

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE SUNPOWER SECURITIES
LITIGATION

Case No. CV 09-5473-RS
(Consolidated)

CLASS ACTION

~~PROPOSED~~ FINAL JUDGMENT
AND ORDER OF DISMISSAL WITH
PREJUDICE

1 This matter came before the Court for hearing on July 3, 2013, pursuant to an Order of
2 this Court dated March 25, 2013 (the “Order”), on the application of the Lead Plaintiffs for
3 approval of the Settlement set forth in the Stipulation of Settlement dated February 1, 2013 (the
4 “Stipulation”). Full and adequate notice having been given to the Settlement Class as required in
5 the Order, and the Court having considered all papers filed and proceedings held herein and
6 otherwise being fully informed in the premises and good cause appearing therefor,

7 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
8 THAT:

9 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
10 capitalized terms used but not defined herein shall have the same meanings as in the Stipulation.

11 2. This Court has jurisdiction over the subject matter of the Action and over all
12 parties to the Action, including all Members of the Settlement Class.

13 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), this
14 Court hereby certifies the Action as a class action solely for purposes of the Settlement. The
15 Settlement Class consists of all Persons who purchased or otherwise acquired SunPower publicly
16 traded Securities¹ during the Settlement Class Period. Excluded from the Settlement Class are
17 Defendants, the officers and directors of SunPower, members of their immediate families and
18 their legal representatives, heirs, successors or assigns, and any entity in which Defendants have
19 or had a controlling interest. Also excluded from the Settlement Class are any Persons who
20 otherwise satisfy the above requirements for membership in the Settlement Class, but who
21 excluded themselves by submitting a valid request for exclusion in accordance with the
22 requirements set forth in the Notice (a list of whom is attached hereto as Exhibit 1).

23 4. With respect to the Settlement Class, this Court finds, solely for the purposes of
24 the Settlement, that the prerequisites for a class action under Rules 23(a) and (b)(3) have been
25 satisfied in that:

26 _____
27 ¹ “Securities” or “SunPower Securities” means SunPower’s Class A and/or Class B common
28 stock and/or 4.75% Senior Convertible Debentures.

1 (a) the members of the Settlement Class are so numerous that joinder of all
2 Settlement Class Members in the Action is impracticable;

3 (b) there are questions of law and fact common to the Settlement Class;

4 (c) the claims by Lead Plaintiffs, as class representatives, are typical of the claims
5 of the Settlement Class;

6 (d) Lead Plaintiffs and Lead Counsel have and will fairly and adequately
7 represent and protect the interests of the Settlement Class Members;

8 (e) the questions of law and fact common to the Members of the Settlement Class
9 predominate over any questions affecting only individual members; and

10 (f) a class action is superior to other available methods for the fair and efficient
11 adjudication of the controversy, considering: (i) the interests of the Settlement Class Members in
12 individually controlling the prosecution of separate actions; (ii) the extent and nature of any
13 litigation concerning the controversy already commenced by Settlement Class Members; and (iii)
14 the desirability or undesirability of concentrating the litigation of these Claims in this particular
15 forum.

16 5. Pursuant to Rule 23, and solely for purposes of the Settlement, the Court further
17 finally certifies Lead Plaintiffs as class representatives for the Settlement Class and appoints
18 Lead Counsel as counsel for the Settlement Class.

19 6. Pursuant to Rule 23, this Court hereby approves the Settlement set forth in the
20 Stipulation and finds that the Settlement is, in all respects, fair, reasonable and adequate to the
21 Settlement Class. The Court further finds that the Settlement set forth in the Stipulation is the
22 result of good-faith, informed, arm's-length negotiations between competent, experienced
23 counsel representing the interests of the respective Settling Parties and is in the best interest of
24 the Settlement Class. The Court further finds that the record is sufficiently developed and
25 complete to have enabled the Settling Parties to have adequately evaluated and considered their
26 positions. Accordingly, the Settlement embodied in the Stipulation is hereby finally approved in
27 all respects. The Settling Parties are hereby authorized and directed to consummate the
28 Settlement in accordance with the terms and provisions of the Stipulation and of this Judgment.

1 7. Except as to any individual claim of those Persons (identified in Exhibit 1 hereto)
2 who otherwise satisfy the requirements for membership in the Settlement Class, but who have
3 validly and timely requested exclusion from the Settlement Class, the Action and all claims
4 contained therein at any time, including, without limitation, all of the Released Claims (including
5 Unknown Claims) are **DISMISSED** in their entirety **WITH PREJUDICE**. The Settling Parties
6 are to bear their own costs, except as otherwise provided in the Stipulation.

7 8. Upon the Effective Date, Plaintiffs and each of the other Settlement Class
8 Members, for themselves, and on behalf of each of their respective spouses, heirs, executors,
9 beneficiaries, administrators, successors, assigns and any other Person claiming (now or in the
10 future) through or on behalf of any of them directly or indirectly, regardless of whether such
11 Plaintiff or Settlement Class Member ever seeks or obtains by any means (including, without
12 limitation, by submitting a Claim to the Claims Administrator) any distribution from the Net
13 Settlement Fund, shall be deemed to have, and by operation of law and of this Judgment shall
14 have, fully, finally and forever released, relinquished, waived, discharged and dismissed each
15 and all of the Released Claims (including Unknown Claims) against each and all of the Released
16 Persons, and shall have covenanted not to sue any Released Person with respect to any Released
17 Claim except to enforce the releases and other terms and conditions contained in the Stipulation
18 or this Judgment entered pursuant thereto. The foregoing provision shall not apply to any Person
19 who independently would be a member of the Settlement Class and timely excludes himself,
20 herself or itself. The Settling Parties acknowledge, and the Settlement Class Members shall be
21 deemed by operation of law and of this Judgment to have acknowledged, that the foregoing
22 waiver of Unknown Claims and of the provisions, rights and benefits of §1542 of the California
23 Civil Code was separately bargained for and is a material element of the Settlement of which the
24 release in this paragraph is a part.

25 9. Upon the Effective Date, Plaintiffs, each of the other Settlement Class Members,
26 and any other Person (including, without limitation, spouses, heirs, executors, beneficiaries,
27 administrators, successors and assigns) claiming now or in the future through or on behalf of any
28 Plaintiff or Settlement Class Member directly or indirectly, shall be forever permanently barred,

1 enjoined and restrained from commencing, instituting, asserting, maintaining, enforcing,
2 prosecuting or otherwise pursuing, either directly or in any other capacity, any of the Released
3 Claims (including any Unknown Claims) against any Released Person in the Action or in any
4 other action or any proceeding, in any state, federal or foreign court of law or equity, arbitration
5 tribunal, administrative forum or other forum of any kind.

6 10. Upon the Effective Date, Defendants, for themselves and on behalf of each of
7 their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns and
8 any other Person claiming (now or in the future) through or on behalf of any of them directly or
9 indirectly, shall be deemed to have, and by operation of law and of the Judgment shall have,
10 fully, finally and forever released, relinquished, waived, discharged and dismissed each and all
11 of the Released Persons' Claims against (i) each and all Plaintiffs in the Action, and their
12 respective attorneys, and all other Settlement Class Members, the members of each Settlement
13 Class Member's immediate family, any entity in which any member of any Settlement Class
14 Member's immediate family has or had a controlling interest (directly or indirectly), any estate
15 or trust of which any Settlement Class Member is the settlor or which is for the benefit of any
16 Settlement Class Member and/or members of his or her family, and (ii) each and all of their
17 respective past, present and future heirs, executors, administrators, predecessors, successors,
18 assigns, employees, agents, affiliates, analysts, assignees, associates, attorneys, auditors, co-
19 insurers, commercial bank lenders, consultants, controlling shareholders, directors, divisions,
20 domestic partners, employers, financial advisors, general or limited partners, general or limited
21 partnerships, insurers, investment advisors, investment bankers, investment banks, joint ventures
22 and joint venturers, managers, marital communities, members, officers, parents, personal or legal
23 representatives, principals, reinsurers, shareholders, spouses, subsidiaries (foreign or domestic),
24 trustees, underwriters and retained professionals, in their respective capacities as such.

25 11. The Court hereby finds that notice of the pendency of this Action as a class action
26 and of the proposed Settlement was given to all Settlement Class Members who could be
27 identified with reasonable effort. The notification provided for and given to the Settlement Class
28 was in compliance with the Preliminary Approval Order, and it constituted the best notice

1 practicable under the circumstances, including individual notice to all Settlement Class Members
2 who could be identified through reasonable effort. The distribution of the Notice and the
3 publication of the Summary Notice provided the best notice practicable under the circumstances
4 of those proceedings and of the matters set forth therein, including the proposed Settlement set
5 forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the
6 requirements of Rule 23; Section 27(a)(7) of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7)
7 as amended by the Private Securities Litigation Reform Act of 1995; Section 21D(a)(7) of the
8 Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) as amended by the Private Securities
9 Litigation Reform Act of 1995; due process; and any other applicable law.

10 12. Pursuant to and in compliance with Rule 23, the Court hereby finds that due and
11 adequate notice of these proceedings was directed to the Settlement Class Members, advising
12 them of, among other things, the Settlement and of their right to object thereto, and a full and fair
13 opportunity was accorded to the Settlement Class Members to be heard with respect to the
14 Settlement. Thus, it is hereby determined that all Settlement Class Members (excluding those
15 Persons listed on Exhibit 1) are bound by this Judgment.

16 13. Any order entered regarding any plan of allocation submitted by Lead Counsel or
17 any order entered regarding any attorneys' fee and/or Litigation Expense application shall in no
18 way disturb or affect this Judgment and shall be considered separate from this Judgment.

19 14. The Stipulation and/or Settlement:

20 (i) shall not be offered, received or admitted against any of the Released Persons as
21 evidence of, or construed or used as, or deemed to be evidence of any presumption, concession
22 or admission by any of the Released Persons (a) of the truth of any fact, (b) of the validity of any
23 Released Claim or any claim that was asserted in the Consolidated Complaint or the Complaint,
24 or that could have been or might have been asserted against any of the Released Persons in this
25 Action or in any litigation in this or any other court, administrative agency, arbitration forum or
26 other tribunal, (c) of any liability, negligence, gross negligence, recklessness, deliberate
27 recklessness, fault or other wrongdoing of any kind of any Released Person to any other Person,
28 (d) of any liability, fault, misrepresentation or omission with respect to any statement or written

1 document approved or made by any of the Released Persons, or (e) of any infirmity in the
2 defenses that have been or could have been asserted in this Action;

3 (ii) shall not be offered, received or admitted against any of the Released Persons, or
4 against Plaintiffs or any other Settlement Class Member(s), as evidence of a presumption,
5 concession or admission with respect to any liability, negligence, fault or wrongdoing of any
6 kind, or in any way referred to for any other reason or purpose as against any of the Released
7 Persons, in any other civil, criminal or administrative action or proceeding in any court,
8 administrative agency or other tribunal (including, without limitation, any formal or informal
9 investigation or inquiry by the Securities and Exchange Commission or any other state or federal
10 governmental or regulatory agency), other than such proceedings as may be necessary to enforce
11 the terms of the Settlement or effectuate the provisions of the Stipulation; provided, however,
12 that if this Stipulation is approved by the Court, any Person may (i) refer to the Stipulation and
13 the Settlement as necessary to secure the liability protections granted them hereunder, and/or (ii)
14 file the Stipulation and/or this Judgment in any action for any purpose, including, without
15 limitation, in order to support a defense or counterclaim based on principles of *res judicata*,
16 collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction or any
17 other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

18 (iii) shall not be construed against any of the Released Persons, Plaintiffs or any other
19 Settlement Class Member(s) as an admission, concession or presumption that the consideration
20 to be given hereunder represents the amount that could be or would have been recovered after
21 trial; and

22 (iv) shall not be construed against Lead Plaintiffs or any other Settlement Class
23 Member(s) as an admission, concession or presumption that any of their claims are without merit
24 or that damages recoverable under the Complaint would not have exceeded the amount of the
25 Settlement Fund.

26 15. Without affecting the finality of this Judgment in any way, this Court hereby
27 retains continuing jurisdiction for the purpose of, *inter alia*, entering orders providing for the
28 implementation and enforcement of the terms of the Stipulation, including, without limitation,

1 the releases provided for herein, and awards of attorneys' fees and Litigation Expenses to Lead
2 Counsel.

3 16. The Court finds, pursuant to 15 U.S.C. § 78u-4(c)(1), that during the course of the
4 Action, the Settling Parties and their respective counsel at all times complied with the
5 requirements of Federal Rule of Civil Procedure 11.

6 17. In the event that the Settlement does not become effective in accordance with the
7 terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement
8 Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered
9 null and void to the extent provided by and in accordance with the Stipulation and shall be
10 vacated and, in such event, all orders entered and releases delivered in connection herewith shall
11 be null and void to the extent provided by and in accordance with the Stipulation.


12 18. Without further order of the Court, the Settling Parties may agree to reasonable
13 extensions of time to carry out any of the provisions of the Stipulation.

14 19. This Court finds, for purposes of the Federal Rules of Civil Procedure, that there
15 is no just reason for delay and expressly directs the Clerk of the Court to enter this Judgment as
16 set forth herein immediately. This Judgment is a final Judgment in the Action as to all claims
17 asserted therein at any time and as to all of the Settlement Class Members' Released Claims
18 against the Released Persons.

19 20. Judgment shall be, and hereby is, entered dismissing the Action in its entirety
20 with prejudice and on the merits.

21 IT IS SO ORDERED.

22
23 DATED: July 3, 2013



24 THE HONORABLE RICHARD SEEBORG
25 UNITED STATES DISTRICT JUDGE
26
27
28

EXHIBIT 1

Requests for Exclusion

1. Marlies Eisenfeld
2. Morval Bank & Trust Cayman Ltd.
3. Eldon L. Dalton
4. Samuel Joseph Nugent
5. Tabitha Zehms
6. Dieter H. Herdes
7. Cristiano Neves Martins
8. Charles Pahl
9. Ruth Rowlandson