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**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

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

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. On March 20, 2022, the Court issued a tentative ruling on Plaintiffs’ Motion for Final
12 Approval of Class Action Settlement (“Final Approval Motion”), instructing Plaintiffs’ counsel to file
13 this supplemental declaration addressing “the merits and potential value of putative class members’
14 claims arising from lost Solar Renewable Energy Credits (SREC) or similar incentives.”

15 6. Based on information provided by SunPower on March 16, 2020, approximately 8% of
16 the Settlement Class Members are or were eligible for Solar Renewable Energy Credit (SREC) or similar
17 incentive programs.

18 7. As described in Plaintiffs’ Complaint, in states where SREC’s are available
19 (predominately in the mid-Atlantic and Northeast), Settlement Class Members earn one SREC for every
20 1,000 kilowatt hours (kWhs) produced by their solar panel system. (Compl. ¶ 93.)

21 8. The value of an individual SREC is dependent on the state where it was generated, when
22 it was generated, and when it is sold. (*See, e.g.*, <https://www.solarreviews.com/blog/what-is-an-srec-and-how-can-i-get-the-best-srec-prices>). However, because the value of the Settlement Class Members’ lost
23 SRECs, if any, is directly based on the amount of any energy production shortfall caused by the alleged
24 defect in the Subject Microinverters, the merits of the Settlement Class Members’ claims for lost SRECs
25 are similar to the merits for their claims for the value of lost energy production.
26

27 9. For example, like claims for lost energy production, the Settlement Class Members’
28 claims for the value of lost SRECs are subject to the risk that SunPower would prevail on an argument

1 that its limited warranty excludes coverage for lost energy production, lost incentives, or other
2 consequential damages. (*See Carson Decl.* ¶ 16 and Exhibit A.)

3 10. In addition, SunPower has argued that there are site-specific factors that impact a
4 residential solar system's energy production, including weather, the position of panels on a property,
5 shading from trees, soiling, and other solar module maintenance. As a result, SunPower argues that
6 Settlement Class Members with sites in SREC states could face the difficult task of proving causation
7 and damages for lost energy production and SRECs.

8 11. To calculate the maximum potential value of the Settlement Class Members' lost SRECs,
9 based upon a review of various states' valuations for SRECs, Plaintiffs have conservatively assumed that
10 an average SREC was worth \$250, or \$0.25 per kWh, although depending upon the applicable state and
11 the time, SRECs are often worth considerably less than \$250. For example, recent prices for Delaware
12 and Pennsylvania SRECs are approximately \$30 and \$38 per SREC, respectively, whereas recent prices
13 for Massachusetts and New Jersey SRECs are approximately \$284 and \$233 per SREC, respectively.

14 12. Plaintiffs previously calculated the potential damages due to lost energy production for all
15 Settlement Class Members nationwide to range between \$5,094,300 and \$17,830,050, based on an
16 average customer paying \$0.23 per kilowatt hour for electricity. (Preliminary Approval Order at 7).
17 Accordingly, the lost energy production associated with these damages would range between 22,149,130
18 kWh and 77,521,956 kWh.

19 13. Assuming equivalent underperformance for Covered Solar Modules owned by Class
20 Members entitled to SRECs (which, again, is represented by SunPower to be approximately 8% of Class
21 Members), the value of lost SRECs due to underperformance is between approximately \$442,982 and
22 \$1,550,439 (*i.e.*, $\$442,982 = 22,149,130 \text{ kWh} * 8\% \text{ of the Settlement Class} * \$0.25 \text{ per kWh SREC price}$
23 and $\$1,550,439 = 77,521,956 \text{ kWh} * 8\% \text{ of the Settlement Class} * \$0.25 \text{ per kWh SREC price}$).

24 14. Thus, the Settlement recovers between 85.78% and 24.5% of the combined damages for
25 the Settlement Class Members' lost energy production and lost SRECs.

26
27 Dated: March 17, 2022

/s/ Shanon J. Carson
Shanon J. Carson