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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11 MAX WEISS, et al.,

12 Plaintiffs,

13 vs.

14 SUNPOWER CORP.,

15 Defendant.
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Case No.: 21CV384151

**ORDER CONCERNING PLAINTIFF'S
MOTIONS: (1) FOR FINAL
APPROVAL OF CLASS SETTLEMENT
AND (2) FOR ATTORNEYS' FEES,
COSTS, AND CLASS
REPRESENTATIVE SERVICE
AWARDS**

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18 This is a putative class action on behalf of residential customers who purchased allegedly
19 defective solar panel modules manufactured by or for Defendant SunPower Corp. The parties
20 reached a settlement, which the Court preliminarily approved in an order filed on October 21,
21 2021. The factual and procedural background of the action and the Court's analysis of the
22 settlement and settlement class are set forth in that order.

23 Before the Court are Plaintiff's motions: (1) for final approval of the settlement and
24 (2) for approval of his attorney fees, costs, and service award. The motions are unopposed. The
25 Court issued a tentative ruling on March 23, 2022, and no one challenged it at the hearing on
26 March 24. The Court now issues its final order, which GRANTS both motions.
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1 **I. LEGAL STANDARD FOR SETTLEMENT APPROVAL**

2 Generally, “questions whether a [class action] settlement was fair and reasonable,
3 whether notice to the class was adequate, whether certification of the class was proper, and
4 whether the attorney fee award was proper are matters addressed to the trial court’s broad
5 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
6 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
7 260.)

8 In determining whether a class settlement is fair, adequate and reasonable, the
9 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
10 the risk, expense, complexity and likely duration of further litigation, the risk of
11 maintaining class action status through trial, the amount offered in settlement, the
12 extent of discovery completed and the stage of the proceedings, the experience
13 and views of counsel, the presence of a governmental participant, and the reaction
14 of the class members to the proposed settlement.

15 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

16 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
17 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
18 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
19 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
20 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
21 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
22 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
23 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
24 marks omitted.)

25 The burden is on the proponent of the settlement to show that it is fair and
26 reasonable. However “a presumption of fairness exists where: (1) the settlement
27 is reached through arm’s-length bargaining; (2) investigation and discovery are
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1 sufficient to allow counsel and the court to act intelligently; (3) counsel is
2 experienced in similar litigation; and (4) the percentage of objectors is small.”
3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
4 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
5 and objectively analyze the evidence and circumstances before it in order to determine whether
6 the settlement is in the best interests of those whose claims will be extinguished,” based on a
7 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

8 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

9 The non-reversionary gross settlement amount is \$4,750,000. Attorney fees of up to
10 \$1,583,333 (one-third of the gross settlement), litigation costs of up to \$50,000, and
11 administration costs of approximately \$130,000 will be paid from the gross settlement. The
12 named plaintiffs will also seek service awards of \$10,000 each, for a total of \$40,000.

13 The settlement requires Defendant to complete the replacement of the allegedly defective
14 parts at each residential site where its Covered Solar Modules were installed by a date certain,¹
15 and to offer a dedicated customer care program for the benefit of settlement class members. In
16 addition, class members who submit a valid claim will receive a pro rata payment in proportion
17 to the total Covered Solar Modules originally installed on their residence compared with the
18 other claimants. If every class member submitted a claim, Plaintiffs estimated that the average
19 payment to each of the 16,981 class members would be \$173.52. Based on the estimated 10 to
20 20 percent claims rate, the average payment was expected to be between \$866.63 and \$1,735.27.
21 Funds associated with checks uncashed after 180 days will be tendered to GRID Alternatives.²

24 ¹ As of March 3, 2022, SunPower has replaced the Subject Microinverters at 16,260 of the
25 17,077 residential sites where the Covered Solar Modules were installed. SunPower has reported
26 that the 817 sites at which Subject Microinverters have not been replaced fall within the
27 exceptions set forth in the Settlement Agreement; most are sites where the homeowner has failed
to respond to SunPower’s notifications to arrange for the replacement.

28 ² GRID is a non-profit charitable organization dedicated to building community-powered
solutions to advance economic and environmental justice through renewable energy, including
bringing solar energy to disenfranchised communities.

1 Class members who do not opt out will release all claims, liabilities, etc., whether known
2 or unknown, “that are asserted or alleged in the Complaint reasonably related to the manufacture,
3 advertising, marketing, distribution, sale, performance, or retrofitting of the Subject
4 Microinverters in the Covered Solar Modules related to the alleged defect giving rise to the
5 Litigation, compliance with the limited warranty(ies) applicable to the Subject Microinverters in
6 the Covered Solar Modules related to the alleged defect giving rise to the Litigation, or any other
7 matters alleged in the Complaint in the Litigation reasonably related to the Subject
8 Microinverters...” The released claims “do not include any release of alleged personal injury
9 claims or any release of claims regarding the Covered Solar Modules that do not reasonably
10 relate to the Subject Microinverters.”

11 The notice process has now been completed. There was one objection to the settlement,³
12 and 12 requests for exclusion from the class were received.⁴ Of 17,091 notice packets, 293 were
13 re-mailed after initially being returned and 804 were ultimately undeliverable. Email notice was
14 also provided to 12,735 class members, with 11,821 emails successfully delivered. Considering
15 both the mail and email notice, only 293 class members could not be reached.

17 ³ The Court has read and considered this objection, filed by former named plaintiff Linda Tonoli.
18 The Court appreciates Ms. Tonoli’s feedback regarding the settlement, but her objections do not
19 change the Court’s view that the settlement is fair and reasonable to the class. The Court notes
20 that the estimated value of the class’s lost energy production based on SunPower’s data (up to
21 \$17,830,050) was discussed in its order granting preliminary approval, and the estimated value
22 of lost SRECs (\$442,982 to \$1,550,439) is discussed in the Supplemental Declaration of Shanon
23 J. Carson filed on March 17, 2022. Ultimately, the average payment to settlement class members
will be about \$1,338, or \$64.80 per Covered Solar Module. Based on this estimate, Ms. Tonoli
herself should recover over 60 percent of the damages she estimates in her objection, which is a
good result for a settlement.

24 ⁴ A total of 139 requests for exclusion were received, but 123 of them—which were all submitted
25 via a January 10, 2022 letter from attorney Steven Marchbanks of Premier Legal Center—are not
26 from settlement class members. The administrator explains that the individuals in question are
27 not included in the data set furnished by SunPower and many of their exclusion requests include
28 information indicating that they are not class members (i.e. the request indicates that their system
is a leased system or that the date of purchase/commission of their solar modules pre-dates the
manufacture of the Covered Solar Modules).

1 As instructed by the Court, the administrator also conducted a supplemental mailing and
2 email campaign on January 14, 2022. The supplemental mailing instructed class members how
3 to find their Notice ID and provided revised dates for the final approval hearing and to submit a
4 claim. The supplemental mailing was sent via postcard to 5,270 class members and via email to
5 11,821 class members.

6 The administrator has received a total of 2,484 claims, 282 of which do not match the
7 settlement class list. The 2,202 apparently valid claims that were submitted represent a claims
8 rate of 12.88 percent, within the range that was estimated at preliminary approval. Assuming
9 confirmation that the 282 claims that do not match the settlement class list are not from class
10 members, the average payment to each of the 2,202 claimants will be \$1,338, or \$64.80 per
11 Covered Solar Module.⁵

12 At preliminary approval, the Court found that the proposed settlement provides a fair and
13 reasonable compromise to Plaintiffs' claims. It finds no reason to deviate from these findings
14 now. The Court thus finds that the settlement is fair and reasonable for purposes of final
15 approval.

16 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

17 Plaintiffs seek a fee award of \$1,583,333.33, or one-third of the gross settlement. This is
18 somewhat higher than the twenty- to twenty-five percent typically requested in a consumer class
19 action with a large class size, but represents the standard percentage awarded in other types of
20 class actions. Plaintiffs also provide a lodestar figure of \$956,956, based on 1,477 hours spent
21 on the case by counsel billing at \$480–830 per hour. Plaintiffs' request results in a reasonable
22 multiplier of 1.65.

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25 ⁵ This estimate is based on a net settlement fund of \$2,946,666.67, assuming the maximum
26 deductions from the settlement fund that were disclosed in the class notice are awarded. The
27 slightly lower deductions actually approved by the Court result in a net settlement fund of
28 \$2,957,637.07, so the average claimant should ultimately receive closer to \$1,343.15. In
addition, 550 claim forms claim a different number of Covered Solar Modules than SunPower's
data reflects, and the administrator will follow up to resolve those discrepancies.

1 Overall, counsel's lodestar is reasonable, and the Court finds the multiplier is appropriate
2 given the contingent nature of the fee award, the uncertainty of recovery here, and the substantial
3 time and costs invested by counsel in the case. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
4 1132 [in order to reflect the fair market value of attorney services, lodestar may be adjusted with
5 a multiplier based on factors including the extent to which the nature of the litigation precluded
6 other employment by the attorneys and the contingent nature of the fee award].) Viewed in light
7 of this cross-check, the Court approves the one-third percentage fee requested. (See *Laffitte v.*
8 *Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its
9 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
10 resulting in a multiplier of 2.03 to 2.13].)

11 Plaintiffs' counsel also requests \$39,029.93 in litigation costs, below the estimate
12 provided at preliminary approval. Plaintiffs' costs appear reasonable and are approved. The
13 \$130,000 in administrative costs are also approved.

14 Finally, Plaintiffs request service awards of \$10,000 each. To support their request, they
15 submit declarations describing their efforts on the case. The Court finds that the class
16 representatives are entitled to enhancement awards and the amount requested is reasonable.

17 **IV. ORDER AND JUDGMENT**

18 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
19 DECREED THAT:

20 The motion for final approval is GRANTED. The following class is certified for
21 settlement purposes:
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1 All persons in the United States who purchased one or more Covered Solar
2 Modules⁶ for residential use through a cash or financed transaction from
3 SunPower or a SunPower authorized dealer and who currently own or formerly
4 owned a residence on which the purchased Covered Solar Modules are installed,
5 as well as any current owner of any such residence. For the avoidance of doubt,
6 the Settlement Class does not include persons in the United States who leased
7 Covered Solar Modules for residential use or who currently own or formerly
8 owned a residence on which leased Covered Solar Modules are installed.

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10 Excluded from the class are the 12 claimants identified in the first page of Exhibit B to
11 the March 3, 2022 Declaration of Eric Schachter of A.B. Data, Ltd.

12 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
13 Proc., § 668.5.) Plaintiffs and the members of the class shall take from their complaint only the
14 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
15 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
16 enforce the terms of the settlement agreement and the final order and judgment.

17 The Court sets a compliance hearing for **December 1, 2022 at 2:30 P.M.** in Department
18 1. At least ten court days before the hearing, class counsel and the settlement administrator shall
19 submit a summary accounting of the net settlement fund identifying distributions made as

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21 ⁶ “Covered Solar Modules” means

22 SunPower photovoltaic modules with the factory integrated Subject
23 Microinverters installed in them. The Covered Solar Modules were produced by
24 SunPower from July 2015 to December 2016 and sold for residential use. The
25 Covered Solar Modules were included in SunPower “Equinox” systems with
26 panel model numbers SPR-E20-327-C-AC, SPRE19-320-C-AC, SPR-E18-305-C-
AC, SPR-X22-360-C-AC, SPR-X21-350-BLK-C-AC, SPR-X21-345-C-AC,
SPR-X21-335-C-AC, SPR-X21-335-BLKC-AC, and SPR-X20-327-BLK-C-AC.

27 “Subject Microinverter(s)” means “factory-integrated Generation 3.0 microinverters with serial
28 numbers beginning with 4140515xxxx and 4140516xxxx. The Subject Microinverters were
produced by a third-party manufacturer in 2015 and 2016 and installed in photovoltaic modules
manufactured by SunPower from July 2015 to December 2016 and sold for residential use.”

1 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
2 beneficiary; the status of any unresolved issues; and any other matters appropriate to bring to the
3 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
4 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

5 **IT IS SO ORDERED.**

6 Date: April 3, 2022

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9 The Honorable Sunil R. Kulkarni
10 Judge of the Superior Court
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