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ORDER ON SUBMITTED MATTER

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

MAX WEISS, et al.,

Plaintiffs,

vs.

SUNPOWER CORP.,

Defendant.

Case No.: 21CV384151

**ORDER CONCERNING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

This is a putative class action on behalf of residential customers who purchased allegedly defective solar panel modules manufactured by or for Defendant SunPower Corp. Before the Court is Plaintiffs' motion for preliminary approval of a settlement, which is unopposed. The Court issued a tentative ruling on October 13, 2021 and held oral argument on October 14.

After considering the additional modifications to the settlement agreement submitted by the parties on October 18, the now Court GRANTS preliminary approval, as explained in more detail below.

1 **I. BACKGROUND**

2 Plaintiffs are residents of California and Massachusetts who purchased SunPower Solar
3 Modules¹ in 2016. (Complaint, ¶¶ 11–14.) Installing a residential solar power system requires a
4 substantial up-front investment by the homeowner, to be defrayed by the benefits that the system
5 will generate over its useful life. (*Id.*, ¶ 21.) These benefits include utilities savings, tax
6 benefits, increased property values, and, where applicable, Solar Renewable Energy Certificates
7 (SRECs).² (*Id.*, ¶ 23.) To justify customers’ up-front investment, SunPower represented that the
8 DC power of the Solar Modules would be at least 95 percent of the minimum peak power rating
9 for the first 5 years, and decline no more than 0.4 percent per year for the following 20 years, so
10 that the power output at the end of the final year of the 25 year warranty period would be at least
11 87 percent of the minimum peak power rating. (*Ibid.*)

12 As alleged in the complaint, the Solar Modules are defective in that the factory-integrated
13 microinverters within the modules degrade and intermittently cease to function at the expected
14 production level within a few years of installation, long before the end of their claimed useful
15

16 ¹ The Solar Modules are defined as “certain residential solar panel modules with factory-
17 integrated Generation 3.0 microinverters manufactured by or for SunPower through December
18 2016.” (Complaint, ¶ 1.)

19 The component at issue is a certain capacitor produced by a third-party
20 manufacturer that was integrated as part of the Generation 3.0 microinverters used
21 in the Solar Modules for a period of time from July 2015 through December 2016.
22 The Solar Modules impacted or potentially impacted by the affected Generation
23 3.0 microinverters include certain of SunPower’s “Equinox” systems, including
panel model numbers SPR-E20-327-C-AC, SPR-E19-320-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-BLK-C-AC, and SPR-X20-327-BLK-C-AC.

24 (Complaint, ¶ 1.)

25 ² The complaint explains that SRECs are a solar incentive that allows homeowners in some states
26 to sell certificates for energy to their utility. (Complaint, ¶ 93.) Importantly, when purchasing
27 SRECS, the utility is not paying the solar power system owners for the excess energy they
28 produce. (*Id.*, ¶ 94.) Rather, it pays for the ability to take credit for the clean energy produced
by the solar power system. (*Ibid.*) Thus, the value of a solar power system owner’s SRECs is
not dependent on the amount of energy the owner consumes. (*Ibid.*) A single SREC can be
worth over \$300 in certain states. (*Ibid.*)

1 life, and long before the end of the 25-year period that SunPower promises that the Solar
2 Modules will be free from defects. (Complaint, ¶ 5.) SunPower internally referred to this defect
3 as the “Ironman Issue.” (*Id.*, ¶ 7.) It began to offer replacement microinverters to customers
4 who raised underperformance issues and proactively replaced microinverters in systems
5 exhibiting underperformance. (*Ibid.*)

6 A SunPower customer service representative admitted that Generation 3.0 microinverters
7 suffer “a product issue that effected communication and degradation of performance” and
8 warrants “[p]roactive replacement” of the microinverters. (Complaint, ¶ 7.) But SunPower did
9 not timely notify its customers or recall the defective microinverters in the Solar Modules, and
10 has failed to adequately compensate customers for economic losses and property damage that
11 resulted, taking the position that such damages are not covered under the limited warranty for the
12 system. (*Id.*, ¶ 8.) SunPower’s warranty does purport to limit customers’ remedies to repair or
13 replacement of any defective parts, or refund of the purchase price. (*Id.*, ¶ 105.) But Plaintiffs
14 allege that this limitation is unconscionable. (*Id.*, ¶ 106.)

15 Although SunPower has now replaced the defective microinverters in the Solar Modules
16 in Plaintiffs’ and most putative class members’ systems, it has not adequately compensated them
17 for the reduced power production they experienced and for lost SRECs or other incentives they
18 would have received but for the defect, as well as for any property damage to their roofs due to
19 the replacement of the microinverters. (Complaint, ¶ 10.)

20 Based on these allegations, Plaintiffs bring this action on behalf of putative nationwide,
21 Massachusetts, and California classes of consumers who purchased Solar Modules for residential
22 use and currently own a residence on which such modules are installed. They assert claims for:
23 (1) breach of express warranty; (2) breach of the implied warranty of merchantability;
24 (3) deceptive acts or practices (Massachusetts General Laws chapter 93A); (4) violations of the
25 Song-Beverly Consumer Warranty Act (Civil Code sections 1792 and 1791.1 et seq.);
26 (5) violations of the Consumer Legal Remedies Act (Civil Code section 1750 et seq.);
27 (6) violations of the Unfair Competition Law (Civil Code section 17200, et seq.); (7) violations
28

1 of the False Advertising Law (Business & Professions Code section 17500 et seq.);
2 (8) negligence; (9) unjust enrichment; and (10) declaratory relief.

3 The parties have reached a settlement. Plaintiffs now move for an order preliminarily
4 approving the settlement of the class claims, provisionally certifying the settlement class,
5 approving the form and method for providing notice to the class, and scheduling a final fairness
6 hearing.

7 **II. LEGAL STANDARD FOR SETTLEMENT APPROVAL**

8 Generally, “questions whether a [class action] settlement was fair and reasonable,
9 whether notice to the class was adequate, whether certification of the class was proper, and
10 whether the attorney fee award was proper are matters addressed to the trial court’s broad
11 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
12 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
13 260.)

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

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

22 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
23 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
24 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
25 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
26 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
27 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
2 marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
6 sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.”

8 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
9 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
10 and objectively analyze the evidence and circumstances before it in order to determine whether
11 the settlement is in the best interests of those whose claims will be extinguished,” based on a
12 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

13 **III. SETTLEMENT PROCESS**

14 According to Plaintiffs, their counsel has investigated the claims at issue since June of
15 2019. In July 2019, Plaintiff Max Weiss sent a letter to SunPower notifying it of his claims and
16 his intention to bring a class action. The letter attached a draft complaint. SunPower responded
17 via counsel in September, and the parties discussed a framework for mediation and confidential
18 discovery to enable that process. In October 2019, they agreed to mediate, and they selected
19 Hon. Ronald Sabraw (Ret.) as the mediator.

20 The parties exchanged documents and information to facilitate settlement discussions.
21 Plaintiffs’ counsel analyzed the information produced by SunPower and conferred with solar
22 industry experts for guidance. Plaintiffs submitted a 43-page mediation statement to Judge
23 Sabraw, and the parties engaged in a full-day, in-person mediation session on February 20, 2020.
24 They did not settle that day, but continued to negotiate, exchanged draft term sheets, and
25 participated in a second, full-day mediation with Judge Sabraw over videoconference on August
26 21, 2020. Again, they did not reach a settlement at the mediation but continued to exchange
27 counter-proposals until Judge Sabraw made a mediator’s proposal to settle the case. The parties
28

1 accepted this proposal on December 14, 2020, and continued to negotiate the terms of the long-
2 form settlement agreement now before the Court.

3 **IV. SETTLEMENT PROVISIONS**

4 The non-reversionary gross settlement amount is \$4,750,000. Attorney fees of up to
5 \$1,583,333 (one-third of the gross settlement), litigation costs of up to \$50,000, and
6 administration costs of approximately \$130,000 will be paid from the gross settlement. The
7 named plaintiffs will also seek service awards of \$10,000 each, for a total of \$40,000.

8 The settlement requires Defendant to complete the replacement of the allegedly defective
9 parts at each residential site where its Covered Solar Modules were installed by a date certain,³
10 and to offer a dedicated customer care program for the benefit of settlement class members. In
11 addition, class members who submit a valid claim will receive a pro rata payment in proportion
12 to the total Covered Solar Modules originally installed on their residence compared with the
13 other claimants. If every class member submitted a claim, Plaintiffs estimate that the average
14 payment to each of the 16,981 class members would be \$173.52. Based on the estimated 10 to
15 20 percent claims rate, the average payment will more likely be between \$866.63 and \$1,735.27.
16 Funds associated with checks uncashed after 180 days will be tendered to GRID Alternatives.⁴

17 Pursuant to the most recent modification to the settlement, class members who do not opt
18 out will release all claims, liabilities, etc., whether known or unknown, “that are asserted or
19 alleged in the Complaint reasonably related to the manufacture, advertising, marketing,
20 distribution, sale, performance, or retrofitting of the Subject Microinverters in the Covered Solar
21 Modules related to the alleged defect giving rise to the Litigation, compliance with the limited
22 warranty(ies) applicable to the Subject Microinverters in the Covered Solar Modules related to
23 the alleged defect giving rise to the Litigation, or any other matters alleged in the Complaint in
24

25 ³ As of June 11, 2021, approximately 1,159 residential sites covered by the settlement remained
26 to be retrofitted. This work was to be completed by June 30, 2021, subject to reasonable
27 extensions.

28 ⁴ 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 the Litigation reasonably related to the Subject Microinverters....” The released claims “do not
2 include any release of alleged personal injury claims or any release of claims regarding the
3 Covered Solar Modules that do not reasonably relate to the Subject Microinverters.” The scope
4 of the release is now appropriate. (See *Amaro v. Anaheim Arena Management, LLC* (Sep. 28,
5 2021, No. G058371) ___ Cal.App.5th ___ [2021 Cal. App. LEXIS 801].)

6 **V. FAIRNESS OF SETTLEMENT**

7 To assess the mediator’s proposal, Plaintiffs’ counsel considered both information they
8 acquired from settlement class members (including the individual plaintiffs) and data produced
9 by SunPower. SunPower’s data supported the conclusion that the overall fleet of sites with the
10 Subject Microinverters performed within approximately 95 percent of cumulative expected
11 output based on site modeling, and the average system produced about 93 percent of expected
12 output (versus 95 percent for performance guarantees on leased sites). The value of the
13 difference in performance was less than \$50 for the average customer (owning 21 panels and
14 paying \$0.23 per kilowatt hour for electricity) during the twelve-month period prior to
15 replacement of the Subject Microinverters. The total value of the case based on that differential
16 would be \$5,094,300, while the total value of the case based on the difference between the
17 average output and 100 percent of expected output would be \$17,830,050. The monetary portion
18 of the settlement thus represents between 93 and 27 percent of the value of the case, an excellent
19 result for the class. The Court agrees with Plaintiffs that the settlement consideration is fair and
20 reasonable to the class in light of the risks on the merits and at class certification, which are
21 described in Plaintiffs’ motion.

22 While the settlement is non-reversionary, it does require class members to submit a claim
23 form to receive a settlement payment. The claim form shall be signed under penalty of perjury
24 attesting:

- 25 a. that the Claimant either (i) purchased through a cash or financed transaction a SunPower
26 residential solar system containing the Covered Solar Modules with the Subject
27 Microinverters and currently owns or formerly owned the residence on which the
28 purchased Covered Solar Modules are installed, or (ii) currently owns such residence;

- 1 b. to the complete address of the residence/site where the SunPower Covered Solar Modules
2 were installed;
- 3 c. to the number of Covered Solar Modules (i.e., the number of solar panels) in the
4 Claimants' system; and
- 5 d. that the Claimant experienced (i) lost or reduced power production from their Covered
6 Solar Modules, (ii) property damage to their residence/site due to repair or replacement of
7 the Subject Microinverters in the Covered Solar Modules, and/or (iii) loss of solar
8 renewable energy credits or other financial incentives.

9 Individuals who submit an incomplete or deficient claim shall be given at least one
10 opportunity to correct the issue within 30 days of submission.

11 Plaintiffs submit that the claims process is appropriate because not all class members
12 experienced lost energy production or property damage, and because there is great variation in
13 the number of Covered Solar Modules in their systems. The parties have attempted to streamline
14 the claims process by omitting any documentation requirement and allowing claims to be
15 submitted online, by email, or by mail. The settlement administrator anticipates a claims rate of
16 between 10 and 20 percent considering the specific process that the parties propose. The
17 administrator will implement a number of fraud prevention techniques to identify claims filed
18 from suspicious locations, by repeat actors, and/or by Internet "bots." Considering this
19 explanation and the circumstances of this case, the Court is persuaded that the proposed claims
20 process is appropriate.

21 The Court retains an independent right and responsibility to review the requested attorney
22 fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles*
23 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While 1/3 of the common fund
24 for attorney fees is generally considered reasonable, counsel shall submit lodestar information
25 prior to any final approval hearing in this matter so the Court can compare the lodestar
26 information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th
27 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee
28

1 through a lodestar calculation].) Finally, the Court notes that the requested litigation costs
2 appear high and will be scrutinized at final approval.

3 **VI. PROPOSED SETTLEMENT CLASS**

4 Plaintiffs request that the following settlement class be provisionally certified:

5 All persons in the United States who purchased one or more Covered Solar
6 Modules for residential use through a cash or financed transaction from SunPower
7 or a SunPower authorized dealer and who currently own or formerly owned a
8 residence on which the purchased Covered Solar Modules are installed, as well as
9 any current owner of any such residence. For the avoidance of doubt, the
10 Settlement Class does not include persons in the United States who leased
11 Covered Solar Modules for residential use or who currently own or formerly
12 owned a residence on which leased Covered Solar Modules are installed.

13 As stated in their Notice of Proposed Modifications filed on September 30, 2021, the
14 parties have agreed to define “Covered Solar Modules” to mean

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

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

1 **A. Legal Standard for Certifying a Class for Settlement Purposes**

2 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
3 approving or denying certification of a provisional settlement class after [a] preliminary
4 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
5 class “when the question is one of a common or general interest, of many persons, or when the
6 parties are numerous, and it is impracticable to bring them all before the court”

7 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:

8 (1) an ascertainable class and (2) a well-defined community of interest among the class
9 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
10 *Drug Stores*)). “Other relevant considerations include the probability that each class member
11 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
12 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
13 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
14 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
15 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

16 In the settlement context, “the court’s evaluation of the certification issues is somewhat
17 different from its consideration of certification issues when the class action has not yet settled.”
18 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
19 settlement-only context, the case management issues inherent in the ascertainable class
20 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
21 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
22 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
23 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

24 **B. Ascertainable Class**

25 A class is ascertainable “when it is defined in terms of objective characteristics and
26 common transactional facts that make the ultimate identification of class members possible when
27 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
28 (*Noel*)). A class definition satisfying these requirements

1
2 puts members of the class on notice that their rights may be adjudicated in the
3 proceeding, so they must decide whether to intervene, opt out, or do nothing and
4 live with the consequences. This kind of class definition also advances due
5 process by supplying a concrete basis for determining who will and will not be
6 bound by (or benefit from) any judgment.

7 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

8 “As a rule, a representative plaintiff in a class action need not introduce evidence
9 establishing how notice of the action will be communicated to individual class members in order
10 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
11 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
12 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
13 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
14 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
15 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
16 own account records. No more is needed.”].)

17 Here, the 16,981 class members are readily identifiable based on Defendant’s records.
18 The class is now clearly and objectively defined. The Court accordingly finds that the class is
19 numerous, ascertainable, and appropriately defined.

20 **C. Community of Interest**

21 The “community-of-interest” requirement encompasses three factors: (1) predominant
22 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
23 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
24 Cal.4th at pp. 326, 332.)

25 For the first community of interest factor, “[i]n order to determine whether common
26 questions of fact predominate the trial court must examine the issues framed by the pleadings
27 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
28 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict

1 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
2 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
3 jointly tried, when compared with those requiring separate adjudication, are so numerous or
4 substantial that the maintenance of a class action would be good for the judicial process and to
5 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
6 (*Lockheed Martin*)). “As a general rule if the defendant’s liability can be determined by facts
7 common to all members of the class, a class will be certified even if the members must
8 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

9 Here, common legal and factual issues predominate. Plaintiffs’ claims all arise from a
10 common product defect and course of conduct by Defendant that caused similar harm to the class
11 members.

12 As to the second factor,

13 The typicality requirement is meant to ensure that the class representative is able
14 to adequately represent the class and focus on common issues. It is only when a
15 defense unique to the class representative will be a major focus of the litigation,
16 or when the class representative’s interests are antagonistic to or in conflict with
17 the objectives of those she purports to represent that denial of class certification is
18 appropriate. But even then, the court should determine if it would be feasible to
19 divide the class into subclasses to eliminate the conflict and allow the class action
20 to be maintained.

21 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
22 brackets, and quotation marks omitted.)

23 Like other members of the class, Plaintiffs purchased Covered Solar Modules and allege
24 harm from the defect at issue. The anticipated defenses are not unique to Plaintiffs, and there is
25 no indication that Plaintiffs’ interests are otherwise in conflict with those of the class.

26 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
27 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
28 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class

1 representative does not necessarily have to incur all of the damages suffered by each different
2 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
3 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not
4 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
5 will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks
6 omitted.)

7 Plaintiffs have the same interest in maintaining this action as any class member would
8 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
9 adequacy of representation.

10 **D. Substantial Benefits of Class Certification**

11 “[A] class action should not be certified unless substantial benefits accrue both to
12 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
13 internal quotation marks omitted.) The question is whether a class action would be superior to
14 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
15 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
16 class action is proper where it provides small claimants with a method of obtaining redress and
17 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
18 120–121, internal quotation marks omitted.)

19 Here, there are 16,981 members of the proposed class. It would be inefficient for the
20 Court to hear and decide the same issues separately and repeatedly for each class member.
21 Further, it would be cost prohibitive for each class member to file suit individually, as each
22 member would have the potential for little to no monetary recovery. It is clear that a class action
23 provides substantial benefits to both the litigants and the Court in this case.

24 **VII. NOTICE**

25 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
26 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
27 for class members to follow in filing written objections to it and in arranging to appear at the
28 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining

1 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
2 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
3 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
4 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
5 3.766(e).)

6 Here, the notice describes the lawsuit, explains the settlement, and instructs class
7 members that they may submit a claim, opt out of the settlement, or object. The gross settlement
8 amount and estimated deductions are provided. The estimated average payment assuming all
9 class members participate is provided, and class members are instructed how to submit a claim
10 and provided with a claim form. Class members are given 60 days to request exclusion from the
11 class or submit a written objection to the settlement. They are given until two weeks before the
12 final approval hearing (about 90 days) to submit a claim.

13 At the Court’s direction, the notice was modified to instruct class members that they may
14 object or opt out of the class by simply providing their name, without the need to provide their
15 address or other identifying information. It was also modified to make it clear that class
16 members may appear at the final fairness hearing to make an oral objection without submitting a
17 written objection.

18 With regard to appearances at the final fairness hearing, the notice was further modified
19 to instruct class members as follows:

20 Hearings before the judge overseeing this case are again being conducted in
21 person. However, remote appearances are still permitted, and are offered with the
22 assistance of a third-party service provider, CourtCall. If that remains the case at
23 the time of the final fairness hearing, class members who wish to appear at the
24 final fairness hearing remotely should contact class counsel to arrange an
25 appearance through CourtCall, at least three days before the hearing if possible.

26 Any CourtCall fees for an appearance by an objecting class member shall be paid
27 by class counsel.
28

1 With these modifications, as updated to reflect the final release language and associated
2 definitions, the notice is approved.

3 Turning to the notice procedure, the parties have selected A.B. Data, Ltd. as the
4 settlement administrator. SunPower will provide the class list to the administrator within 5
5 business days of preliminary approval. The administrator will then mail the notice to class
6 members, after updating their addresses using the National Change of Address database. Any
7 notices returned as undeliverable will be re-mailed to any forwarding address provided or located
8 through skip tracing. The administrator will also maintain a settlement website and toll-free
9 phone number, and will provide the notice and claim form to any person who requests them
10 during the claim period. These procedures are appropriate and are approved.

11 **VIII. CONCLUSION**

12 Plaintiffs’ motion for preliminary approval is GRANTED. The final approval hearing
13 shall take place on **February 24, 2022** at 1:30 p.m. in Dept. 1. The following class is
14 preliminarily certified for settlement purposes:

15
16 All persons in the United States who purchased one or more Covered Solar
17 Modules⁵ for residential use through a cash or financed transaction from
18 SunPower or a SunPower authorized dealer and who currently own or formerly
19 owned a residence on which the purchased Covered Solar Modules are installed,

20
21 ⁵ “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 as well as any current owner of any such residence. For the avoidance of doubt,
2 the Settlement Class does not include persons in the United States who leased
3 Covered Solar Modules for residential use or who currently own or formerly
4 owned a residence on which leased Covered Solar Modules are installed.

5
6 Also, the November 4, 2021 case management conference is VACATED.

7 **IT IS SO ORDERED.**

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9 Date: October 20, 2021

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11 _____
12 The Honorable Sunil R. Kulkarni
13 Judge of the Superior Court
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