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Attorneys for Plaintiffs and the Settlement Class

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MAX WEISS, LEZLEY HOLMES,
SEBASTIEN TARDIF, and JOHN
MACZYNSKI, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

SUNPOWER CORPORATION,
Defendant.

Case No.: 21-cv-384151

CLASS ACTION

**DECLARATION OF SHANON J. CARSON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hon. Sunil R. Kulkarni

Date: March 24, 2022

Time: 1:30 PM

Location: Department 1

1 I, Shanon J. Carson, hereby declare as follows:

2 1. I am one of the attorneys for Plaintiffs and the Settlement Class in the above-captioned
3 matter.

4 2. I am an Executive Shareholder of Berger Montague PC (“Berger Montague”). I am a
5 member in good standing of the bar of the Commonwealth of Pennsylvania, and I am admitted to the
6 United States District Court for the Eastern District of Pennsylvania and many other district courts
7 throughout the country.

8 3. I am admitted in this Court *pro hac vice* with respect to this matter.

9 4. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of Class
10 Action Settlement.

11 5. Extensive information concerning: (1) the background of this litigation; (2) Class
12 Counsel’s significant class action litigation experience, including on behalf of purchasers of defective
13 products; (3) Class Counsel’s investigation and evaluation of Plaintiffs’ and the Settlement Class’s
14 claims; (4) the parties’ ADR, mediation sessions, and settlement negotiations; and (5) Class Counsel’s
15 assessment that the Settlement is an excellent result for the Settlement Class is included in my
16 declaration, filed July 16, 2021, in support of Plaintiffs’ Unopposed Motion for Preliminary Approval
17 of Settlement and my declaration, filed December 10, 2021, in support of Plaintiffs’ Motion for
18 Attorneys’ Fees, Costs, and Class Representative Service Awards. Those declarations are incorporated
19 herein by reference.

20 6. In early June 2019, Class Counsel began to investigate and analyze potential claims by
21 Plaintiff Max Weiss against SunPower Corporation (“SunPower,” “Defendant,” or the “Company”),
22 including conferring with solar industry experts and interviewing SunPower customers and dealers.

23 7. Following the initial investigation, Class Counsel drafted a class action complaint
24 asserting claims against SunPower on behalf of Plaintiff Weiss and a proposed nationwide class of
25 SunPower customers.

26 8. In July 2019, Class Counsel sent a letter and a copy of the complaint to SunPower, to
27 provide SunPower with statutorily required pre-suit notice of the claims.

28 9. Once Class Counsel received SunPower’s response to the notice of Plaintiff Weiss’

1 claims, Class Counsel conferred with counsel for SunPower to develop a framework for ADR,
2 mediation, and corresponding discovery.

3 10. In October 2019, the parties agreed to mediate Plaintiffs' and the Settlement Class's
4 claims. The parties subsequently selected Hon. Ronald Sabraw (Ret.), a well-known and highly
5 respected California mediator, and former California state court judge, as mediator.

6 11. To prepare for the mediation, Class Counsel continued to investigate the factual and legal
7 bases for Plaintiffs' and the proposed class members' claims, including reviewing confidential
8 documents and data produced by SunPower, interviewing and obtaining information from several
9 SunPower dealers, conferring with solar experts, and interviewing numerous SunPower customers.

10 12. Shortly before the mediation, Class Counsel submitted a detailed, 43-page mediation
11 statement to Judge Sabraw. The parties attended a full-day, in-person mediation session on February
12 20, 2020, which did not result in a settlement.

13 13. Thereafter, Plaintiffs resumed preparing for litigation, including continuing to interview
14 SunPower customers and conferring with solar experts and SunPower dealers. Concurrently, the parties
15 with the assistance of Judge Sabraw, continued the ADR process, exchanged draft term sheets, and
16 participated in a second full-day mediation session on August 21, 2020 (which was a remote Zoom
17 session given the Pandemic).

18 14. Although that second mediation session also did not result in a settlement, the parties
19 continued to negotiate at arm's-length through the mediator, Judge Sabraw. In December 2020, after
20 numerous additional conferences with Judge Sabraw and the exchange of several counterproposals, the
21 parties ultimately accepted Judge Sabraw's Mediator's Proposal, which outlined the core terms to
22 resolve the case on a class-wide basis.

23 15. Thereafter, Class Counsel engaged in substantial negotiations with counsel for SunPower
24 to negotiate a formal Settlement Agreement.

25 16. To assess the fairness of the \$4,750,000 monetary recovery for the Settlement, Class
26 Counsel considered language in SunPower's limited warranty purporting to exclude coverage for lost
27 energy production, lost incentives, or other consequential damages. An example of SunPower's limited
28 warranty for the Covered Solar Modules is attached here as Exhibit A.

1 17. Class Counsel also considered both information they acquired from Settlement Class
2 Members, including the Plaintiffs, and data produced by SunPower during mediation. SunPower's data
3 supported that the overall fleet of sites with the Subject Microinverters performed within approximately
4 95% of cumulative expected output based on SunPower's site modeling. SunPower's data also supported
5 that the average system produced approximately 93% of expected output, whereas for performance
6 guarantees on leased sites, SunPower projects that its systems will produce at least 95% of expected
7 output. The data Plaintiffs' counsel considered estimated the value of that difference in performance as
8 less than \$50 for the average customer (*i.e.*, one owning 21 panels and paying \$0.23 per kilowatt hour
9 for electricity) during the twelve-month period leading up to replacement of the Subject Microinverters.¹

10 18. Class Counsel also considered facts learned in their investigation suggesting that it is
11 unlikely that a substantial portion of the Settlement Class incurred energy production losses from the
12 Subject Microinverters during every year since they were installed. For example, SunPower began
13 retrofitting Subject Microinverters as early as 2018, for some customers, including those that complained
14 about production shortfalls.

15 19. Notwithstanding, considering all information Plaintiffs' counsel obtained regarding
16 Settlement Class Member's experiences with the Subject Microinverters, Class Counsel estimates that
17 the value of the energy loss for the average Settlement Class Member could be as much as \$500.

18 20. Based on the claims the Settlement Administrator has received to date, and on
19 SunPower's data for the number of Covered Solar Modules covered by those claims, Claimants will
20 receive \$56.49 per Covered Solar Module, after deducting the maximum estimated amounts, disclosed
21 in the Notice, for Class Counsel's fees and expenses, Plaintiffs' Service Awards, and notice and
22 administration costs. The average Claimant, one having 21 Covered Solar Modules, will receive
23 approximately \$1,186 from the Settlement.

24 21. SunPower has reported that, to date, it has replaced the Subject Microinverters at
25 approximately 16,260 of the approximately 17,077 residential sites where the Covered Solar Modules

26
27 ¹ Based on this data, the average Settlement Class Member's Covered Solar Modules underperformed
28 by, at most, 761 kWh, during the twelve-month period leading up to replacement of the Subject
Microinverters.

1 were installed. SunPower has reported that the 817 sites at which Subject Microinverters have not been
2 replaced fall within the exceptions set forth in footnote 1 of Section 3.6 of the Settlement Agreement,
3 most are sites where the homeowner has failed to respond to SunPower's notifications to arrange for the
4 replacement.

5 22. There is a substantial cost to SunPower to replace the Subject Microinverters at each site.
6 Also, there is significant value for the Settlement Class receiving not only a commitment that SunPower
7 would complete replacement of all Subject Microinverters, but also that SunPower would do so by a
8 date certain. Without the Settlement, SunPower could contend that its limited warranty does not require
9 repair or replacement of the microinverters unless a customer demonstrates that the microinverters fail
10 to conform to the warranty.

11 23. SunPower also reported that it activated the Enhanced Customer Care Program provided
12 by paragraph 3.5 of the Settlement in June 2021, in anticipation of Settlement Class Members calling
13 SunPower in reaction to Plaintiffs filing the motion for preliminary approval of the Settlement. The
14 program remains active, pending final approval of the Settlement. SunPower has reported that, to date,
15 the customer care program has received approximately 230 calls.

16 24. Approximately eight (8) states and the District of Columbia offer Solar Renewable
17 Energy Credit (SREC) or similar incentive programs. Based on information provided by SunPower,
18 only approximately 10% of the Settlement Class Members are or were eligible for these programs.

19 25. After the Notice of Settlement was mailed to Settlement Class Members, Class Counsel
20 received and has promptly responded to inquiries from Settlement Class Members.

21 The foregoing statement is made under penalty of perjury under the laws of the State of California
22 and is true and correct to the best of my knowledge and belief.

23
24 Date: March 3, 2022

25
26
27
28

/s/Shanon J. Carson
Shanon J. Carson

EXHIBIT A



SunPower Limited Product and Power Warranty for Residential PV Modules

This Limited Warranty is effective for SunPower® photovoltaic modules with “SPR” in the product model number and sold after January 1, 2015. SunPower photovoltaic modules which include “COM” in the model number are for commercial installations and have a different warranty.

1. Limited Warranty

SunPower Corporation (“SunPower”) warrants that for 25 years beginning on the Warranty Start Date¹ (the “Warranty Period”), its photovoltaic modules specified above, which may include factory-integrated electronics, (“PV Module(s)”), shall be free from defects in materials and workmanship under normal application, installation, use and service conditions, and the DC power of the PV Modules will be at least 95% of the Minimum Peak Power² rating for the first 5 years, and declining by no more than 0.4% per year for the following 20 years, so the power output at the end of the final year of the 25 year warranty period will be at least 87% of the Minimum Peak Power rating.

If any PV Module fails to conform to this Limited Warranty and provided that any loss in power is determined by SunPower (in its sole discretion) not to have resulted from one of the excluded events set forth in Section 3 below, then for the Warranty Period, SunPower will repair, replace (new or refurbished) or refund the defective PV Modules as set forth herein. SunPower will make all reasonable efforts to repair or replace the PV Module with an electrically and mechanically compatible PV Module with an equal or greater power rating. If this is not commercially feasible, then SunPower will refund the purchase price of the defective PV Module as paid by the customer. The repair, replacement or refund remedy provided herein shall be the sole and exclusive remedy. Limited Warranty for any repaired or replaced PV Module shall not extend beyond the Warranty Period. In the case of a valid claim for PV Modules installed by SunPower, an affiliate of SunPower or an authorized SunPower installer, the Limited Warranty covers:

- (i) reasonable and customary transportation costs for return of the PV Modules;
- (ii) reshipment of any repaired or replaced PV Modules; and
- (iii) costs associated with installation, removal or reinstallation of the PV Modules.

2. General Conditions for Warranty Claims

- a) Warranty claims must in all events be filed within the Warranty Period.
- b) Warranty claims may only be made by, or on the behalf of (i) the original end customer, as named in the certificate of guarantee or invoice, as applicable, and (ii) any subsequent title holder of the PV Modules upon satisfactory proof of succession or transfer from the original end customer as named in the certificate of guarantee or invoice, as applicable.
- c) When PV Modules are used on a mobile platform of any type, such as a vehicle, the Warranty Period shall be limited to 12 years.
- d) In cases of PV Module replacement, any replaced PV Module shall pass into the ownership of SunPower.

3. Exclusions and Limitations

The Limited Warranty does not apply to any of the following:

- a) PV Modules subjected to: misuse, abuse, neglect or accident; alteration, improper installation, application or removal (including but not limited to installation, application or removal by any party other than SunPower, a SunPower authorized dealer or technician

¹ “Warranty Start Date” is the earlier of (i) date of array interconnection and (ii) 6 months following the date of SunPower delivery. If the delivery date cannot be verified, manufacturing date will be used in its place.

² “Minimum Peak Power” is defined as Peak Power minus peak power tolerance or the minimum rated power, as shown on the label. Peak Power is defined as the watt peak at Standard Test Conditions (1000W/m² irradiance, AM1.5, 25C. SOMS current, LACCS FF and Voltage from NREL calibration), as described in IEC61215, measured per IEC60904, and accounting for tolerances per EN50380. SunPower modules shall, in any event, require a sweep rate of no less than 200ms to ensure an accurate power measurement. SunPower can provide a detailed testing procedure or a list of recognized testing agencies upon request.

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approved by SunPower in writing); non-observance of the applicable SunPower installation, users and/ or maintenance instructions or non-compliance with national and local electric codes; repair or modifications by someone other than an approved service technician of SunPower; conditions exceeding the voltage, wind, or snow load specifications; power failure surges, lightning, flood, or fire; damage from persons, insects, animals, or industrial chemical exposure; glass breakage from impact or other events outside SunPower's control.

- b) Cosmetic effects stemming from normal wear and tear of PV Module materials or other cosmetic variations which do not cause power output lower than what is guaranteed by the Limited Warranty. Normal wear and tear of PV Module materials can include, but is not limited to, fading of frame color, weathering of glass coatings, and areas of discoloration around or over individual solar cells or any part of the PV Module.
- c) PV Modules installed in locations, which in SunPower's absolute judgment may be subject to direct contact with bodies of salt water.
- d) PV Modules for which the labels containing product type or serial number have been altered, removed or made illegible.
- e) PV Modules which have been moved from their original installation location without the express written approval of SunPower.
- f) PV Modules that include factory-integrated electronics where such factory-integrated electronics exhibit defects that do not materially impact power output.
- g) SunPower modules which include "COM" in the model number.

SunPower shall not be held responsible or liable to the customer or any third-party arising out of any non-performance or delay in performance of any terms and conditions of sale, including this Limited Warranty, due to acts of God, war, riots, strikes, fire, flood or any other cause or circumstance beyond the reasonable control of SunPower.

4. Limitation of Warranty Scope

SUBJECT TO THE LIMITATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUNPOWER, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING, SIGNED AND APPROVED BY SUNPOWER. SUNPOWER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PV MODULES, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE PV MODULE, OR FROM USE OR INSTALLATION. UNDER NO CIRCUMSTANCES SHALL SUNPOWER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, HOWSOEVER CAUSED. LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES ARE THEREFORE SPECIFICALLY BUT WITHOUT LIMITATION EXCLUDED. SUNPOWER'S AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SUNPOWER BY THE CUSTOMER, FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH GAVE RISE TO THE WARRANTY CLAIM. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

IF ANY PROVISION OF THIS LIMITED WARRANTY IS HELD UNENFORCEABLE OR ILLEGAL BY A COURT OR OTHER BODY OF COMPETENT JURISDICTION, SUCH PROVISIONS SHALL BE MODIFIED TO THE MINIMUM EXTENT REQUIRED SUCH THAT THE REST OF THIS LIMITED WARRANTY WILL CONTINUE IN FULL FORCE AND EFFECT.

5. Obtaining Warranty Performance

If you feel you have a justified claim covered by this Limited Warranty, immediately notify (a) the seller and installer of the PV Modules, or (b) any authorized SunPower installer, or (c) contact SunPower Corporation directly at the contacts shown below. Your installer, or SunPower will give advice on handling the claim, which shall include, without limitation, the provision of the warranty card, online warranty registration information, invoice, and/or evidence of the date of delivery of the PV Module, serial number and product number of affected modules, and evidence of claim. The return of any PV Modules will not be accepted unless prior written authorization has been given by SunPower.