Fir Tree.

We have yet to serve -- the issue of language was filed in late February. The outside service stated under Rule 4 is late May. We intend to put on an amended complaint before then. We're open to the middle of May; we have yet to discuss with the defendants a date by which to amend. We can do so here or we can follow up afterwards and meet and confer on that date and provide it to your Honor.

THE COURT: That's absolutely fine. You can meet and confer and send me a letter on it if it's reflecting any agreement.

MR. FIERRO: Understood.

THE COURT: Thank you.

MR. FIERRO: Thank you, your Honor.

THE COURT: All right. Ms. Brody, let's see what we can do to pick up the pace on the premotion letters. You have and have had the amended pleadings. Would it be convenient for you to get your premotion letter in by April 30?

MS. BRODY: April 30? I'm sorry, I thought I heard you say April 3rd.

So April 30? Yes, we can do that, your Honor.

THE COURT: All right.

That's going to be for all defendants.

MS. BRODY: For the --

THE COURT: Everything except Fir Tree; you don't have to do it for Fir Tree because you haven't been served yet.

MS. BRODY: Right.

So we haven't seen the Quinn Emanuel amended complaints yet.

THE COURT: That's right.

MS. BRODY: They haven't been filed yet.

THE COURT: That's right.

So let me give you till May 4th on the premotion letters, all premotion letters except Fir Tree.

MS. BRODY: That's fine.

Does that work for the --

MR. HAKKI: It does. Thank you, your Honor.

MS. BRODY: Yes. Thank you, your Honor.

Your Honor, is there a schedule for the response to

the premotion letter or is it --

THE COURT: Let me work on that.

Would it be convenient for the plaintiffs, the individual action plaintiffs, to respond by May 14th?

MR. HERMAN: Certainly, your Honor.

MR. ROSSMAN: That's fine, your Honor.

I do have a question, your Honor.

THE COURT: Just one second.

Go ahead, Mr. Rossman.

MR. ROSSMAN: Thank you, your Honor.

What I wanted was if you'd give me a little bit of clarity for my benefit when I talk to my clients about the decision that they'll have to make about whether they conform the amended complaint to your Honor's decision and the three items that you already green-lighted, so to speak, or whether to try to replead with respect to the other three, the liquidity, the internal controls, and the use of proceeds.

I do want to make sure that I understand your Honor as saying if my clients decide to at this point limit the amended complaint to the items that your Honor has already green-lighted in a decision, that we would be able to participate in discovery notwithstanding the fact that there will be a motion made, as I understand it, against the California blue sky law claims.

And I would propose to your Honor that the logic of

allowing us to proceed and participate in discovery while that motion pends is the motion will be of a purely legal nature, as Mr. Hakki already indicated. It's not dependent on the factual issues; the quarrel with us is on the statute and the meaning of the statute.

So I would suggest that given that we've got limited proceeds here, we've got a schedule that's going to proceed rapidly and, frankly, we've already had discussions with plaintiffs where we would agree to coordinate with them and have, from our perspective, one-and-done in terms of depositions, so there's no added burden on defendants at all, that if my clients were to make the decision to conform their factual allegations to those three items, that we be permitted -- and I would advise the Court of this within the next week, that we be permitted to participate in discovery on that basis.

THE COURT: Let me ask you a question, Mr. Rossman --

MR. ROSSMAN: Of course, your Honor.

THE COURT: -- out of total ignorance.

Does the blue sky claim broaden the scope of discovery in any respect or would the responsive documents and indeed even the questions one would likely ask at a deposition amount to about the same whether the blue sky claim is in or the blue sky claim is not in?

MR. ROSSMAN: It's an excellent question, your Honor.

I believe that it is essentially the same discovery. I'd be interested to hear if defendants have a different view; but our view is it's the same transaction, same facts. We already agreed to live with plaintiffs' discovery requests and we think we can accomplish anything we need to accomplish within the course of a single deposition.

THE COURT: Let me hear from underwriter defendants.

MR. HAKKI: Thank you, your Honor.

I had sort of understood your opening remarks on this to sort of give the plaintiffs a sense of choice. Either we're going to have motion practice now, in which case you're going to wait for discovery, or we're going to not have motion practice and try to stipulate to hold these things in abeyance and you're just going to litigate issues I've green-lighted for now.

But I hear Mr. Rossman; I understand the logic to some degree. What I hear him saying is, I'd like to have motion to dismiss practice on my California claim and be green-lighted on discovery, which feels a bit like having their cake and eat it. So I don't think it's in keeping with the spirit of what your Honor put forth, but only your Honor could really answer that. But I think we would object to that, I think is my initial reaction to being in motion practice with them and discovery with them.

It's not quite as clean in terms of the legal versus

the factual either; you'll have to see how the briefing plays out. I don't even have his amended complaint yet. But one of the arguments you can expect to hear from us is that there's a *scienter* requirement for the California blue sky statute based upon when the events in question occurred. And that could have a bearing on discovery, I don't know. I don't even have his amended complaint, your Honor. But it seems to me, going back to kind of the first principles that we talked about at the start of the conference, that either they are pursuing what's been green-lighted, which does not include California state law claims, or they are in motion practice and not in discovery, not both.

THE COURT: Mr. Rossman, this is what I would say: I would not have you, in effect, enter into an agreement without knowing the answer to that question. I think that's fair. But I probably need to know a little more. Your complaint, for example -- does anyone have any '34 Act claims against the underwriter defendants?

MR. HAKKI: Your Honor, they do not. But the blue sky -- I don't want to get too far into this until we see their complaint, but the blue sky statute in California during the relevant period was patterned on Rule 10b-5.

THE COURT: No, I understand. That's why I listened to what you said, and so this would be the only *scienter*-based claim against your client, is that what you're saying?

MR. HAKKI: It is, your Honor, unless we took the position again, and I haven't seen their complaint, but under Second Circuit precedent, the whole --

THE COURT: I got it. I got it. I got it.

MR. ROSSMAN: Your Honor, just a straight-up statutory dispute that we have, we think they are wrong about their interpretation. During the time period that's relevant, the California legislature actually said, We're trying to broaden the statute to cover more activity, including scheme. There was no intent to create a *scienter* requirement; we don't think there ever was a *scienter* requirement. We also don't think that that's anything that should apply to the statute as it is today, where they would clearly acknowledge there is no *scienter* requirement. So we don't think that that's -- I think it's a straight-up legal issue. You'll answer it on the briefs.

My point is they are going to make a motion in any event on those claims; it will not bear, as far as I can conceive, on the discovery that we'd be seeking in any event on the Section 11 and 12 claims that your Honor has already found to be appropriate claims to proceed. So I think there's nothing to be gained from our perspective. If they want to make a motion, they are entitled to make it; we can oppose it. The only thing that we'll be doing is we'll be keeping up with the pace in terms of the rest the case.

THE COURT: The best way I can respond is I'm open-minded on that. I think I need to hear a little bit more from each side. If there's a concrete proposal -- and I don't want you to spin wheels, I wouldn't urge you to do this unless I thought there was a prospect that it would succeed. But if there's a concrete proposal, it will make it a lot easier for me to decide.

MR. ROSSMAN: Thank you, your Honor.

I think we have what we need to have a discussion with defendants and try to resolve it.

THE COURT: All right.

So on the individual actions, documents will be collected and ready for production to the plaintiffs in the individual actions provided, however, that the PSLRA shall remain in place pending further order.

Two, all premotion letters by all defendants on motions to dismiss for all individual actions, other than *Fir Tree*, are due May 4th; responses due May 14.

And, of course, I'll set the same date in October.

My hope is -- and it's maybe overly optimistic, but my hope is that we will get the individual actions on the same schedule sooner rather than later, one way or another. And I think the individual actions have heard an idea that may facilitate that and we'll see what happens.

What else?

MR. GRAZIANO: We don't have anything further.

MR. HERMAN: Nothing further, your Honor.

MR. FIERRO: Nothing further, your Honor.

MR. ROSSMAN: I'm told we have a mechanical issue with filing, your Honor. We need authorization to file the amended complaints. And with respect to the Canyon plaintiffs, to file them as a consolidated claim; otherwise, we're going to get bounced out of ECF.

THE COURT: This is all you need to do: Right when you get back to the office, it could be this afternoon or tomorrow morning, just send me a very short letter, one paragraph or so. And what I anticipate doing is just writing on a bracketed "application granted." But we'll then have it worded so that the clerk's office will understand what you're trying to accomplish.

MR. ROSSMAN: Perfect. Much appreciated, your Honor.

THE COURT: All right.

What else?

MS. BRODY: Nothing further, your Honor.

MR. HAKKI: Nothing further, your Honor.

THE COURT: I've done that much damage that you all are surrendering at this point?

All right. Well, listen, this has been very, very helpful in enabling me to get my arms around things. I think you all been very cooperative, understanding that you have

different interests in mind and different clients with different needs.

So I thank you very much and we are adjourned.

* * *

Exhibit 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SUNEDISON, INC. SECURITIES LITIGATION — 16 MD 2742 (PKC)

DARCY CHURCH, individually, and on behalf of all others similarly situated, et al.,

Plaintiffs,

v. — 16 Civ. 7962 (PKC)

AHMAD R. CHATILA, et al.,

Settlement

Defendants.

JOHN CHURCH, individually, and on behalf of all others similarly situated, et al.

Plaintiffs,

v. — 16 Civ. 8039 (PKC)

TERRAFORM POWER, INC., et al.

Settlement

Defendants.

New York, N.Y.
January 31, 2018
2:30 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

POMERANTZ LLP
Attorneys for Plaintiffs
BY: JEREMY A. LIEBERMAN
BRENDA SZYDLO
AATIF IQBAL
-and-
THE ROSEN LAW FIRM, P.A.
Attorneys for 16 Civ. 8039 Plaintiffs
BY: SARA FUKS

SIDLEY AUSTIN LLP
Attorneys for Defendants Chatila and Wuebbels
BY: SARA B. BRODY

O'MELVENY & MYERS LLP
Attorneys for Defendant Hernandez
BY: JAMES E. MILLER

WILMER HALE CUTLER PICKERING HALE AND DORR LLP
Attorneys for Defendant TerraForm
BY: JENNY PELAEZ

Also Present: Edward A. Simpson

(Case called)

MR. LIEBERMAN: Good afternoon, your Honor. Jeremy Lieberman, from the Pomerantz firm, lead counsel in both the Church and Chamblee actions.

THE COURT: Good to see you, Mr. Lieberman.

MS. SZYDLO: Brenda Szydlo, Pomerantz LLP, also for the plaintiffs.

MR. IQBAL: Aatif Iqbal, also with the Pomerantz firm, for the plaintiffs in the Church action.

MS. FUKS: Good afternoon. Sara Fuks, from The Rosen Law Firm, for the plaintiffs in the Chamblee action.

THE COURT: From which law firm?

MS. FUKS: The Rosen Law Firm.

THE COURT: All right. I think you may have to correct something on the docket sheet. I think they have you at Milberg LLP.

MS. FUKS: Oh, OK. That's my prior firm.

THE COURT: You'll need to speak to the clerk's office to get that straightened out.

MS. FUKS: Yes.

THE COURT: OK?

MS. FUKS: Thank you.

THE COURT: And you are Mr. Simpson?

MR. SIMPSON: Yes, your Honor.

THE COURT: And you are an objector in the Chamblee v.

TerraForm case.

MR. SIMPSON: That's correct, your Honor.

THE COURT: I have your filing, and we'll talk some more as we go through.

For the defendants.

MS. BRODY: Good afternoon, your Honor. Sara Brody, from Sidley Austin, on behalf of Ahmad Chatila and Brian Wuebbels in both the Church and Chamblee actions.

MR. MILLER: Good afternoon, your Honor. James Miller, from O'Melveny & Myers, appearing in the Chamblee action, on behalf of defendant Alejandro Hernandez.

MS. PELAEZ: Good afternoon, your Honor. Jenny Pelaez of Wilmer Hale on behalf of defendant TerraForm Power in the Chamblee action.

THE COURT: Thank you very much.

Are there any other objectors present in this courtroom? If so, please identify yourself.

While there are spectators who have come to observe this proceeding, none of them appear to be objectors.

Let me say for the record, before me as part of the MDL classes of plaintiffs represented by your firm, Mr. Lieberman, in Church v. Chatila, lead plaintiff moves for final approval of the settlement on behalf of all shareholders who purchased common stock in Vivint Solar between July 20, 2015, and April 1, 2016; and in Chamblee v. TerraForm Power,

lead plaintiffs move for final approval of a class action settlement on behalf of all shareholders who purchased common stock in TerraForm Power between July 18, 2014, and March 15, 2016.

My initial impression was that there were going to be great efficiencies in having the two approval hearings on the same day. As I worked my way through this, I became less convinced that I was right about that, but nevertheless, here we are.

Before I proceed, with regard solely to Church v. Chatila, is there anything further you wish to say or any developments you or any other plaintiffs' counsel wish to apprise me of?

MR. LIEBERMAN: Just very briefly, your Honor.

We think under the circumstances, it's important to note that the Vivint Solar investors are suing here really entities and executive directors of SunEdison. Really, the legal theory is that somehow misstatements regarding SunEdison were damaging to Vivint Solar.

THE COURT: Yes. It's not SunEdison; it's the officers and directors of SunEdison.

MR. LIEBERMAN: That's correct.

THE COURT: I understand.

MR. LIEBERMAN: And the ability to proceed with such a theory is somewhat under question in the Second Circuit.

THE COURT: It certainly is. I know the Third Circuit has expressed more warmth toward the theory than the Second Circuit has.

MR. LIEBERMAN: That's correct, your Honor.

In light of that and in light of the ever-decreasing insurance proceeds available and in light of the more than 20 actions currently pending, we thought the best thing would be for the investors to take a fair, reasonable sum and to no longer remain in the action where the returns would only become more diminished as time went on. With respect to Vivint Solar, there's just that perspective.

If your Honor has any questions, I'm happy to address them.

THE COURT: All right. And there have been no objectors.

MR. LIEBERMAN: That's correct, your Honor.

THE COURT: Is there anything the defendants wish to tell me with regard to the Vivint action?

MS. BRODY: No, your Honor.

THE COURT: All right. Let me proceed.

Defendants Ahmad Chatila and Brian Wuebbels are alleged to have violated Section 10(b) and Rule 10b-5 by making material misstatements to Vivint shareholders. The two were officers of nonparty SunEdison.

In July 2015, SunEdison and Vivint reached an

agreement whereby SunEdison was to acquire Vivint for approximately $2.2 billion. According to plaintiffs, however, SunEdison had publicly misrepresented its financial strength and did not have sufficient resources to complete the Vivint transaction.

They allege that the two named defendants were responsible for those misrepresentations. They allege that SunEdison allegedly "slow walked" the Vivint acquisition, which ultimately was never consummated, and the price of Vivint's share fell from $15.75 to $2.42.

The proposed settlement provides for payment of $2.1 million to those who purchased Vivint stock between July 20, 2015, and April 1, 2016, and this represents an average recovery of 16 cents per share of Vivint stock for an estimated 13.2 million shares.

They seek attorneys' fees of $525,000, and the proposed fee award represents 25 percent of the overall recovery and 1.04 of the lodestar.

They also seek reimbursement of expenses of $57,560.24.

Lead plaintiffs seek differential payments in the amount of $1,000 each.

For a class to be certified, it must satisfy the requirements of 23(a), including numerosity, commonality of questions of law and fact, whether the claims of the named

plaintiffs are typical of the class, and whether the representative parties adequately represent the class interest.

On numerosity, the claims administrator sent notice claims to 14,880 potential class members, and it satisfies the numerosity requirement of 23(a)(1).

There are common questions of law and fact, including whether the misstatements and omissions artificially inflated the price of Vivint shares, whether were made with scienter, and the damages caused to shareholders as a result, so it satisfies Rule 23(a)(2).

The claims of the named plaintiffs would be typical, as would be the defenses raised by defendants, and thus, it satisfies 23(a)(3).

The representative parties, I find, have fairly and adequately protected the interests of the class, and so the requirements of Rule 23(a)(4) are met.

In addition, the action would satisfy one of the requirements in 23(b).

Here, it's asserted that it satisfies 23(b)(3), which everyone should be familiar with, and in terms of whether questions of law or fact common to the class predominate over any questions affecting individual members or whether the class action is superior, predominance is satisfied if resolution of some of the legal or factual questions qualify each class member's case as a genuine controversy that can be established

through generalized proof, and if these issues are more substantial than the individual issues.

In a case like this, there's a presumption that shareholders relied on alleged misstatements and omissions in a well-developed market and a reasonably efficient market.

Here, the Court concludes that Rule 23(b)(3) is satisfied because plaintiffs' claims can be satisfied with generalized proof, and these generalized issues are more substantial than the individual ones. The generalized proof would look to defendants' public statements and any effect upon the share price and any resulting damage, so 23(b)(3) is satisfied.

Rule 23(e) requires that I consider whether or not the settlement should be approved, and the Court has to consider whether it is fair, reasonable and adequate. The Court has followed Weinberger v. Kendrick and Detroit v. Grinnell Corp. and the standards therein.

I'll jump right into them.

With regard to the procedural fairness of the settlement, in February and March of 2017, the parties attended several days of mediation before Judge Layn Phillips, and they submitted mediation statements and statements in response, but there was no settlement. Then there was briefing on the motion to dismiss the second amended complaint, and while the motion practice was under way, there was a session with Gregory

Lindstrom of the same firm as Judge Phillips, and again, another round of briefs and mediation; again no settlement, but on July 26, 2017, the parties accepted a proposal by Mr. Lindstrom and informed the Court of the agreement in principle.

It appears from the record that the negotiations were protracted, over several months, and hard fought. I find that they were in good faith and at arm's length through the assistance of experienced mediators. Even though discovery had not taken place, it was only after briefing on the motion to dismiss and the various mediation letters, so it was procedurally fair and conducted at arm's length between experienced and capable counsel.

With regard to complexity, expense and likely duration of the litigation, which also overlaps considerably with the risk of establishing liability and damages, plaintiffs had before them the task of proving securities fraud against officers of SunEdison for changes in the share price of the target company of a SunEdison acquisition. The Third Circuit has indicated that such a claim might hypothetically succeed, but the Second Circuit has expressed skepticism about this theory of liability, and there would be obstacles in proving loss causation and scienter, which would require them to show that Chatila and Wuebbels were responsible for inflating Vivint's share price as opposed to some intervening cause, and

they did so knowingly and recklessly.

Had plaintiffs' claims survived the motion-to-dismiss stage, litigation would have been costly and protracted; included extensive expert evidence; voluminous fact discovery; and motion for class certification. The fees alone would have exceeded $500,000, so it seems to me that this was a significant factor weighing in favor of a settlement.

In terms of the reaction of the class, Sarah Evans states that 14,880 notice-of-claim forms were mailed out. As of January 18, Strategic Claims Services had received 1,768 claim forms and received no objections to the settlement, and there are no objectors present.

The same firm, Strategic Claims Services, received one letter requesting exclusion, which did not include supporting documentation, but would represent a loss of about $2,700. The deadline for exclusion requests was January 5.

The Court has not received any objections, and so the absence of objections weighs somewhat in favor of approving the proposed settlement.

The stage of the proceedings and the amount of the discovery completed I've already discussed. I'll just add that the plaintiffs state they have spoken to more than 100 former employees and reviewed the Vivint and SunEdison filings and reviewed the SunEdison bankruptcy filings.

I've also discussed the risks of establishing

liability and damages in discussing the complexity.

In terms of the risk of maintaining the class through trial, there's been no motion for class certification, or there had been none, at the time the settlement in principle was announced, and so the Court assumes that a hypothetical motion would have succeeded.

In terms of the ability to withstand greater judgment, plaintiffs note that Chatila and Wuebbels have dwindling personal resources and a limited pool of insurance coverage. Out of $150 million in coverage, at most, $60 million remains and Chatila and Wuebbels continue to face potentially billions of dollars in liability arising out of other legal actions against them.

The diminishing insurance coverage is a factor in considering the reasonableness of the settlement, and so the settlement certainly was negotiated not only with the difficulty and risks of establishing liability and damages as a major concern, but also the defendants' ability to withstand a greater judgment.

I've also looked at the range of reasonableness.

Plaintiffs state that their damage expert has estimated that if they had proved liability for each misstatement and corrective disclosure, classwide discovery would have ranged between $74.6- and $114.8 million, so the settlement is somewhere between 1.8 and 3 percent of the

maximum damages. But actually, a more realistic and conservative recovery range would have been between $60- and $94 million.

In any event, all things considered, the Court concludes that the settlement is in the range of reasonable.

I've looked at the terms of the settlement, which is a small recovery per share, 16 cents, and I've looked at the fairly straightforward plan of allocation, which provides a *pro rata* share of the total settlement fund, minus attorneys' fees and expenses, based on the shareholdings of the claimants. That seems appropriate.

I've looked at whether notice was satisfactory, and here, as I noted before, forms were mailed to 14,880 potential class members, published online and in a print edition of Investor's Business Daily. The settlement assistance firm contacted 798 banks and brokerages and an additional 637 mutual funds, insurance companies, pension funds and money managers, to notify them of the proposed settlement and to request names and addresses of beneficial owners.

Of those 14,880 original notices, 420 were returned, and of the 420, they were remailed where addresses could be found, so I think it was the best notice that was practicable under the circumstances, and that individual notice was given to those who could be identified through a reasonable effort.

I conclude that the settlement of $2.1 million is

fair, reasonable and adequate, and it's prudent.

With regard to attorneys' fees and expenses, which I mentioned at the outset, the fee would be distributed among three law firms: The Pomerantz firm, which is lead counsel; The Rosen Law Firm; and the Wehrle Law LLC. Pomerantz put in 475 hours, the Rosen firm 333, and the Wehrle firm 32 hours.

In reviewing a fee application, the Court is to act as a fiduciary and must serve as a guardian of the rights of absent class members. I've looked at the circuit's guidance in Goldberger v. Integrated Resources and other cases. I've looked at the time and labor expended by counsel, and I've recounted the amount spent by each firm. The lodestar as to the Pomerantz firm would be 281,000 and change; the Rosen firm, 213,000 and change; and the Wehrle firm is less. It's 32.2 hours at $350 an hour, but that gives you a sense of the time put into it, and the lodestar is a good cross-check.

I've considered the magnitude, complexity and risk of the litigation, which I've already described.

As to the quality of the representation, I find that the Pomerantz firm has significant experience in bringing large and complex shareholder securities litigation, and the Rosen firm has set forth numerous resolutions that were favorable in class actions litigated throughout the country. The Wehrle firm has provided commercial litigation services for 18 years, working in Missouri state and federal courts.

Of course, on the other side of the case, quality law firms defending the case made it more difficult for the claims to proceed, but they were able to meet the challenge sufficient to get this very reasonable settlement.

The requested fee in relation to the settlement amounts to about 25 percent of the total recovery, and of course, some cases settle for as high as 30 to 33-1/3 percent. Under the circumstances, the Court concludes that 25 percent is reasonable in this case. Public policy supports rewarding attorneys who bring successful securities actions that foster the enforcement of the federal securities laws.

I also note there have been no objections to the fee award in this case, so the fee award of $525,000, amounting to 25 percent of the fund amount recovered, is reasonable. It's 1.04 times the lodestar.

The expenses of $57,560.24 were reasonable. They include investigator fees, mediation fees, expert fees, which are the principal components. Then there is $9,000 in additional fees. I've reviewed the components of those, and I find them to be reasonable.

With regard to compensatory awards to lead plaintiffs, they seek awards of $1,000.

Section 78u-4(a)(4) states that the share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be

equal on a per-share basis to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses, including lost wages, directly relating to the representation of the class to any representative party serving on behalf of a class.

Plaintiffs Harris and Tervort have not submitted any affidavit or declaration that describe any expenses they incurred or any particular risk or service beyond that which one would expect of any class representative. It is true that they have devoted significant time to this case, reviewing pleadings and conferring with counsel, but there have been no lost wages, time missed from work, lost commissions, lost bonuses, travel expenses or other expenses that arose due to their role as plaintiffs, and no lost vacation time, so they have not made an adequate showing supporting a compensatory award, and the application is denied.

That concludes my findings with regard to Church v. Chatila.

Does the plaintiff wish to submit a proposed judgment, or have you submitted one?

MR. LIEBERMAN: We have, but we have an extra copy, your Honor.

THE COURT: Let me see if I have one around. Where do I find it in the papers?

MR. LIEBERMAN: If I can approach the bench?

THE COURT: It's paragraph 2, I think.

OK. Do you have an additional copy for me?

One moment.

I have signed the order and final judgment in Church v. Chatila and the order awarding attorneys' fees and expenses, and direct the clerk to docket same.

with regard to Chamblee v. TerraForm Power, I'll hear from the plaintiffs first. Then I'll hear from the objector, although I've already reviewed the objection, but I'll give Mr. Simpson an opportunity to say anything he wishes to further. And then I'll hear from the defendants

MR. LIEBERMAN: Your Honor, with respect to the Chamblee case, I think we'll rest on our papers but reserve to respond to any objection.

THE COURT: All right.

Mr. Simpson, is there anything you'd like to add?

MR. SIMPSON: No, sir.

I have filed my objection based on fairness, and it boils down to I don't think I was paid enough for the shares that I purchased, and I just want to ask the Court to look at that and do what's fair as far as reimbursing me for my expenses and the cost of the shares that I didn't get.

THE COURT: Right.

MR. SIMPSON: Selling it for $9.52 is something that I

would have never done on my own. My trading strategy has always been to hold it until it comes back up higher, and at the time they sold it out from under me, it was projected to come up to $19 a share, and I would have never sold it. And I had a person in the hospital that I was taking care of at that time, and I didn't know what was going on until I -- you know, it was already sold.

THE COURT: Right.

MR. SIMPSON: And I don't think it's fair that I be out that money because of something that wasn't my fault.

THE COURT: Thank you, Mr. Simpson.

Where do you come in from today?

MR. SIMPSON: From Arkansas.

THE COURT: Oh, good to have you here. How long are you going to be with us in New York?

MR. SIMPSON: Until Friday.

THE COURT: Good. I hope the Chamber of Commerce thanks you for coming, and we hope that you get some good weather here in New York and enjoy the sights while you're here.

MR. SIMPSON: Well, it's been a real great opportunity to see how the court system works up here. I'm not familiar with how New York does things, but I'm really impressed with the facilities. Everybody's been real nice to me.

THE COURT: Good.

MR. SIMPSON: And you got a really good staff here.

THE COURT: You're welcome to be here, Mr. Simpson. This is a court open to all people, so it's a pleasure to have you here with us today.

MR. SIMPSON: Thank you, sir.

THE COURT: Anything you wanted to say, Mr. Lieberman?

MR. LIEBERMAN: Your Honor, I, too, would like to extend a welcome to Mr. Simpson to New York. I hope he has a pleasant stay here.

Certainly we're sympathetic to him in the sense he was forced to liquidate his shares. Unfortunately, it simply wasn't the subject matter or couldn't be addressed in our securities fraud class action, which is with respect to false and misleading representations and damages to the share based upon such representations. So I don't think there's any plausible way we could have pursued a claim for Mr. Simpson in our action. It's not evident that he is actually a damaged shareholder under 10(b) of the Securities Exchange Act.

MR. SIMPSON: Your Honor, I have to object to that. If we're going to proceed further, I'd like to ask Mr. Lieberman to be sworn in and say that under oath.

THE COURT: Well, that's not the way this works, but I gave you an opportunity to speak. I'll hear what he has to say and take it for what it's worth before I rule. That's all.

Anything else?

MR. LIEBERMAN: No, your Honor. That's all. I think we'd stand on the papers.

THE COURT: Thank you.

MR. LIEBERMAN: I appreciate the time.

THE COURT: Thank you.

Is there anything any of the defendants wish to say on the settlement?

MS. PELAEZ: Defendant TerraForm supports the settlement. We take no position on the amount of fees and costs requested. As far as the objection, we agree with plaintiffs' position.

THE COURT: Any other defendant?

MS. BRODY: Nothing to add, your Honor.

THE COURT: All right. Thank you very much.

Plaintiffs bring the claim in the Chamblee v. TerraForm action under Section 10(b) and Rule 10b-5 against TerraForm Power and certain officers of TerraForm's parent company, nonparty SunEdison.

According to plaintiffs, defendants materially misrepresented and omitted information regarding the financial strength of SunEdison. The complaint alleges that false statements were made to investors to artificially inflate the price of TerraForm common stock and injured TerraForm shareholders when the true state of affairs was disclosed.

During the relevant period, TerraForm's stock price

dropped from $33.09 to $9.72 a share.

The proposed settlement provides for a payment of $14,750,000 to investors who purchased stock in TerraForm Power Inc. between the dates July 18, 2014, the date of TerraForm's IPO, and March 15, 2016.

Counsel states that this represents an average recovery of, again, 16 cents per share of TerraForm's stock for an estimated 92.2 million shares.

Lead counsel seeks an attorneys' fee award of $3,687,500, which represents about 25 percent of the overall recovery, and also reimbursement of $84,894.02, and each of the lead plaintiffs seeks $2,000 as a compensatory award.

I've already described the legal requirements, but let me go through them here as to Chamblee v. TerraForm.

With regard to 23(a) and numerosity, the claims administrator sent claim forms to 58,741 potential class members. The class was so numerous that joinder of all members was impracticable, and 23(a)(1) is satisfied.

The class satisfies the requirement that they have common questions of law and fact, including misstatements and omissions, whether they were made with scienter, the damages caused to shareholders, and whether the misstatements and omissions artificially inflated the price of the shares, and 23(a)(2) is satisfied.

The claims of the named plaintiffs and the defendants'

defenses to those claims render the plaintiffs' claims typical of those of class members.

Representative parties have fairly and adequately protected the interests of the class, including the filing of three complaints, premotion practice and the mediation practice, so 23(a)(4) is satisfied.

I find that Rule 23(a) is satisfied, and the class satisfies 23(b)(3), because resolution of the claims can be satisfied with generalized proof, and these generalized issues are more substantial than the individualized proof among TerraForm's shareholders. The generalized proof would look to public statements, the effect on share price and any resulting damages, so 23(b)(3) is satisfied. A class action is superior to other methods of adjudication.

The Court has reviewed the fairness, the reasonableness and the adequacy of the settlement from the standpoint of the settlement class. In that regard, the Court has been aided not only by the submission of the parties, but also by the objection of Edward Simpson, who has noted that some aspects of losses on sales were due to purported authority of Ameritrade and TerraForm, and specifically to the Brookfield transaction. The Court has taken due account of Mr. Simpson's objection.

In deciding whether the settlement is fair, reasonable and adequate, I've considered the Grinnell factors and the

other factors that apply under circuit precedent in Weinberger v. Kendrick, and the like.

The parties held four mediation sessions before Judge Layn Phillips in February and March of 2017, also a mediation session with Mr. Lindstrom, and on June 28 reached an agreement in principle. I conclude that the settlement negotiations were in good faith, at arm's length, with the assistance of experienced mediators.

No discovery had taken place, but the parties' respective positions have been tested in their premotion letters and moving papers in support of the motion to dismiss, and in plaintiffs' research and drafting of a complaint, an amended complaint and a second amended complaint.

The case has been litigated by experienced counsel on both sides. I conclude that the settlement was procedurally fair and conducted at arm's length.

With regard to the complexity, expense and likely duration of the litigation as well as the risk of establishing liability and damages, the claims are brought against TerraForm and certain of its officers, as noted. Plaintiffs allege that SunEdison and TerraForm were essentially the same company and that the share price of TerraForm dropped when corrective disclosures were made about the true state of affairs within TerraForm and SunEdison.

The action was likely to be lengthy, complex, risky

and expensive. Plaintiffs would have to prove that defendants knowingly or recklessly misstated or omitted material information resulting in damages to TerraForm's shareholders. Plaintiffs would have the task of proving that such statements made about SunEdison affected the share price of its subsidiary, TerraForm. Discovery would have been time-consuming and expensive, and much of the material was in the hands of third parties.

Of course, plaintiffs would have had to have survived the motion under 12(b)(6) and the PSLRA. They also would have had the difficulty of collecting a judgment, and I'll get into that a little bit later.

The claims administrator for this case is JND Legal Administration, and they've submitted a declaration from Robert Cormio, who states that as of January 17, 2018, JND had mailed 58,741 notice packets. There were four timely requests for exclusion and one untimely request for exclusion.

There was the objection of Edward Andrew Simpson Jr., who states that he purchased TerraForm shares on or about the named dates of July 8, 2014, through March 15, 2016, and sold them numerous times; however, never at a loss.

He states, "I hereby allege that TerraForm (nor Ameritrade) did not have the authority to authorize the selling of my stock at a loss to me." Simpson states that he's owed $46,151 in actual damages and $10 million in punitive damages.

In an annexed trading record, a summary of transactions crosses out the words "you sold" with the handwritten note, "They stole."

Additional exhibits include trading records from October and November 2015. Mr. Simpson appears to have purchased and held shares of TerraForm in 2,000-share allotments, often selling them for a few hundred dollars' profit.

Counsel for plaintiffs notes that on October 16, 2015, Brookfield Asset Management acquired TerraForm, for which shareholders either received $9.52 in cash per share or an exchange of shares. Plaintiffs' counsel suggests that Mr. Simpson's objection is directed to Brookfield's acquisition of TerraForm and the sale of TerraForm's stock that resulted from the transaction.

Here, I note that the objection raises, in essence, a different claim than the one that is asserted in this litigation. Mr. Simpson, if he has a basis for that claim, would ordinarily have been permitted to pursue that claim. This claim relates to a species of misstatements that predated the acquisition by Brookfield. In any event, the Court has taken account of Mr. Simpson's objection.

As noted, the Second Circuit, in the Wal-Mart case, concluded that a small number of objectors supports the conclusion, or is one factor in supporting the conclusion, on

adequacy, and I take the number of objections into account in analyzing the overall fairness.

I've already commented on the stage of the proceeding, the amount of discovery completed. There really wasn't discovery, but there was analysis -- and a good and detailed analysis -- of the strength of the complaint and the defenses.

I've also discussed the risk of establishing liability and damages.

In terms of the risk of maintaining the class through trial, a hypothetical motion for class certification would likely have succeeded.

There is the concern with regard to the ability to withstand a greater judgment, and I've already spoken about the amount of insurance dollars that are available here.

The eighth and ninth Grinnell factors consider the range of reasonableness of the settlement. Total damages, according to plaintiffs' expert, could have been in the $326- to $357 million range. That assumes, of course, that liability was established. And the settlement represents between 4.2 and 4.5 percent of the estimated damages, but it's a significant portion of the insurance coverage, and as plaintiffs put it, it's preferrable to "the unfortunate likelihood of no recovery at all."

The Court concludes that the proposed settlement is comfortably within the range of reasonableness.

I've also considered the proposed settlement and its value. I've noted what the amount is. I've noted the per-share amount. The plan of allocation is straightforward and it's reasonable.

The notice was most adequate. I've already noted the number of packets that were sent to potential class members. JND contacted brokerage firms, banks and third-party nominees to notify them of the settlement and to request the names and addresses of beneficial owners.

On December 1, 2017, they sent reminder postcards to all entities in their broker database who had not responded. The Court concludes that the notice provided adequately informed members of the class of the proposed settlements and the options available to them, and the process was the best notice practicable under the circumstances, including individual notice to those who would be identified through reasonable efforts.

The Court concludes that the proposed settlement of $14,750,000 is fair, reasonable and adequate, and it's approved.

With regard to the fee application, the Pomerantz firm seeks attorneys' fees in total of $3,687,500 as well as reimbursement of expenses of $84,894.02, and these would be split between the Pomerantz firm, which is the lead counsel, the Rosen firm and Cohen Milstein. Pomerantz notes that it put

in 1,401.3 hours; the Rosen firm, 458.5 hours; and Cohen Milstein, 104.75 hours, which represents the efforts, the time and labor expended.

In terms of lodestar, for the Pomerantz firm, it comes out to be a 1,030,000. For the Rosen firm, it comes out to be 314,000, and for the Cohen Milstein firm, it comes out to be about 67,000.

I've already discussed the magnitude, risks and complexity of the litigation.

With regard to the experience and quality of counsel, in this case, it was quite good, and they were up against quality counsel who did a good job holding their own.

The fee award amounts to 25 percent of the total recovery, and I conclude that that is reasonable. Public policy indicates the value of awarding adequate compensation.

The reaction of the class has also been taken into account.

With regard to reimbursement of expenses, they include mediation fees, expert fees, investigator fees -- those are the large items -- plus travel expenses, transportation, fees to bankruptcy counsel and other expenses. The Court concludes, having reviewed them, that $84,894.02 is fair, reasonable and adequate.

With regard to the compensatory awards for lead plaintiffs of $2,000, the lead plaintiffs, Schlettwein and

Spindler, have submitted declarations. They were certainly very much involved in reviewing matters, but I've already cited the standard under PSLRA, and nothing in plaintiffs' submission describes costs and expenses, lost wages, lost vacation time, time lost from work, lost commission, bonuses, travel expenses or other expenses that arose due to their roles as plaintiffs, and their application for compensatory awards is denied.

Mr. Lieberman, do you have a proposed judgment you want to hand up?

MR. LIEBERMAN: I do, your Honor, if I could approach the bench.

THE COURT: It is done. I have signed the order and final judgment and the order awarding plaintiffs' counsel attorneys' fees and reimbursement of expenses, and direct that the clerk docket the same.

I want to express my thanks and congratulations to the counsel in this case, who have conducted themselves in a professional manner. They have been a pleasure to have before me. They set out to do their work responsibly, without undue contentiousness, focus in on things that mattered and not on collateral and petty disputes. I wish I could say that about all attorneys who cross the threshold of my courtroom, but I think you should be very proud of the results that you have been able to accomplish in this difficult circumstance.

MR. LIEBERMAN: Thank you, your Honor. Thank you for

your efficient adjudication of this matter.

THE COURT: All right. Anything further from the plaintiffs?

MR. LIEBERMAN: No, your Honor.

THE COURT: Anything further from the defendants?

MS. BRODY: No, your Honor. Thank you, your Honor.

THE COURT: OK.

And thank you, Mr. Simpson. Safe travels back home.

MR. SIMPSON: Thank you, your Honor.

THE COURT: OK. Good to see you all.

(Adjourned)