

1 BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
2 DAVID R. STICKNEY (Bar No. 188574)
NIKI L. MENDOZA (Bar No. 214646)
3 BENJAMIN GALDSTON (Bar No. 211114)
12481 High Bluff Drive, Suite 300
4 San Diego, CA 92130
Tel: (858) 793-0070
5 Fax: (858) 793-0323
davids@blbglaw.com
6 nikim@blbglaw.com
beng@blbglaw.com
7

KESSLER TOPAZ MELTZER
& CHECK, LLP
RAMZI ABADOU (Bar No. 222567)
ELI R. GREENSTEIN (Bar No. 217945)
STACEY KAPLAN (Bar No. 241989)
One Sansome Street, Suite 1850
San Francisco, CA 94104
Tel: (415) 400-3000
Fax: (415) 400-3001
rabadou@ktmc.com
egreenstein@ktmc.com
skaplan@ktmc.com

8 KAPLAN FOX & KILSHEIMER LLP
LAURENCE D. KING (Bar No. 206423)
9 MARIO M. CHOI (Bar No. 24309)
350 Sansome Street, Suite 400
10 San Francisco, CA 94104
Tel: (415) 772-4700
11 Fax: (415) 772-4707
lking@kaplanfox.com
12 mchoi@kaplanfox.com

13 *Attorneys for Lead Plaintiffs Arkansas Teacher*
Retirement System, Första AP-fonden and
14 *Danske Invest Management A/S*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 IN RE SUNPOWER SECURITIES
LITIGATION

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

CLASS ACTION

**LEAD PLAINTIFFS' REPLY AND
NOTICE OF NON-OPPOSITION IN
SUPPORT OF MOTION FOR
FINAL APPROVAL OF
SETTLEMENT, PLAN OF
ALLOCATION, AND REQUEST
FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF
LITIGATION EXPENSES**

Judge: Hon. Richard Seeborg
Courtroom: 3, 17th Floor
Date: July 3, 2013
Time: 3:00 p.m.

1 Lead Plaintiffs Arkansas Teacher Retirement System, Första AP-fonden, and Danske
2 Invest Management A/S (“Lead Plaintiffs”) respectfully submit this Reply and notice of non-
3 opposition in further support of their motion for final approval of the Settlement and proposed
4 Plan of Allocation (ECF No. 259) and Lead Counsel’s request for attorneys’ fees and
5 reimbursement of Litigation Expenses (ECF No. 260), both filed on May 15, 2013 (collectively,
6 “Lead Plaintiffs’ Motions”).

7 Pursuant to the Court’s March 25, 2013 Order Preliminarily Approving Settlement,
8 Providing For Notice And Scheduling Settlement Hearing (“Preliminary Approval Order,” ECF
9 No. 257), beginning on April 8, 2013, more than 200,000 copies of the Court-approved Notice
10 Of Pendency Of Class Action And Proposed Settlement, Final Approval Hearing, And Motion
11 For Attorneys’ Fees And Reimbursement Of Litigation Expenses (“Notice”) were mailed to
12 potential Settlement Class Members and their nominees.¹ The Notice advised Settlement Class
13 Members of the \$19.7 million cash Settlement, the proposed Plan of Allocation and Lead
14 Counsel’s request for an award of attorneys’ fees and reimbursement of litigation expenses. The
15 Notice further advised Settlement Class Members of the deadline for requesting exclusion from
16 the Settlement Class, or submitting objections to the proposed Settlement, the Plan of Allocation,
17 or the request for an award of attorneys’ fees and reimbursement of Litigation Expenses.

18 On May 15, 2013, pursuant to the Court’s Preliminary Approval Order, Lead Plaintiffs
19 filed their motion for final approval of the Settlement and Plan of Allocation and Lead Counsel’s
20 fee application. Following the filing of Lead Plaintiffs’ Motions and the expiration of the
21 June 12, 2013 deadline for filing objections, the Settlement Class’s overwhelming support for the
22 Settlement, the Plan of Allocation and the fee application remains beyond question. There is not
23 a single objection to the Settlement, the Plan of Allocation, or the fee application.² “[T]he
24

25
26 ¹ See Supplemental Declaration of Stephanie A. Thurin Re Notice Dissemination (“Supplemental
27 Thurin Declaration”) submitted herewith, which provides updated information regarding the
notice mailing and requests for exclusion received.

28 ² One objection was initially filed (ECF No. 264). However, after Lead Counsel informed
counsel for the purported objector that it appeared from the face of the objection that the objector
was not a Member of the Settlement Class (and instead had purchased the six shares of

1 absence of a large number of objections to a proposed class action settlement raises a strong
 2 presumption that the terms of a proposed class settlement action are favorable to the class
 3 members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation
 4 omitted); *see also Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *4 (N.D. Cal.
 5 Feb. 2, 2009); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007).

6 Indeed, the Settlement, Plan of Allocation and fee application are supported by the Court-
 7 appointed Lead Plaintiffs, sophisticated institutional investors who supervised the prosecution of
 8 this case. Further, as of June 25, 2013, only nine exclusion requests have been received.³ The
 9 dearth of objections and exclusion requests is a testament to the fairness, reasonableness and
 10 adequacy of the Settlement, Plan of Allocation and fee application.

11 Based on the foregoing and the entire record herein, Lead Plaintiffs respectfully request
 12 that the Court approve the Settlement and Plan of Allocation as fair, reasonable and adequate and
 13 in the best interest of the Settlement Class, and grant the attorneys’ fees and expenses, in the
 14 amounts requested, as reasonable compensation.

15 Dated: June 26, 2013

Respectfully submitted,

16 BERNSTEIN LITOWITZ BERGER
 17 & GROSSMANN LLP

18 /s/ David R. Stickney

19 DAVID R. STICKNEY

20 DAVID R. STICKNEY
 21 NIKI L. MENDOZA
 22 BENJAMIN GALDSTON
 12481 High Bluff Drive, Suite 300
 San Diego, CA 92130

23
 24 SunPower stock over five months prior to the Settlement Class Period), the objector’s counsel
 25 filed a Notice of Withdrawal of Objection of Jeff M. Brown to Proposed Settlement (ECF No.
 26 265). No compensation or consideration of any kind was paid or promised to counsel for the
 objector or his client in connection with the withdrawal of the objection in this matter.

27 ³ Those who requested exclusion are listed on Exhibit A to the Thurin Supplemental Declaration,
 28 and on Exhibit 1 to the [Proposed] Final Judgment And Order Of Dismissal With Prejudice
 submitted herewith. For the Court’s convenience, Lead Plaintiffs are also submitting herewith
 proposed orders approving of the Plan of Allocation and fee and expense request.

1 Tel: (858) 793-0070
2 Fax: (858) 793-0323

3 *Attorneys for Lead Plaintiffs Arkansas Teacher*
4 *Retirement System, Första AP-fonden and*
5 *Danske Invest Management A/S*

6 KAPLAN FOX & KILSHEIMER LLP
7 LAURENCE D. KING
8 MARIO M. CHOI
9 350 Sansome Street, Suite 400
10 San Francisco, CA 94104
11 Tel: (415) 772-4700
12 Fax: (415) 772-4707

13 -and-

14 FREDERIC S. FOX (*pro hac vice*)
15 JOEL B. STRAUSS (*pro hac vice*)
16 CHRISTINE M. FOX (*pro hac vice*)
17 850 Third Avenue, 14th Floor
18 New York, NY 10022
19 Tel: (212) 687-1980
20 Fax: (212) 687-7714
21 ffox@kaplanfox.com
22 jstrauss@kaplanfox.com
23 cfox@kaplanfox.com

24 *Attorneys for Lead Plaintiffs Arkansas Teacher*
25 *Retirement System, Första AP-fonden and*
26 *Danske Invest Management A/S*

27 KESSLER TOPAZ MELTZER
28 & CHECK LLP
RAMZI ABADOU
ELI R. GREENSTEIN
STACEY KAPLAN
One Sansome Street, Suite 1850
San Francisco, CA 94104
Tel: (415) 400-3000
Fax: (415) 400-3001

-and-

DARREN J. CHECK
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
dcheck@ktmc.com

Attorneys for Lead Plaintiffs Arkansas Teacher
Retirement System, Första AP-fonden and
Danske Invest Management A/S, and additional
Plaintiff Bobby J. Reynolds