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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 IN RE SUNPOWER CORPORATION )  
14 SHAREHOLDER DERIVATIVE )  
LITIGATION )

Lead Case No. 1:09-CV-158522

(Consolidated with Case No. 1:09-CV-159022)

15 This Document Relates To: )  
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ALL ACTIONS )  
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STIPULATION AND AGREEMENT OF  
SETTLEMENT

**E-FILED**

Jan 24, 2014 3:25 PM

David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-09-CV-158522 Filing #G-60221

By G. Duarte, Deputy

1 WHEREAS, this Stipulation and Agreement of Settlement (the "Stipulation"), dated as of  
2 December 19, 2013, is made and entered into by and among the following Settling Parties (as  
3 defined further in ¶1.21 below): (1) Plaintiffs Anita Bonna, David Sutherland, and Oliver Barker (the  
4 "State Plaintiffs"), on behalf of themselves and derivatively on behalf of SunPower Corporation  
5 ("SunPower" or the "Company"), by and through their counsel of record in the action; (2) Plaintiffs  
6 ~~Richard Logan and David Clarke (the "Federal Plaintiffs")~~ on behalf of themselves and derivatively on  
7 behalf of SunPower; (3) Plaintiff Melvin J. Brenner (the "Delaware Plaintiff") on behalf of himself and  
8 derivatively on behalf of SunPower; (4) the Individual Defendants (as defined in ¶1.9 below); and (5)  
9 nominal defendant SunPower, each by and through their respective counsel;

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10 WHEREAS, this Stipulation is intended by the Settling Parties to fully, finally and forever  
11 resolve, discharge and settle the Released Claims (as defined in ¶1.17 below), upon and subject to the  
12 terms and conditions hereof;

13 WHEREAS, on November 16, 2009, SunPower disclosed that there had been unsubstantiated  
14 accounting entries in connection with its Philippines operations. On March 19, 2010, SunPower filed a  
15 Securities and Exchange Commission ("SEC") Form 10-K that restated the Company's financial  
16 statements for the entire 2008 fiscal year and the first three fiscal quarters of 2009;

17 WHEREAS, on November 18, 2009, a federal securities class action captioned *Plichta v.*  
18 *SunPower Corporation*, Case No. 09-5473 RS was filed in the United States District Court for the  
19 Northern District of California (the "Securities Class Action");

20 WHEREAS, the first of three state derivative actions was commenced on December 1, 2009  
21 which were subsequently consolidated into *In re SunPower Corp. Shareholder Derivative Litigation* in  
22 California Superior Court, Santa Clara County, Case No. 1:09-CV-158522 ("State Action"). On  
23 December 4, 2009, the first of two federal derivative actions was commenced which were consolidated  
24 into *In re SunPower Corp. Shareholder Derivative Litigation* in the United States District Court for the  
25 Northern District of California, Case No. CV-09-5731-RS ("Federal Action"). On April 20, 2010, the  
26 Delaware Plaintiff served an inspection demand pursuant to 8 Del. C. § 220, and after negotiations with  
27 the Company received relevant documents, including minutes of SunPower's Board and Audit  
28 Committee from January 2008 through March 2010. On May 23, 2011, the Delaware Plaintiff

1 commenced the action captioned *Brenner v. W. Steve Albrecht, et al.*, C.A. No. 6514-VCP in Delaware  
2 Chancery Court (“Delaware Action”). Collectively, these derivative lawsuits are referred to herein as  
3 the “Actions”;

4 WHEREAS, on May 13, 2011, the Federal Plaintiffs filed an amended complaint that included  
5 additional allegations concerning SunPower’s financial reporting. On March 5, 2012, the State  
6 Plaintiffs filed a Consolidated Amended Complaint that included additional factual allegations  
7 concerning the alleged misstatements and actions taken by the Individual Defendants. The Settling  
8 Parties stipulated that the Individual Defendants were not required to respond to these pleadings until  
9 after the resolution of the Securities Class Action. On January 27, 2012, the Delaware Action was  
10 stayed by order of the Delaware Chancery Court;

11 WHEREAS, the Actions allege breach of fiduciary duty and insider trading claims on behalf of  
12 SunPower against the Individual Defendants. The Actions allege the Individual Defendants breached  
13 their fiduciary duties, which allegedly resulted in a material accounting restatement. Plaintiffs further  
14 allege that the Individual Defendants failed to prevent and disclose a series of manual journal entries  
15 and other accounting adjustments made in connection with overseas manufacturing facilities designed  
16 to understate SunPower’s expenses and work-in-process inventory and thereby artificially inflated the  
17 Company’s income and earnings per share. Plaintiffs allege that while failing to disclose the accounting  
18 irregularities, certain of the Individual Defendants sold 239,713 shares of SunPower stock;

19 WHEREAS, the Actions were stayed while the Securities Class Action was litigated;

20 WHEREAS, on December 19, 2011, the district court granted in part and denied in part  
21 defendants’ motion to dismiss filed in the Securities Class Action and discovery began;

22 WHEREAS, on December 14, 2012, SunPower announced that the Securities Class Action had  
23 settled for \$19.7 million. The final settlement of the Securities Class Action was approved by the  
24 district court on July 3, 2013;

25 WHEREAS, in April 2013, the Parties began a dialogue regarding the possible resolution of the  
26 Actions. An in-person mediation was scheduled for May 9, 2013, before Jed Melnick of JAMS. On  
27 April 12, 2013, the Parties held a pre-mediation telephone conference with Mr. Melnick. On April 17,  
28 2013, Plaintiffs’ Counsel sent a demand for corporate governance reforms to Defendants’ Counsel

1 Morrison & Foerster LLP to be adopted by SunPower in connection with a settlement of the Actions.  
2 On May 3, 2013, Plaintiffs' Counsel submitted a mediation statement to Mr. Melnick, including an  
3 extensive discussion of the claims and the documents provided to Plaintiffs pursuant to the Delaware  
4 Plaintiff's document inspection demand under 8 Del. C. § 220. Prior to the May 9, 2013, mediation, the  
5 Parties continued to negotiate the terms of the corporate governance reforms and exchanged drafts  
6 thereof. Despite the Parties' work at the full day mediation session on May 9, 2013, the Actions did not  
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7 settle at that time. However, with Mr. Melnick's assistance, an agreement in principle to resolve the  
8 claims was subsequently reached. After the substantive relief in the form of the corporate governance  
9 reforms was negotiated, the Parties negotiated the Fee and Expense Amount, as defined herein;

10 WHEREAS, in connection with the settlement negotiations, Plaintiffs demanded the right to  
11 conduct additional discovery, to which Defendants ultimately agreed. This discovery included certain  
12 information provided by SunPower to the SEC related to the SEC's inquiry into the accounting  
13 irregularities at the Company's overseas manufacturing facilities;

14 WHEREAS, Plaintiffs believe that the claims asserted in the Actions have merit, and Plaintiffs'  
15 entry into this Stipulation is not intended to be and shall not be construed as an admission or concession  
16 concerning the relative strength or merit of the claims alleged in the Actions. However, Plaintiffs  
17 recognize and acknowledge the expense and length of continued legal proceedings necessary to  
18 prosecute the Actions through preparation of pleadings, pre-trial motion practice, discovery, trial, and  
19 the appeals process. Plaintiffs' Counsel have taken into account the uncertain outcome and the risk of  
20 any litigation, especially in complex litigation such as the Actions. Plaintiffs' Counsel are also mindful  
21 of the problems of proof and possible defenses to the claims asserted in the Actions;

22 WHEREAS, Plaintiffs' Counsel have conducted extensive investigation, including, *inter alia*: (i)  
23 reviewing SunPower's internal documents (including Board and Audit Committee minutes from January  
24 2008 through March 2010), press releases, public statements, SEC filings, and securities analysts'  
25 reports and advisories about the Company; (ii) reviewing media reports about the Company; (iii)  
26 researching the applicable law with respect to the claims alleged in the Actions and the potential  
27 defenses thereto; (iv) preparing and filing derivative complaints, including the Consolidated Amended  
28 Complaint; (v) conducting preliminary damages analyses; (vi) participating in informal conferences

1 with Defendants' Counsel Morrison & Foerster LLP regarding the specific facts of the cases, the  
2 perceived strengths and weaknesses of the cases, and other issues in an effort to facilitate negotiations  
3 and conducting research into the Company's corporate governance structure in order to make a  
4 settlement demand; (vii) participating in mediation and other conferences with Jed Melnick; and (viii)  
5 negotiating this Settlement with Defendants. Based on Plaintiffs' Counsel's thorough review and  
6 analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel  
7 believe that the settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers  
8 substantial benefits upon SunPower and its shareholders. Based upon Plaintiffs' Counsel's evaluation,  
9 Plaintiffs have determined that the Settlement is in the best interests of SunPower and its shareholders  
10 and have agreed to settle the Actions upon the terms and subject to the conditions set forth herein;

11 WHEREAS, each Defendant has denied and continues to deny each and all of the claims and  
12 contentions alleged in the Actions. Each Defendant expressly has denied and continues to deny all  
13 charges of wrongdoing or liability arising out of or relating in any way to the events, conduct,  
14 statements, acts, or omissions alleged in the Actions, and Defendants contend that many of the factual  
15 allegations in the Actions are materially inaccurate. The Individual Defendants have further asserted  
16 that at all times, they acted in good faith, and in a manner they reasonably believed to be, and that was,  
17 in fact, in the best interests of SunPower and its stockholders. Pursuant to the terms set forth below, this  
18 Stipulation shall in no event be construed as or deemed to be evidence of an admission or concession by  
19 Defendants with respect to any claim of any fault, liability, wrongdoing, or damage whatsoever.  
20 Nonetheless, Defendants have concluded that further defense of the Actions would be protracted,  
21 distracting, and expensive, and that it is desirable that the Actions be fully and finally settled in the  
22 manner and upon the terms and conditions set forth in this Stipulation. Nominal Defendant has also  
23 taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like  
24 the Actions. Nominal Defendant is entering into this Stipulation because the Settlement would eliminate  
25 the burden and expense of further litigation, and because the Settlement provides benefits and is in the  
26 best interests of SunPower and its stockholders; and

27 WHEREAS, there has been no admission or finding of facts or liability by or against any party,  
28 and nothing herein should be construed as such;

1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs  
2 (on behalf of themselves and derivatively on behalf of SunPower) nominal defendant SunPower, and  
3 the Individual Defendants, by and through their respective counsel, and subject to the approval of the  
4 Court, that the Released Claims shall be finally, fully, and forever compromised, settled, and released,  
5 and the Actions shall be dismissed with prejudice and with full preclusive effect, upon and subject to  
6 the terms and conditions of the Stipulation as follows.

### 7 DEFINITIONS

8 As used in this Stipulation, the following terms have the meanings specified below:

9 1.1 "Board" means the SunPower Board of Directors.

10 1.2 "Court" refers to the Superior Court for the State of California, Santa Clara County.

11 1.3 "Current SunPower Shareholders" means, for purposes of this Stipulation, any Persons  
12 (defined below) who own SunPower common stock as of the date of this Stipulation and who continue  
13 to hold their SunPower common stock as of the date of the Settlement Hearing, excluding the Individual  
14 Defendants (defined below), the officers and directors of SunPower, members of their immediate  
15 families, and their legal representatives, heirs, successors, or assigns, or any entity in which Individual  
16 Defendants have or had a controlling interest.

17 1.4 "Defendants" means, collectively, the Individual Defendants and nominal defendant  
18 SunPower.

19 1.5 "Defendants' Counsel" means Morrison & Foerster LLP, 425 Market Street, San  
20 Francisco, California 94105, on behalf of SunPower Corporation and Individual Defendants W. Steve  
21 Albrecht, Betsy S. Atkins, Pat Wood III, Thomas R. McDaniel, Thomas H. Werner, T.J. Rodgers, Uwe-  
22 Ernst Bufe, Dennis Arriola, Emmanuel Hernandez, and John B. Rodman; and Sidley Austin LLP, 555  
23 California Street, San Francisco, California 94104, on behalf of Individual Defendant Mariano M.  
24 Trinidad.

25 1.6 "Effective Date" means the first date by which all of the events and conditions specified  
26 in ¶17 herein have been met and have occurred.

27 1.7 "Fee and Expense Amount" means the agreed upon sum of \$1,000,000.00 to be paid to  
28 Plaintiffs' Counsel for their attorneys' fees and expenses, subject to approval by the Court.

1 1.8 "Final" means the time when a judgment that has not been reversed, vacated, or modified  
2 in any way is no longer subject to appellate review, either because of disposition on appeal and  
3 conclusion of the appellate process or because of passage, without action, of time for seeking appellate  
4 review. More specifically, it is that situation when (1) either no appeal has been filed and the time has  
5 passed for any notice of appeal to be timely filed in the Actions; or (2) an appeal has been filed and the  
6 appellate court has either affirmed the judgment or dismissed that appeal and the time for any  
7 reconsideration or further appellate review has passed; or (3) a higher court has granted further  
8 appellate review and that court has either affirmed the underlying judgment or affirmed the appellate  
9 court's decision affirming the judgment or dismissing the appeal.

10 1.9 "Individual Defendants" means collectively, W. Steve Albrecht, Betsy S. Atkins, Pat  
11 Wood III, Thomas R. McDaniel, Thomas H. Werner, T.J. Rodgers, Uwe-Ernst Bufe, Dennis Arriola,  
12 Emmanuel Hernandez, John B. Rodman, and Mariano M. Trinidad.

13 1.10 "Judgment" means the order and judgment to be rendered by the Court, substantially in  
14 the form attached hereto as Exhibit E.

15 1.11 "Mediator" means Jed Melnick, Esq. of JAMS.

16 1.12 "Notice to Current SunPower Shareholders" or "Notice" means the Notice of Derivative  
17 Settlement, substantially in the form of Exhibit C attached hereto and the Summary Notice of  
18 Derivative Settlement substantially in the form of Exhibit D attached hereto for publication in *Investor's*  
19 *Business Daily*.

20 1.13 "Person" or "Persons" means an individual, corporation, limited liability corporation,  
21 professional corporation, partnership, limited partnership, limited liability partnership, association, joint  
22 stock company, estate, legal representative, trust, unincorporated association, government or any  
23 political subdivision or agency thereof, and any business or legal entity, and their spouses, heirs,  
24 predecessors, successors, representatives, or assignees.

25 1.14 "Plaintiffs" means, collectively: (i) State Plaintiffs Anita Bonna, David Sutherland, and  
26 Oliver Barker; (ii) Federal Plaintiffs Richard Logan and David Clarke; and (iii) Delaware Plaintiff  
27 Melvin J. Brenner.

1 1.15 "Plaintiffs' Counsel" means (i) Robbins Arroyo LLP, 600 B. Street, Suite 1900, San  
2 Diego, CA 92101, (ii) Bottini & Bottini LLP, 7817 Ivanhoe Drive, Suite 102, La Jolla, CA 92037, (iii)  
3 Harwood Feffer LLP, 488 Madison Avenue, New York, New York, 10022, (iv) The Shuman Law Firm,  
4 885 Arapahoe Ave., Boulder, CO 80302, (v) Schubert Jonckheer & Kolbe LLP, Three Embarcadero  
5 Center, Suite 1650, San Francisco, California 94111.

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6 1.16 "Preliminary Approval Order" means the Order to be entered by the Court, substantially  
7 in the form of Exhibit B attached hereto, which preliminarily approves the terms and conditions of the  
8 Settlement as set forth in this Stipulation, directing that Notice be provided to Current SunPower  
9 Shareholders, and scheduling a Settlement Hearing to consider whether the Settlement, the Fee and  
10 Expense Amount, and the Incentive Awards should be finally approved.

11 1.17 "Released Claims" means any and all claims for relief (including Unknown Claims as  
12 defined below), rights, demands, causes of action, liabilities, debts, obligations, matters, issues and suits  
13 of any kind whatsoever, whether known or unknown, contingent or absolute, matured or unmatured,  
14 discoverable or undiscoverable, whether or not concealed or hidden, that have been, or could or might  
15 have been, or in the future might be asserted by Plaintiffs, SunPower, and/or any SunPower  
16 shareholder derivatively on behalf of SunPower against any Released Persons that are based upon or  
17 related to (i) the Actions, (ii) the facts, transactions, events, occurrences, acts, disclosures, statements,  
18 omissions or failures to act which were alleged or could or might have been alleged in the Actions;  
19 and/or (iii) the settlement of the Actions, including the payments provided for in this Stipulation, and  
20 the reasonable attorneys' fees, costs, and expenses incurred in defense thereof. Notwithstanding the  
21 foregoing, Released Claims shall not include claims to enforce the terms of this Stipulation or the  
22 Settlement. In addition, nothing set forth herein shall constitute a release by any Defendant of any  
23 insurer, reinsurer, or any other entity contracted or otherwise obligated to provide insurance or  
24 indemnification to any of the Released Persons of any claim arising out of the rights, remedies, duties or  
25 obligations provided for in any insurance policy or agreement, but the Effective Date shall not be  
26 contingent upon the resolution of such claim. Nothing set forth herein shall constitute a release by or  
27 among the Company and the Individual Defendants or Released Persons of the rights and obligations  
28 relating to indemnification or advancement of defense costs arising from the Company's or any of its



1 subsidiaries', divisions', or related or affiliated entities' certificate of incorporation or bylaws, Delaware  
2 law, or any indemnification agreement or similar agreement.

3 1.18 "Released Persons" means, collectively, (a) SunPower and each and all of the Individual  
4 Defendants, each and all of SunPower's and the Individual Defendants' respective past, present, or  
5 future parents, subsidiaries, affiliates, successors, predecessors, assigns, any entity in which SunPower  
6 or any Individual Defendant has or have a controlling interest (directly or indirectly), members of any  
7 Individual Defendant's immediate family, any entity in which any member of any Individual  
8 Defendant's immediate family has or had a controlling interest (directly or indirectly), and any trust of  
9 which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant  
10 and/or member(s) of his or her family, and (b) each and all of SunPower's and the Individual  
11 Defendants' respective past, present, or future accountants, administrators, advisors, affiliates, agents,  
12 analysts, assignees, assigns, associates, attorneys, auditors, co-insurers, commercial bank lenders,  
13 consultants, controlling shareholders, directors, divisions, employees, employers, executors, financial  
14 advisors, general or limited partners, general or limited partnerships, heirs, insurers, investment  
15 advisors, investment bankers, investment banks, joint ventures and joint venturers, managers, marital  
16 communities, members, officers, parents, personal or legal representatives, predecessors, principals,  
17 reinsurers, representatives, shareholders, spouses, subsidiaries, successors, and underwriters.

18 1.19 "Settlement" means the settlement documented in this Stipulation.

19 1.20 "Settlement Hearing" means the hearing or hearings at which the Court will review the  
20 adequacy, fairness, and reasonableness of the Settlement.

21 1.21 "Settling Parties" means, collectively, each of the Plaintiffs (on behalf of themselves  
22 and derivatively on behalf of SunPower), each of the Individual Defendants, and nominal defendant  
23 SunPower.

24 1.22 "Stipulation" means this Stipulation and Agreement of Settlement.

25 1.23 "SunPower," the "Company," or "Nominal Defendant" means SunPower Corporation.

26 1.24 "Unknown Claims" means any and all claims that were alleged or could or might have  
27 been alleged in the Actions by the Plaintiffs, SunPower or any SunPower shareholder, which any  
28 Plaintiff, SunPower, or SunPower shareholders do not know or suspect to exist in his, her, or its favor at

1 the time of the release of the Released Persons, including claims which, if known by him, her, or it,  
2 might have affected his, her or its settlement with and release of the Released Persons, or might have  
3 affected his, her or its decision not to object to this settlement. With respect to any and all Released  
4 Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs, Individual  
5 Defendants, and SunPower shall expressly waive and relinquish, and each of SunPower's shareholders  
6 shall be deemed to have, and by operation of the Judgment shall have, expressly waived and  
7 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California  
8 Civil Code §1542, which provides:

9  
10 A general release does not extend to claims which the creditor does not know or suspect  
11 to exist in his or her favor at the time of executing the release, which if known by him or  
12 her must have materially affected his or her settlement with the debtor.

12 The Settling Parties further stipulate and agree that, upon the Effective Date, Plaintiffs,  
13 Individual Defendants, and SunPower shall expressly waive and relinquish, and each of SunPower's  
14 shareholders shall be deemed to have, and by operation of the Judgment shall have, expressly waived  
15 and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits  
16 conferred by any law of the United States, or by the law of any state or territory of the United States, or  
17 principle of common law or of international or foreign law, that is similar, comparable, or equivalent in  
18 effect to California Civil Code §1542. It is understood that Plaintiffs, SunPower, or SunPower's  
19 shareholders may hereafter discover facts in addition to or different from those that he, she, or it now  
20 knows or believes to be true with respect to the subject matter of the Released Claims (including  
21 Unknown Claims), but Plaintiffs and SunPower shall expressly fully, finally, and forever discharge,  
22 settle, and release, and each of SunPower's shareholders, upon the Effective Date, shall be deemed to  
23 have, and by operation of the Judgment shall have, fully, finally, and forever discharged, settled, and  
24 released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or  
25 non-contingent, whether or not concealed or hidden, that now exist, or heretofore have existed, upon  
26 any theory of law or equity now existing or coming into existence in the future, including, but not  
27 limited to, conduct that is negligent, grossly negligent, reckless, intentional, with or without malice, or a  
28 breach of any duty, law or rule, without regard to the subsequent discovery or existence of such

1 different or additional facts. Plaintiff and SunPower acknowledge, and SunPower's shareholders shall  
2 be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was  
3 separately bargained for and a key element of the Settlement of which this release is a part.

#### 4 THE SETTLEMENT

5 I. In consideration for the full settlement and release of all Released Claims, and as a direct  
6 result of the extensive ongoing negotiations among the Settling Parties and as a result of the filing,  
E-FILED result of the extensive ongoing negotiations among the Settling Parties and as a result of the filing,  
7 prosecution and settlement of the Actions, SunPower and/or its Board has agreed to adopt, implement,  
8 and/or maintain the corporate governance enhancements set forth in Exhibit A to this Stipulation. In no  
9 event, however, shall SunPower be obligated to adopt, implement, maintain or enforce any measures  
10 that, either now or in the future, conflict with or are otherwise inconsistent with the listing requirements  
11 of any exchange on which the Company's stock is traded, any regulations of the United States  
12 Securities and Exchange Commission, or any applicable law, rule, or regulation. SunPower  
13 acknowledges that the prosecution and settlement of the Actions was a substantial factor in its decision  
14 to adopt, implement, and/or maintain the corporate governance reforms set forth in Exhibit A, which  
15 confer substantial benefits upon SunPower and its shareholders.

#### 16 APPROVAL AND NOTICE OF THE SETTLEMENT

17 2. Promptly after execution of the Stipulation, Plaintiffs shall submit the Stipulation  
18 together with its exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval  
19 Order"), substantially in the form of Exhibit B attached hereto, requesting: (i) preliminary approval of  
20 the Settlement; (ii) approval of the form and manner of providing notice of the Settlement to Current  
21 SunPower Shareholders; and (iii) a date for the Settlement Hearing.

22 3. The Settling Parties agree that all proceedings and further activity between the Settling  
23 Parties in the Actions, except for those relating to the Settlement, shall be stayed pending Court  
24 approval of the Settlement, entry of the Judgment, and dismissal with prejudice of the Actions.

25 4. Pending the Effective Date, Plaintiffs and Plaintiffs' counsel agree not to commence or  
26 participate in any other actions or proceedings asserting any of the Released Claims against any of the  
27 Released Persons. The Settling Parties further agree that they shall cooperate in opposing any  
28 subsequently filed similar actions and request that they be either dismissed or stayed.

1           5.       Notice to Current SunPower Shareholders shall consist of a Notice of Derivative  
2 Settlement, which includes the general terms of the Settlement and the date of the Settlement Hearing,  
3 substantially in the form attached hereto as Exhibit C, and the publication of the Summary Notice of  
4 Derivative Settlement, substantially in the form of Exhibit D, in *Investor's Business Daily*.

5           6.       SunPower shall undertake the administrative responsibility for giving notice to Current  
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6 SunPower Shareholders in the manner set forth in this paragraph and shall be solely responsible for  
7 paying the costs and expenses related to providing such notice to its shareholders. Within ten (10)  
8 calendar days after the entry of the Preliminary Approval Order, SunPower shall post a copy of the  
9 Notice of Derivative Settlement and this Stipulation on the Company's website, and shall file a Form 8-  
10 K with the SEC that includes the Notice of Derivative Settlement. The Form 8-K shall also refer  
11 shareholders to the website of SunPower for more information, including a copy of the Stipulation.  
12 Also within ten (10) calendar days after the entry of the Preliminary Approval Order, SunPower shall  
13 publish the Summary Notice of Derivative Settlement in *Investor's Business Daily*, and Plaintiffs'  
14 Counsel shall post a copy of the Notice and Stipulation to their respective websites. The Settling Parties  
15 agree that the content and manner of the Notice, as set forth in this paragraph, constitutes adequate and  
16 reasonable notice to Current SunPower Shareholders pursuant to applicable law and due process. Prior  
17 to the Settlement Hearing, Defendants' Counsel shall serve on counsel in the Actions and file with the  
18 Court an appropriate affidavit or declaration with respect to filing and posting the Notice.

19           7.       Plaintiffs will request that forty-five (45) days after the Notice is given, the Court hold  
20 the Settlement Hearing to consider and approve the Judgment substantially in the form of Exhibit E  
21 hereto.

22           8.       Within five (5) business days after entry of the Judgment approving the Settlement  
23 becomes Final, the Federal Plaintiffs and Delaware Plaintiff shall apply to the United States District  
24 Court for the Northern District of California and the Delaware Court of Chancery, respectively, to  
25 dismiss the Federal Action and Delaware Action, respectively, with prejudice, and shall take, or cause  
26 to be taken, all actions, and do, or cause to be done, all things, reasonably necessary, proper, or  
27 advisable under applicable laws, regulations, and agreements to secure such dismissals.

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11. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

13. The Fee and Expense Amount, or any portion thereof awarded by the Court, shall be funded within ten (10) calendar days of the entry of the Judgment to an interest-bearing escrow account maintained by Harwood Feffer LLP as receiving agent for all Plaintiffs' Counsel. In the event Plaintiffs' Counsel are unable to agree on the allocation of any awarded fees and expenses, it shall be determined by the Mediator, upon whose decision said funds shall be released. Defendants shall have no responsibility for, and no liability whatsoever with respect to, the allocation of fees and expenses

1 among Plaintiffs' Counsel.

2 14. Harwood Feffer LLP shall release funds from the escrow account upon occurrence of the  
3 Effective Date, and upon the agreement of all Plaintiffs' Counsel. In the event that any amount of fees  
4 and expenses awarded to Plaintiffs' Counsel is reduced, reversed, or modified, if the Effective Date  
5 does not occur, or if for any other reason any order approving the Settlement does not become Final,

6 Harwood Feffer LLP shall refund the full amount of any funds received as fees and expenses (or such  
7 portion as the modification may require) plus interest thereon within ten (10) business days of the event  
8 that triggered the repayment obligation to the Person(s) who paid the fees and expenses. The interest  
9 rate to be paid in the event said funds must be returned will be in accordance with the LIBOR 1-month  
10 rate as of the date the escrow account maintained by Harwood Feffer LLP is established, to begin  
11 accruing on the date on which funds are transferred to the escrow account maintained by Harwood  
12 Feffer LLP. Harwood Feffer LLP, as a condition of receiving such fees and expenses, agrees that it is  
13 subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph, and  
14 Harwood Feffer LLP agrees that the Court may, upon application of Defendants and notice to Plaintiffs'  
15 Counsel, summarily issue orders, including, but not limited to, judgments and attachment orders, and  
16 may make appropriate findings of or sanctions for contempt against Harwood Feffer LLP, should  
17 Harwood Feffer LLP fail timely to repay fees and expenses pursuant to this paragraph. Except as  
18 provided herein, Defendants shall bear no other expenses, costs, damages, or fees alleged or incurred by  
19 the Plaintiffs, or by any of their attorneys, experts, advisors, agents, or representatives.

20 15. Based on the benefits achieved through the prosecution of the Actions, Plaintiffs'  
21 Counsel intend to seek Court approval for an award in the amount of \$2,000.00 (the "Incentive  
22 Amounts") for each of the Plaintiffs. Defendants will not object to a request for Court approval of the  
23 Incentive Amounts. The failure of the Court to approve the requested Incentive Amounts, in whole or  
24 in part, shall have no effect on the Settlement. The Incentive Amounts, if approved by the Court, shall  
25 be paid by Harwood Feffer LLP to Plaintiffs from any fees and expenses awarded to Plaintiffs.  
26 Defendants shall not be liable for any portion of any Incentive Amounts.

27 16. The Fee and Expense Amount, or any portion thereof awarded by the Court, shall  
28 constitute full and complete compensation for all of Plaintiffs' Counsel's services in the Actions. No

1 proceeding or order concerning any fee and expense application or award, or any modification or  
2 reversal on appeal of any fee and expense award, shall constitute grounds for cancellation or  
3 termination of the Settlement by any Settling Party. Upon payment of the Fee and Expense Amount, or  
4 any portion thereof awarded by the Court, Defendants and their insurer(s) shall be discharged from any  
5 further liability for payment of Plaintiffs' Counsel's fees, costs or expenses in the Actions.

6 **EFFECTIVE DATE OF THE SETTLEMENT**  
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7 17. The Effective Date of this Stipulation shall be conditioned on the occurrence of all of the  
8 following events:

9 a. Court approval of the Settlement and approval of the content and method of  
10 providing the Notice to Current SunPower Shareholders, and the subsequent dissemination of the  
11 Notice to Current SunPower Shareholders;

12 b. Court entry of the Judgment, in all material respects in the form set forth as  
13 Exhibit E annexed hereto, approving the Settlement without awarding costs to any party, except as  
14 provided herein, and dismissing the State Action with prejudice;

15 c. dismissal of the Federal Action and Delaware Action with prejudice; and

16 d. the Judgment and dismissal of the Federal Action and Delaware Action with  
17 prejudice have become Final.

18 18. If any of the conditions specified in paragraph 17 are not met, then this Stipulation shall  
19 be deemed canceled and terminated unless Plaintiffs' Counsel and Defendants' Counsel mutually agree  
20 in writing to proceed with this Stipulation; except that any proceeding, dispute, appeal, petition, or  
21 order pertaining to the Incentive Awards or any fees and expenses requested by or awarded to Plaintiffs'  
22 Counsel shall not operate to terminate, modify, or cancel this Stipulation, or affect or delay the  
23 Effective Date or the finality of the Judgment approving this Stipulation and the settlement of the  
24 Actions.

25 19. If for any reason the Effective Date does not occur, or if this Stipulation is in any way  
26 canceled, terminated, or fails to become Final in accordance with its terms: (i) the Settling Parties shall  
27 be restored to their respective positions as of the date immediately preceding the full execution of this  
28 Stipulation; and (ii) all negotiations, proceedings, documents prepared, and statements made in

1 connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed  
2 to be an admission by any Settling Party of any act, matter, or proposition and shall not be used in any  
3 manner for any purpose in the Actions or in any other action or proceeding. In such event, the terms  
4 and provisions of this Stipulation shall have no further force and effect with respect to the Settling  
5 Parties and shall not be used in the Actions or in any proceedings for any purpose, and any Judgment or  
E-FILED: 2013-02-25 PM 03:00:00 ON Case 1:09-cv-15852-UNA Document 1-1 Filed 02/25/13 Page 1 of 1  
6 other order of the Court shall be treated as vacated, *nunc pro  
7 tunc*.

8 **STIPULATION NOT AN ADMISSION**

9 20. The Stipulation shall be null and void and of no force and effect if the Court does not  
10 enter the Judgment. The Stipulation and the Settlement are not and shall not be construed to be an  
11 admission by any party of the validity or invalidity of any claim or defense or of any liability or  
12 wrongdoing whatsoever. The Stipulation, the Settlement and any matter relating to them may not be  
13 offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or  
14 proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Released  
15 Persons may file this Stipulation and/or the Judgment in any action that may be brought against them in  
16 order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, full  
17 faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim  
18 preclusion or issue preclusion or similar defense or counterclaim.

19 **AUTHORITY**

20 21. Each of the attorneys executing the Stipulation on behalf of one or more of the parties  
21 hereto warrants and represents that he or she has been duly authorized and empowered to execute this  
22 Stipulation on behalf of his or her respective client or clients.

23 **EXHIBITS**

24 22. The exhibits to this Stipulation are material and integral parts hereof and are fully  
25 incorporated herein by this reference.

26 23. In the event that there exists a conflict or inconsistency between the terms of this  
27 Stipulation and the terms of any exhibit hereto, the terms of this Stipulation shall prevail.

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1 **SUCCESSORS**

2 31. This Stipulation shall bind and inure to the benefit of the parties to the Stipulation and  
3 their respective heirs, predecessors, successors and assigns and to any corporation or other entity into  
4 which or with which any party to this Stipulation may merge or consolidate. Notwithstanding the  
5 foregoing, the corporate governance reforms set forth in Exhibit A shall not bind any successor entity in  
6 the event that the Company merges with or is acquired by such entity, and the Company is not the  
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7 surviving entity post-merger or acquisition.

8 **GOVERNING LAW; JURISDICTION**

9 32. This Stipulation and the Settlement contemplated by it shall be governed by and  
10 construed in accordance with the laws of the State of California without regard to choice of law or  
11 conflict of law principles. Any action arising out of or relating to this Stipulation shall be brought  
12 exclusively in the Court.

13 **CONFIDENTIALITY**

14 33. To the extent permitted by law, all agreements made and orders entered into during the  
15 course of the Actions relating to the confidentiality of documents or information shall survive this  
16 Stipulation. Plaintiffs and their Counsel agree to return, permanently delete, and/or destroy (and certify  
17 in writing that they have done so) any documents produced by SunPower, Defendants, and any third  
18 parties to the Action, including any copies thereof, and any translations of any such documents, within  
19 sixty (60) days of the Effective Date.

20 **COOPERATION**

21 34. The parties hereto and their attorneys agree to cooperate fully with one another in  
22 seeking the Court's approval of this Stipulation and the Settlement and to obtain entry of the Judgment.

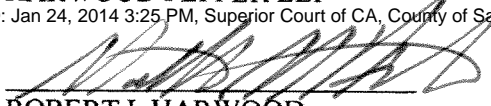
23 **NO CONSTRUCTION AGAINST DRAFTER**

24 35. This Stipulation shall not be construed more strictly against one party than another  
25 merely because it, or any part of it, may have been prepared by counsel for one of the parties, it being  
26 recognized that it is the result of arm's-length negotiations between the parties and all parties have  
27 contributed substantially and materially to the preparation of this Stipulation.


1 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by  
2 their duly authorized attorneys, dated as of December 16, 2013, at New York, NY.

3  
4  
5 HARWOOD FEFFER LLP

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27 FRANCIS A. BOTTINI, JR.  
ALBERT Y. CHANG  
28 7817 Ivanhoe Drive, Suite 102

1 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by  
2 their duly authorized attorneys, dated as of December 16, 2013, at San Diego, CA.

3  
4  
5 HARWOOD FEFFER LLP

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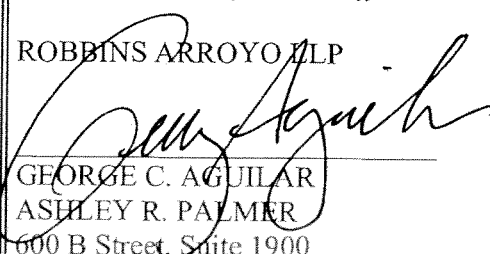
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2 their duly authorized attorneys, dated as of Dec. 19, 2013, at San Francisco,  
3 CA

4  
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# EXHIBIT A

## Corporate Governance Term Sheet

### **I. Adoption of New Reforms.**

SunPower Corporation (“SunPower” or “the Company”) will adopt within 60 days of final approval of a settlement of the pending shareholder derivative actions, the following corporate governance procedures. All such procedures shall be maintained for three (3) years, whereafter the procedures may be eliminated upon a majority vote of the Board of Directors, or until the Company’s common stock is no longer publicly traded, whichever occurs first. SunPower’s Board of Directors acknowledges that the following corporate governance procedures were implemented, modified, and/or are being maintained in response to the pending shareholder derivative actions.

#### **A. Senior Internal Audit Professional**

1. The Company shall maintain a senior management position within the Internal Audit Department, at least at the Senior Director level, currently held by the Senior Director, Internal Audit (“SDIA”).
2. The SDIA will report directly to the Audit Committee and administratively to the CFO. The SDIA will act as the principal liaison between the Internal Audit Department and the Audit Committee.
3. The risks associated with the financial reporting-related functions in the Company’s international production facilities will be assessed and, to the extent appropriate, prioritized in the Company’s internal audit plan.
4. The Company shall revise its Code of Business Conduct and Ethics to state that the SDIA will share with the General Counsel responsibility for the oversight and management of the Company’s Code of Business Conduct and Ethics.

5. The Company shall revise its Code of Business Conduct and Ethics to state that the SDIA shall be designated as an additional recipient of all reports generated by the Company's Whistleblower policy and Compliance and Ethics Helpline.

**B. International Compliance**

1. . The Internal Audit responsibilities shall include an annual assessment of internal controls worldwide, as part of the Company's Sarbanes-Oxley compliance program, governing manual journal entries, accounting for costs of goods sold (COGS), inventory, and all other material financial reporting-related functions.
2. The Company shall continue to maintain documented processes for capitalizing manufacturing variances and train responsible employees on the proper methods throughout the organization, including with respect to all international operations.

**C. Director Time Commitments**

1. The Company shall revise its Corporate Governance Principles to state that a director who also serves as the CEO of the Company should not serve on more than two (2) other public company boards absent consent from the Nominating and Corporate Governance Committee, and in no event more than three (3) other public company boards.
2. The Company shall revise its Corporate Governance Principles to state that directors other than the CEO should not serve on more than six (6) other public company boards.

**D. Director Education and Information**

1. The Company will make available to the directors continuing education programs designed for directors of publicly-traded companies. Such programs should be selected by SunPower's General Counsel, and shall focus on areas such as

compliance with Generally Accepted Accounting Principles in the United States of America (“GAAP”), the Sarbanes-Oxley Act of 2002, and public company reporting and compliance requirements.

2. The Company will, consistent with its Corporate Governance Principles, continue to reimburse the directors for reasonable costs incurred for attending continuing education programs designed for directors of publicly-traded companies.
3. The Company shall revise its Corporate Governance Principles to recommend that each independent director attend at least six (6) hours per year of continuing education programs.
4. Management shall provide training to new directors to familiarize them with the Company’s business operations and financial reporting worldwide, and will provide periodic training on these issues to all board members. This additional training will satisfy, in whole or part, the recommended six hours of additional director education referenced in paragraph D.3.
5. SunPower’s General Counsel shall disseminate written materials to all SunPower directors on an annual basis outlining recent legal decisions and developments, if any, germane to the directors’ fulfillment of their fiduciary duties.
6. The Audit Committee shall receive a report identifying key risks to the Company’s business worldwide.

E. Compensation Evaluation

1. At least once every three (3) years, the Compensation Committee shall retain an independent consultant to (a) conduct a comparative study of the Company’s executive compensation policies relative to comparable public companies, and (b)

- propose any improvements to these policies. The study prepared by such consultant shall be presented to the Compensation Committee at a regularly scheduled meeting.
2. In conducting evaluations and determining executive compensation, the Compensation Committee will evaluate the commitment of senior management to ethics and compliance as a component of the executive's performance review.

F. Forfeiture of Bonuses and Profits for Restatement

1. In the event that the Company restates its financial statements filed with the SEC, the Board shall consider whether it is appropriate for the Company to demand, and if appropriate shall cause the Company to demand, reimbursement, in whole or in part, of any annual incentive payment or long-term incentive payment to an executive officer where: (1) the payment was predicated upon achieving certain financial results that were subsequently the subject of the restatement; (2) the Board determines the executive officer engaged in intentional or reckless misconduct that caused the need for the restatement; and (3) a lower payment would have been made to the executive based upon the restated financial results. For purposes of this policy, the term "executive officer" means any officer who has been designated an executive officer by the Board.

G. Employee Training Regarding Business Conduct and Ethics Compliance and GAAP

1. The Company will maintain its training program for all employees, including employees in its manufacturing facilities around the world, regarding the Company's Code of Business Conduct and Ethics and availability of the Company's Whistleblower Hotline, and will provide such training on a bi-annual basis. The

- training program will advise employees that the Company will not permit retaliation against any employee reporting concerns. Employees will provide written or electronic confirmation that they reviewed a copy of the Company's Code of Business Conduct and Ethics.
2. Employees working in functions related to finance or accounting shall be required and/or recommended, as appropriate, to participate in continuing professional education programs regarding compliance with GAAP deemed important to the Company's business.
  3. The Company will reimburse the employees for reasonable costs incurred for attending such continuing educational programs. Employees participating in such continuing professional education programs will provide a written or electronic acknowledgment attesting that he or she participated.
  4. At least annually, one or more members of the Company's senior management shall personally visit the Company's international production facilities.
  5. The Company shall conduct formal, documented exit interviews of all senior management, including at its international production facilities, except when eliminating positions or terminating someone for cause.

#### H. Audit Committee Functions

1. The Audit Committee Charter shall be amended to specifically extend the Audit Committee's oversight to the Company's Internal Audit function.
2. The Audit Committee shall undertake the following duties:
  - a. Review and concur with the appointment, replacement, reassignment, or dismissal of senior Internal Audit personnel, including the SDIA.

- b. Consider, in consultation with the SDIA and senior Internal Audit personnel, the scope and plan of the internal audit.
- c. Review with the SDIA and senior Internal Audit personnel and the Company's independent auditor the coordination of audit efforts with the objective of achieving completeness of coverage, reduction of redundant efforts, and the effective use of audit resources.
- d. Consider and review with the SDIA and senior Internal Audit personnel (i) significant findings during the year and management's responses thereto; (ii) any difficulties encountered in the course of their audits, including any restrictions on the scope of their work or access to required information; (iii) any changes required in the planned scope of their audit plan, and (iv) the Internal Audit department budget and staffing.
- e. Review with the Chief Financial Officer and Principal Accounting Officer and the independent auditors the sufficiency and quality of the Internal Audit staff and other financial and accounting personnel of the Company.
- f. Continue its practice of meeting with the SDIA, senior Internal Audit personnel, the CFO and the Principal Accounting Officer in executive session at the conclusion of the annual audit.
- g. Continue its practice of discussing with the independent auditor the matters required to be discussed under the standards of the Public Company Accounting Oversight Board [Item 407(d)(3)(i)(B) of Regulation S-K].



- h. Continue its practice of overseeing, reviewing, and periodically updating the Company's Code of Business Conduct and Ethics and the Company's procedures to monitor compliance with and enforcement thereof.
  - i. Continue its practice of discussing, with the independent auditor, the SDIA, the CFO, the Principal Accounting Officer and management the extent to which changes or improvements in financial or accounting practices have been implemented.
  - j. Review policies and procedures on executive expense accounts and perquisites, including the use of company assets, and consider the results of any work in these areas by the internal or the external auditor.
- 3. The Audit Committee Charter, Section B, "Independent Auditor," shall be amended to include as a required item for discussion with the independent auditor the adequacy of the Company's internal controls worldwide..
- 4. The Audit Committee Charter, Section B, "Independent Auditor," shall be amended to require the Audit Committee to obtain from the independent auditor annually a report on any significant deficiencies or material weaknesses identified in the audit of the consolidated financial statements of SunPower Corporation and its subsidiaries worldwide.
- 5. The "Risk Oversight" portion of the Audit Committee Charter shall be amended to add a provision that the Audit Committee must consider accounting and financial reporting risks to the Company inherent in the Company's business worldwide.

I. Revision of Insider Trading Policy

1. The “Pre-Clearance of Trades” provision of the Insider Trading Policy shall be modified to appoint the Company’s General Counsel or, if the General Counsel is unavailable, the General Counsel’s delegate, as the sole source for the pre-clearance authorization of all trades covered by the Insider Trading Policy.
2. The Company’s General Counsel shall provide a report annually to the Audit Committee of the insider trading activity of all directors and Section 16 officers.

J. Lead Independent Director Duties

1. The Company shall revise its Corporate Governance Principles to specify the following additional duties for the Lead Independent Director:
  - a. Coordinate the scheduling of board meetings and dissemination of related agenda materials for board meetings and executive sessions of the board’s independent or non-management directors.
  - b. Assist the board and management in their efforts regarding compliance with implementation of the Company’s Corporate Governance Principles.
  - c. Act as the principal liaison between the independent directors and the CEO on sensitive issues.
  - d. Be available for communications with shareholders.
  - e. Consult with board committee chairs, as requested, in fulfilling their designated roles and responsibilities to the board.
2. The Company’s Proxy Statement shall include a written statement explaining why the combined CEO/Chairman position as currently structured is in the best interests of shareholders.

#### K. D&O Insurance

1. The Company's Nominating and Corporate Governance Committee shall oversee a periodic review of all D&O insurance policies, including A, B, and C coverage, purchased by SunPower for the Company, its senior management, and its board of directors, and assess the sufficiency of coverage.

#### L. Board Composition

1. The board of directors shall appoint a third independent director to join the board of directors and Audit Committee no later than September 1, 2013.

### **II. Existing Reforms Enacted Following Filing of the Shareholder Derivative Actions.**

SunPower adopted the following corporate governance procedures after the filing of the shareholder derivative actions beginning in December 2009. All such procedures shall be maintained for a period of three (3) years, whereafter the procedures may be eliminated upon a majority vote of the Board of Directors, or until the Company's common stock is no longer publicly traded, whichever occurs first.

#### A. Improvements to Existing Corporate Governance Principles

1. SunPower added a "Lead Independent Director" provision (Corporate Governance Principles, Item 3), which facilitates communication between management and the independent directors. (The duties of the Lead Independent Director as currently described in Item 3 will be revised, as detailed above.).
2. SunPower modified the "Board Membership Criteria and Selection" provision (Corporate Governance Principles, Item 19) to identify eight specific criteria to be used by the Nominating and Corporate Governance Committee in its evaluation of director nominees.

3. SunPower supplemented the “Board Membership Criteria and Selection” provision (Corporate Governance Principles, Item 19) to include a provision that the Nominating and Corporate Governance Committee will evaluate an incumbent director’s performance in connection with a nomination to re-elect the director.
4. SunPower supplemented the “Formal Evaluation and Compensation of the CEO and Other Executive Officers” provision (Corporate Governance Principles, Item 25) to require that the Compensation Committee’s annual CEO performance and compensation review will be communicated to the CEO by the Lead Independent Director.
5. SunPower adopted a provision requiring affirmative action by the disinterested members of the Audit Committee before waiving any provision of the Code of Business Conduct and Ethics.

B. Improvements to Existing Code of Business Conduct and Ethics

1. SunPower supplemented the “Reporting Illegal or Unethical Conduct and Asking Questions About the Code” provision (Code of Business Conduct and Ethics, Item 13) to include instructions on where and how employees may report concerns with legal or ethical issues they face on the job.
2. SunPower established the Compliance and Ethics Helpline (“Helpline”) that is available for reporting (anonymously, if desired) by employees 24 hours a day, seven days a week. The Helpline is administered by a third party administrator. All Helpline reports are forwarded to the Company’s Legal Department.

3. SunPower created new Attachment 1 to the Code of Business Conduct and Ethics, which provides a list of Helpline website addresses and telephone numbers for employees to use in each country in which the Company maintains operations.
4. SunPower supplemented the “Disclosures and Controls” provision (Code of Business Conduct and Ethics, Item 16) to provide that the Audit Committee will be notified of complaints made to the Helpline regarding disclosures and controls.
5. SunPower designated its General Counsel as the authority with day-to-day responsibility for the oversight and management of the Code of Business Conduct and Ethics, who shall report to the CEO and the Audit Committee regarding (a) implementation and effectiveness of the code and (b) instances of any criminal conduct or potential criminal conduct (the “Accountability for Adherence to this Code of Business Conduct and Ethics” provision, Code of Business Conduct and Ethics, Item 17).

C. Improvements to Existing Whistleblower Policy

1. SunPower supplemented the “Policy” statement of the Whistleblower Policy Regarding Accounting and Auditing Matters to provide that the Audit Committee encourages employees to report instances of fraud to the Helpline, which reports will then be forwarded to the Legal Department and the Audit Committee.
2. SunPower supplemented Attachment 1 to the Whistleblower Policy Regarding Accounting and Auditing Matters, which instructs employees on how to use the new Helpline to report legal or ethical issues, and advises them that any reports will be provided to the Legal Department and the Audit Committee.

3. SunPower adopted Attachment 2 to the Whistleblower Policy Regarding Accounting and Auditing Matters, which provides Helpline web addresses and telephone numbers for employees to use in each country in which the Company maintains operations.

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9 Co-Lead Counsel for Plaintiffs

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 IN RE SUNPOWER CORPORATION )  
SHAREHOLDER DERIVATIVE )  
14 LITIGATION )

Lead Case No. 1:09-CV-158522

(Consolidated with Case No. 1:09-CV-159022)

15 This Document Relates To: )

[PROPOSED] ORDER PRELIMINARILY  
APPROVING DERIVATIVE SETTLEMENT  
AND PROVIDING FOR NOTICE

16 ALL ACTIONS )

17 Judge: Hon. James P. Kleinberg  
Dept: 1

18  
19 **EXHIBIT B**  
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1 WHEREAS the State Plaintiffs, on behalf of all Settling Parties, have made an application for an  
2 order: (i) preliminarily approving the proposed Settlement of the above-captioned shareholder  
3 derivative action (the “State Action”) in accordance with the Stipulation and Agreement of Settlement  
4 dated \_\_\_\_\_, 2013 and the exhibits thereto (the “Stipulation”)<sup>1</sup>, and (ii) approving for  
5 dissemination of the Notice to current SunPower Shareholders (the “Notice”);

6 WHEREAS, the Stipulation sets forth the terms and conditions for the settlement, including but  
7 not limited to: (i) corporate government reforms to be implemented and/or maintained by SunPower;  
8 (ii) dismissal of the State Action with prejudice; (iii) a Fee and Expense Amount to Plaintiffs’ Counsel  
9 in the Actions, upon the terms and conditions set forth in the Stipulation; and (iv) the request, upon  
10 timely application, for Incentive Amounts for each of the Plaintiffs to be paid out of the Fee and  
11 Expense Amount;

12 WHEREAS, the Settlement appears to be the product of serious, informed, arm’s-length  
13 negotiations and falls within the range of possible approval;

14 WHEREAS, this Court, having considered the Stipulation and the exhibits annexed thereto:

15 NOW THEREFORE, IT IS HEREBY ORDERED:

16 1. This Court does hereby preliminarily approve, subject to further consideration at the  
17 Settlement Hearing described below, the Stipulation and the Settlement, including the terms and  
18 conditions for the proposed settlement and dismissal of the State Action with prejudice.

19 2. A hearing (the “Settlement Hearing”) shall be held before this Court on \_\_\_\_\_  
20 \_\_\_\_\_, at \_\_\_\_\_, in the Superior Court of the State of California, Santa Clara County, the  
21 Honorable James P. Kleinberg, Department 1, located at 191 North First Street, San Jose, CA 95113, to  
22 finally determine whether:

23 (a) the terms and conditions of the Settlement are fair, reasonable, adequate, and in  
24 the best interests of SunPower and Current SunPower Shareholders (as defined in the Stipulation);

25 (b) the Judgment as provided for in ¶1.10 of the Stipulation should be entered;  
26 \_\_\_\_\_

27 <sup>1</sup> All capitalized terms contained herein shall have the same meanings as set forth in the  
28 Stipulation (in addition to those capitalized terms defined herein).



1 (c) to award the Fee and Expense Amount to Plaintiffs' Counsel; and  
2 (d) to award the Incentive Amounts to the Plaintiffs, payable from the Fee and  
3 Expense Amount.

4 3. The Court approves, as to form and content, the Notice of Derivative Settlement annexed  
5 to the Stipulation as Exhibit C, and the Summary Notice of Derivative Settlement annexed to the  
6 Stipulation as Exhibit D, and finds that the posting of the Stipulation and Notice, the publication of the  
7 Summary Notice in *Investor's Business Daily*, substantially in the manner and form set forth in ¶1.12 of  
8 the Stipulation, and the posting of the Notice and Stipulation on Plaintiff Counsel's websites meets the  
9 requirements of due process and applicable law and constitutes due and sufficient notice to all Persons  
10 entitled thereto of all matters relating to the Settlement.

11 4. Within ten (10) calendar days following entry of this Preliminary Approval Order,  
12 SunPower shall cause the Notice of Derivative Settlement and the Stipulation to be posted on the  
13 Investor Relations section of its website. The website posting shall be maintained through the date of  
14 the Settlement Hearing. Within ten (10) calendar days following entry of this Preliminary Approval  
15 Order, SunPower shall cause a copy of the Notice of Derivative Settlement to be filed with the  
16 Securities and Exchange Commission (the "SEC") via a Current Report on Form 8-K (a "Form 8-K").

17 5. Within ten (10) calendar days following entry of this Preliminary Approval Order,  
18 SunPower shall cause the Summary Notice of Derivative Settlement to be published once in *Investor's*  
19 *Business Daily*.

20 6. All costs incurred in the posting of the Notice and the Stipulation on SunPower's  
21 website, filing of the Notice on a Form 8-K with the SEC, and publication of the Summary Notice shall  
22 be paid by SunPower or its insurer(s), and SunPower shall undertake all administrative responsibility  
23 for such posting, filing, and publishing.

24 7. At least seven (7) calendar days prior to the Settlement Hearing, SunPower's counsel  
25 shall file with the Court and serve on all Settling Parties proof, by affidavit or declaration, of such  
26 posting, filing, and publishing of the Notice in accordance with ¶6 of the Stipulation.

27 8. All Current SunPower Shareholders shall be subject to and bound by the provisions of  
28 the Stipulation and the releases contained therein, and by all orders, determinations, and judgments in

1 the State Action concerning the Settlement, whether favorable or unfavorable to Current SunPower  
2 Shareholders.

3 9. Pending final determination of whether the Settlement should be approved, State  
4 Plaintiffs, Federal Plaintiffs, Delaware Plaintiff and Current SunPower Shareholders shall not  
5 commence or prosecute against any of the Released Persons any action or proceeding in any court or  
6 tribunal asserting any of the Released Claims.

7 10. All papers in support of the Settlement, the Fee and Expense Amount, and the Incentive  
8 Amounts shall be filed with the Court and served at least sixteen (16) court days prior to the Settlement  
9 Hearing, any opposition papers shall be filed with the Court and served at least nine (9) court days prior  
10 to the Settlement Hearing, and any reply papers shall be filed with the Court and served at least five (5)  
11 court days prior to the Settlement Hearing.

12 11. Any Current SunPower Shareholders may appear and show cause, if he, she, or it has  
13 any reason why the terms of the Settlement should not be approved as fair, reasonable, and adequate, or  
14 why a judgment should not be entered thereon, or why the Fee and Expense Amount or Incentive  
15 Amounts should not be approved; provided, however, unless otherwise ordered by the Court, no  
16 Current SunPower Shareholders shall be heard or entitled to contest the approval of all or any of the  
17 terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving  
18 the same, or the Fee and Expense Amount or Incentive Amounts, unless that Person has, at least nine  
19 (9) court days prior to the Settlement Hearing, filed with the Clerk of the Court and served on the  
20 following counsel (delivered by hand or sent by first class mail) appropriate proof of stock ownership,  
21 along with written objections, including the basis therefore, and copies of any papers and briefs in  
22 support thereof:

23 Kip B. Shuman  
24 Rusty E. Glenn  
25 THE SHUMAN LAW FIRM  
26 885 Arapahoe Ave.  
27 Boulder, CO 80302  
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Facsimile: (303) 484-4886

Co-Lead Counsel for State Plaintiffs

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2 Judson E. Lobdell  
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4 425 Market Street  
5 San Francisco, CA 94105  
6 Telephone: (415) 268-7000  
7 Facsimile: (415) 268-7522

8 Counsel for SunPower Corporation and Individual Defendants W. Steve Albrecht, Betsy S. Atkins,  
9 Pat Wood III, Thomas R. McDaniel, Thomas H. Werner, T.J. Rodgers, Uwe-Ernst Bufe, Dennis  
10 Arriola, Emmanuel Hernandez, John B. Rodman.

11 Sara B. Brody  
12 SIDLEY AUSTIN LLP  
13 555 California Street, Suite 2000  
14 San Francisco, CA 94104  
15 Telephone: (415) 772-1279  
16 Facsimile: (415) 772-7400

17 Counsel for Individual Defendant Mariano M. Trinidad

18 The written objections and copies of any papers and briefs in support thereof to be filed in Court  
19 shall be delivered by hand or sent by first class mail to:

20 Clerk of the Court  
21 SUPERIOR COURT OF CALIFORNIA  
22 191 North First Street  
23 San Jose, CA 95113

24 Any Current SunPower Shareholder who does not make his, her, or its objection in the manner  
25 provided herein shall be deemed to have waived such objection and shall forever be foreclosed from  
26 making any objection to the fairness, reasonableness, or adequacy of the Settlement n and to the Fee  
27 and Expense Amount and Incentive Amounts, unless otherwise ordered by the Court, but shall  
28 otherwise be bound by the Final Judgment to be entered and the releases to be given.

12. Neither the Stipulation nor the Settlement, nor any act performed or document executed  
pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may  
be offered, attempted to be offered or used in any way by the Settling Parties or any other Person as a  
presumption, a concession or an admission of, or evidence of, any fault, wrongdoing or liability of the  
Settling Parties or of the validity of any Released Claims; or (b) is intended by the Settling Parties to be  
offered or received as evidence or used by any other person in any other actions or proceedings,

1 whether civil, criminal or administrative. The Released Persons may file the Stipulation and/or the  
2 Final Judgment in any action that may be brought against them in order to support a defense or  
3 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,  
4 standing, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or  
5 issue preclusion or similar defense or counterclaim; and any of the Settling Parties may file the  
6 Stipulation and documents executed pursuant and in furtherance thereto in any action to enforce the  
7 Settlement.

8 13. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any  
9 other dates set forth herein without further notice to Current SunPower Shareholders, and retains  
10 jurisdiction to consider all further applications arising out of or connected with the Settlement.

11  
12 IT IS SO ORDERED.

13 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JAMES A. KLEINBERG  
SUPERIOR COURT JUDGE

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15 Submitted by:  
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1 THE SHUMAN LAW FIRM  
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9 Co-Lead Counsel for Plaintiffs

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 IN RE SUNPOWER CORPORATION )  
SHAREHOLDER DERIVATIVE )  
14 LITIGATION )

Lead Case No. 1:09-CV-158522

(Consolidated with Case No. 1:09-CV-159022)

15 This Document Relates To: )

NOTICE OF DERIVATIVE SETTLEMENT

16 ALL ACTIONS )  
17 )

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19 EXHIBIT C  
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1 TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS  
2 OF COMMON STOCK OF SUNPOWER CORPORATION  
3 ("SUNPOWER" OR THE "COMPANY") AS OF \_\_\_\_\_, 2013 ("CURRENT  
4 SUNPOWER SHAREHOLDERS"). PLEASE READ THIS NOTICE  
5 CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE  
6 AFFECTED. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT  
7 AND DISMISSAL OF SHAREHOLDER DERIVATIVE LITIGATION AND  
8 CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS.  
9 YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS  
10 ACTION (THE "STATE ACTION").

11 IF THE COURT APPROVES THE SETTLEMENT AND DISMISSAL OF  
12 THE STATE ACTION, SHAREHOLDERS OF SUNPOWER MAY BE  
13 FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE  
14 PROPOSED SETTLEMENT AND FROM PURSUING THE RELEASED  
15 CLAIMS. THIS ACTION IS NOT "CLASS ACTION" LITIGATION. THUS,  
16 THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A  
17 CLAIM FOR A MONETARY PAYMENT.

18 THE COURT HAS MADE NO FINDINGS OR DETERMINATIONS  
19 RESPECTING THE MERITS OF THE STATE ACTION. THE  
20 RECITATION OF THE BACKGROUND AND CIRCUMSTANCES OF THE  
21 SETTLEMENT CONTAINED HEREIN DOES NOT CONSTITUTE THE  
22 FINDINGS OF THE COURT. IT IS BASED ON REPRESENTATIONS  
23 MADE TO THE COURT BY COUNSEL FOR THE SETTLING PARTIES.

24 PLEASE TAKE NOTICE that the State Action, as well as certain related putative  
25 shareholder derivative actions, are being settled on the terms set forth in a Stipulation and  
26 Agreement of Settlement dated \_\_\_\_\_, 2013 (the "Stipulation").<sup>1</sup>

27 **I. SUMMARY OF THE ACTIONS BY SETTLING SHAREHOLDERS**

28 **A. The Actions**

The first of three state derivative actions was commenced on December 1, 2009 which were  
subsequently consolidated into *In re SunPower Corp. Shareholder Derivative Litigation* in  
California Superior Court, Santa Clara County, Case No. 1:09-CV-158522 ("State Action"). On  
December 4, 2009, the first of two federal derivative actions was commenced which were

<sup>1</sup> This notice should be read in conjunction with the Stipulation, which has been filed with the  
Court and posted at the investor relations portion of SunPower's website,  
investors.sunpowercorp.com. All capitalized terms herein have the same meanings as set forth in  
the Stipulation.

1 consolidated into *In re SunPower Corp. Shareholder Derivative Litigation* in the United States  
2 District Court for the Northern District of California, Case No. CV-09-5731-RS (“Federal Action”).  
3 On April 20, 2010, Delaware Plaintiff Melvin J. Brenner served an inspection demand pursuant to 8  
4 Del. C. § 220, and after negotiations with the Company, received certain relevant documents,  
5 including minutes of SunPower’s Board and Audit Committee from January 2008 through March  
6 2010. On May 23, 2011, the Delaware Plaintiff commenced the action captioned *Brenner v. W.*  
7 *Steve Albrecht, et al.*, C.A. No. 6514-VCP in Delaware Chancery Court (“Delaware Action”).  
8 Collectively, these derivative lawsuits are referred to herein as the “Actions.”

9 Each of the Actions alleges breach of fiduciary duty and insider trading claims on behalf of  
10 SunPower against the Individual Defendants. The Actions allege the Individual Defendants  
11 breached their fiduciary duties, which allegedly resulted in a material accounting restatement.  
12 Plaintiffs further allege that the Individual Defendants failed to disclose a series of manual journal  
13 entries and other accounting adjustments made in connection with overseas manufacturing facilities  
14 designed to understate SunPower’s expenses and work-in-process inventory and thereby artificially  
15 inflated the Company’s income and earnings per share. Plaintiffs allege that while failing to  
16 disclose the accounting irregularities, certain of the Individual Defendants sold approximately  
17 239,713 shares of SunPower stock.

18 On November 16, 2009, SunPower disclosed that there had been unsubstantiated accounting  
19 entries in connection with its Philippines operations. On March 19, 2010, SunPower filed a  
20 Securities and Exchange Commission (“SEC”) Form 10-K that restated the Company’s financial  
21 statements for the entire 2008 fiscal year and the first three fiscal quarters in 2009.

22 Plaintiffs alleged that these acts (which are described in more detail in the Stipulation) were  
23 the result of the Individual Defendants’ breaches of their fiduciary duties to SunPower and caused  
24 harm to the Company. As discussed herein and more fully in the Stipulation, this proposed  
25 Settlement resolves certain claims related to these events.

## 1       **II.       SUMMARY OF SETTLEMENT AND SETTLEMENT NEGOTIATIONS**

2           Counsel for the Settling Parties engaged in extensive efforts to resolve the Actions, as  
3 detailed in the Stipulation.

4           Specifically, in April 2013, the Settling Parties began a dialogue regarding the possible  
5 resolution of the Actions. A mediation was scheduled for May 9, 2013 before Mr. Jed Melnick of  
6 JAMS. On April 12, 2013, the Settling Parties held a pre-mediation telephone conference with Mr.  
7 Melnick. On April 17, 2013, Plaintiffs' Counsel sent a demand for corporate governance reforms to  
8 Defendants' Counsel Morrison & Foerster LLP to be adopted by SunPower in connection with a  
9 settlement of the Actions. On May 3, 2013, Plaintiffs' Counsel submitted a joint mediation  
10 statement to Mr. Melnick, including an extensive discussion of the claims and the documents  
11 provided to Plaintiffs by Defendants. Prior to the May 9, 2013 mediation, the Settling Parties  
12 continued to negotiate the terms of the corporate governance reforms and exchanged drafts thereof.  
13 Despite the Settling Parties' work at the full-day mediation session on May 9, 2013, the Actions did  
14 not settle at that time. However, with Mr. Melnick's assistance, an agreement in principle to  
15 resolve the claims was subsequently reached. After the substantive relief in the form of the  
16 corporate governance reforms was negotiated, the Settling Parties negotiated the attorneys' fees and  
17 expenses to be paid to Plaintiffs' Counsel.  
18

19           In addition to corporate governance reforms previously implemented by SunPower,  
20 SunPower will adopt, within 60 days of final approval of the Settlement, the following corporate  
21 governance procedures. All such procedures shall be maintained for three (3) years, whereafter the  
22 procedures may be eliminated upon a majority vote of the Board of Directors, or until the  
23 Company's common stock is no longer publicly traded, whichever occurs first. SunPower's Board  
24 of Directors acknowledges that the following corporate governance procedures were implemented,  
25 modified, and/or are being maintained in response to the pending shareholder derivative actions.  
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1                   A. Senior Internal Audit Professional

2                   1.       The Company shall maintain a senior management position within the  
3                   Internal Audit Department, at least at the Senior Director level, currently held by the  
4                   Senior Director, Internal Audit (“SDIA”).

5                   2.       The SDIA will report directly to the Audit Committee and  
6                   administratively to the CFO. The SDIA will act as the principal liaison between the  
7                   Internal Audit Department and the Audit Committee.

8                   3.       The risks associated with the financial reporting-related functions in  
9                   the Company’s international production facilities will be assessed and, to the extent  
10                  appropriate, prioritized in the Company’s internal audit plan.

11                  4.       The Company shall revise its Code of Business Conduct and Ethics to  
12                  state that the SDIA will share with the General Counsel responsibility for the  
13                  oversight and management of the Company’s Code of Business Conduct and Ethics.

14                  5.       The Company shall revise its Code of Business Conduct and Ethics to  
15                  state that the SDIA shall be designated as an additional recipient of all reports  
16                  generated by the Company’s Whistleblower policy and Compliance and Ethics  
17                  Helpline.

18                   B. International Compliance

19                   1.       The Internal Audit responsibilities shall include an annual assessment  
20                   of internal controls worldwide, as part of the Company’s Sarbanes-Oxley compliance  
21                   program, governing manual journal entries, accounting for costs of goods sold  
22                   (COGS), inventory, and all other material financial reporting-related functions.

23                   2.       The Company shall continue to maintain documented processes for  
24                   capitalizing manufacturing variances and train responsible employees on the proper  
25                   methods throughout the organization, including with respect to all international  
26                   operations.

27                   C. Director Time Commitments

28                   1.       The Company shall revise its Corporate Governance Principles to  
29                   state that a director who also serves as the CEO of the Company should not serve on  
30                   more than two (2) other public company boards absent consent from the Nominating  
31                   and Corporate Governance Committee, and in no event more than three (3) other  
32                   public company boards.

33                   2.       The Company shall revise its Corporate Governance Principles to  
34                   state that directors other than the CEO should not serve on more than six (6) other  
35                   public company boards.

36                   D. Director Education and Information

37                   1.       The Company will make available to the directors continuing  
38                   education programs designed for directors of publicly-traded companies. Such  
39                   programs should be selected by SunPower’s General Counsel, and shall focus on  
40                   areas such as compliance with Generally Accepted Accounting Principles in the

United States of America (“GAAP”), the Sarbanes-Oxley Act of 2002, and public company reporting and compliance requirements.

2. The Company will, consistent with its Corporate Governance Principles, continue to reimburse the directors for reasonable costs incurred for attending continuing education programs designed for directors of publicly-traded companies.

3. The Company shall revise its Corporate Governance Principles to recommend that each independent director attend at least six (6) hours per year of continuing education programs.

4. Management shall provide training to new directors to familiarize them with the Company’s business operations and financial reporting worldwide, and will provide periodic training on these issues to all board members. This additional training will satisfy, in whole or part, the recommended six hours of additional director education referenced in paragraph D.3.

5. SunPower’s General Counsel shall disseminate written materials to all SunPower directors on an annual basis outlining recent legal decisions and developments, if any, germane to the directors’ fulfillment of their fiduciary duties.

6. The Audit Committee shall receive a report identifying key risks to the Company’s business worldwide.

#### E. Compensation Evaluation

1. At least once every three (3) years, the Compensation Committee shall retain an independent consultant to (a) conduct a comparative study of the Company’s executive compensation policies relative to comparable public companies, and (b) propose any improvements to these policies. The study prepared by such consultant shall be presented to the Compensation Committee at a regularly scheduled meeting.

2. In conducting evaluations and determining executive compensation, the Compensation Committee will evaluate the commitment of senior management to ethics and compliance as a component of the executive’s performance review.

#### F. Forfeiture of Bonuses and Profits for Restatement

1. In the event that the Company restates its financial statements filed with the SEC, the Board shall consider whether it is appropriate for the Company to demand, and if appropriate shall cause the Company to demand, reimbursement, in whole or in part, of any annual incentive payment or long-term incentive payment to an executive officer where: (1) the payment was predicated upon achieving certain financial results that were subsequently the subject of the restatement; (2) the Board determines the executive officer engaged in intentional or reckless misconduct that caused the need for the restatement; and (3) a lower payment would have been made to the executive based upon the restated financial results. For purposes of this policy, the term “executive officer” means any officer who has been designated an executive officer by the Board.

#### G. Employee Training Regarding Business Conduct and Ethics Compliance and GAAP

1. The Company will maintain its training program for all employees, including employees in its manufacturing facilities around the world, regarding the Company's Code of Business Conduct and Ethics and availability of the Company's Whistleblower Hotline, and will provide such training on a bi-annual basis. The training program will advise employees that the Company will not permit retaliation against any employee reporting concerns. Employees will provide written or electronic confirmation that they reviewed a copy of the Company's Code of Business Conduct and Ethics.

2. Employees working in functions related to finance or accounting shall be required and/or recommended, as appropriate, to participate in continuing professional education programs regarding compliance with GAAP deemed important to the Company's business.

3. The Company will reimburse the employees for reasonable costs incurred for attending such continuing educational programs. Employees participating in such continuing professional education programs will provide a written or electronic acknowledgment attesting that he or she participated.

4. At least annually, one or more members of the Company's senior management shall personally visit the Company's international production facilities.

5. The Company shall conduct formal, documented exit interviews of all senior management, including at its international production facilities, except when eliminating positions or terminating someone for cause.

#### H. Audit Committee Functions

1. The Audit Committee Charter shall be amended to specifically extend the Audit Committee's oversight to the Company's Internal Audit function.

2. The Audit Committee shall undertake the following duties:

a. Review and concur with the appointment, replacement, reassignment, or dismissal of senior Internal Audit personnel, including the SDIA.

b. Consider, in consultation with the SDIA and senior Internal Audit personnel, the scope and plan of the internal audit.

c. Review with the SDIA and senior Internal Audit personnel and the Company's independent auditor the coordination of audit efforts with the objective of achieving completeness of coverage, reduction of redundant efforts, and the effective use of audit resources.

d. Consider and review with the SDIA and senior Internal Audit personnel (i) significant findings during the year and management's responses thereto; (ii) any difficulties encountered in the course of their audits, including any restrictions on the scope of their work or access to required information; (iii) any changes required in the planned scope of their audit plan, and (iv) the Internal Audit department budget and staffing.

e. Review with the Chief Financial Officer and Principal Accounting Officer and the independent auditors the sufficiency and quality of the Internal Audit staff and other financial and accounting personnel of the Company.

f. Continue its practice of meeting with the SDIA, senior Internal Audit personnel, the CFO and the Principal Accounting Officer in executive session at the conclusion of the annual audit.

g. Continue its practice of discussing with the independent auditor the matters required to be discussed under the standards of the Public Company Accounting Oversight Board [Item 407(d)(3)(i)(B) of Regulation S-K].

h. Continue its practice of overseeing, reviewing, and periodically updating the Company's Code of Business Conduct and Ethics and the Company's procedures to monitor compliance with and enforcement thereof.

i. Continue its practice of discussing, with the independent auditor, the SDIA, the CFO, the Principal Accounting Officer and management the extent to which changes or improvements in financial or accounting practices have been implemented.

j. Review policies and procedures on executive expense accounts and perquisites, including the use of company assets, and consider the results of any work in these areas by the internal or the external auditor.

3. The Audit Committee Charter, Section B, "Independent Auditor," shall be amended to include as a required item for discussion with the independent auditor the adequacy of the Company's internal controls worldwide.

4. The Audit Committee Charter, Section B, "Independent Auditor," shall be amended to require the Audit Committee to obtain from the independent auditor annually a report on any significant deficiencies or material weaknesses identified in the audit of the consolidated financial statements of SunPower Corporation and its subsidiaries worldwide.

5. The "Risk Oversight" portion of the Audit Committee Charter shall be amended to add a provision that the Audit Committee must consider accounting and financial reporting risks to the Company inherent in the Company's business worldwide.

I. Revision of Insider Trading Policy

1. The "Pre-Clearance of Trades" provision of the Insider Trading Policy shall be modified to appoint the Company's General Counsel or, if the General Counsel is unavailable, the General Counsel's delegate, as the sole source for the pre-clearance authorization of all trades covered by the Insider Trading Policy.

2. The Company's General Counsel shall provide a report annually to the Audit Committee of the insider trading activity of all directors and Section 16 officers.

J. Lead Independent Director Duties

1. The Company shall revise its Corporate Governance Principles to specify the following additional duties for the Lead Independent Director:

a. Coordinate the scheduling of board meetings and dissemination of related agenda materials for board meetings and executive sessions of the board's independent or non-management directors.

b. Assist the board and management in their efforts regarding compliance with implementation of the Company's Corporate Governance Principles.

1 c. Act as the principal liaison between the independent directors and the  
CEO on sensitive issues.

2 d. Be available for communications with shareholders.

3 e. Consult with board committee chairs, as requested, in fulfilling their  
designated roles and responsibilities to the board.

4 2. The Company's Proxy Statement shall include a written statement  
5 explaining why the combined CEO/Chairman position as currently structured is in  
the best interests of shareholders.

6 K. D&O Insurance

7 1. The Company's Nominating and Corporate Governance Committee  
8 shall oversee a periodic review of all D&O insurance policies, including A, B, and C  
9 coverage, purchased by SunPower for the Company, its senior management, and its  
board of directors, and assess the sufficiency of coverage.

10 L. Board Composition

11 1. The board of directors shall appoint a third independent director to  
12 join the board of directors and Audit Committee no later than September 1, 2013.

13 **III. REASONS FOR THE SETTLEMENT**

14  
15 Plaintiffs and SunPower believe that this Settlement is in the best interests of SunPower and  
16 Current SunPower Shareholders.

17 **A. Why Did The Plaintiffs Settle?**

18  
19 Plaintiffs' Counsel conducted an extensive investigation relating to the claims and the  
20 underlying events and transactions alleged in the Actions. Plaintiffs' Counsel have analyzed the  
21 evidence discovered during their investigation, and have researched the applicable law with respect  
22 to the potential claims of Plaintiffs, SunPower, and Current SunPower Shareholders against the  
23 Defendants, as well as the potential defenses thereto.

24 Based upon the investigation and analysis described above, Plaintiffs and their counsel have  
25 concluded that the terms and conditions of the Stipulation are fair, reasonable, and adequate to  
26 Plaintiffs, SunPower, and Current SunPower Shareholders, and in their best interests, and have  
27 agreed to settle the claims raised in the Actions pursuant to the terms and provisions of the  
28

1 Stipulation after considering, among other things: (i) the substantial benefits that SunPower and  
2 Current SunPower Shareholders have received or will receive from the Settlement; (ii) the attendant  
3 risks of continued litigation of the Actions; and (iii) the desirability of permitting the Settlement to  
4 be consummated.

5 In particular, Plaintiffs and their counsel considered the significant litigation risk inherent in  
6 the Actions. The law imposes significant burdens on plaintiffs for pleading and proving a  
7 shareholder derivative claim. While Plaintiffs believe their claims are meritorious, Plaintiffs  
8 acknowledge that there is a substantial risk that the Actions may not succeed in producing a  
9 recovery in light of the applicable legal standards and possible defenses. Plaintiffs and their counsel  
10 believe that, under the circumstances, they have obtained the best possible relief for SunPower and  
11 for Current SunPower Shareholders.

#### 12 **B. Why Did Defendants Agree To Settle?**

13  
14 The Defendants deny each and every allegation of wrongdoing or liability made against  
15 them in the Actions. The Defendants further assert that, at all times, they acted in good faith, and in  
16 a manner they reasonably believed to be and that was in the best interests of SunPower and  
17 SunPower's shareholders. The Defendants assert that they have meritorious defenses to the claims  
18 in the Actions, and that judgment should be entered dismissing all claims against them with  
19 prejudice. Nonetheless, the Defendants have entered into the Stipulation to avoid the continuing  
20 additional expense, inconvenience, and distraction of this litigation and to avoid the risks inherent in  
21 any lawsuit, and without admitting any wrongdoing or liability whatsoever.

#### 22 **IF YOU ARE A CURRENT SUNPOWER SHAREHOLDER, YOUR RIGHTS** 23 **MAY BE AFFECTED BY PROCEEDINGS IN THE STATE ACTION.**

24 As detailed in the Stipulation at ¶1.17, the Settlement, once approved by the Court, provides  
25 for the release of certain claims as defined in the Stipulation as follows:  
26

27 "Released Claims" means any and all claims for relief (including Unknown Claims  
28 as defined below [in Stipulation at ¶1.24]), rights, demands, causes of action,

1 liabilities, debts, obligations, matters, issues and suits of any kind whatsoever,  
2 whether known or unknown, contingent or absolute, matured or unmatured,  
3 discoverable or undiscoverable, whether or not concealed or hidden, that have been,  
4 or could or might have been, or in the future might be asserted by Plaintiffs,  
5 SunPower, and/or any SunPower shareholder derivatively on behalf of SunPower  
6 against any Released Persons that are based upon or related to (i) the Actions, (ii) the  
7 facts, transactions, events, occurrences, acts, disclosures, statements, omissions or  
8 failures to act which were alleged or could or might have been alleged in the  
9 Actions; and/or (iii) the settlement of the Actions, including the payments provided  
10 for in this Stipulation, and the reasonable attorneys' fees, costs, and expenses  
11 incurred in defense thereof. Notwithstanding the foregoing, Released Claims shall  
12 not include claims to enforce the terms of this Stipulation or the Settlement. In  
addition, nothing set forth herein shall constitute a release by any Defendant of any  
insurer, reinsurer, or any other entity contracted or otherwise obligated to provide  
insurance or indemnification to any of the Released Persons of any claim arising out  
of the rights, remedies, duties or obligations provided for in any insurance policy or  
agreement, but the Effective Date shall not be contingent upon the resolution of such  
claim. Nothing set forth herein shall constitute a release by or among the Company  
and the Individual Defendants or Released Persons of the rights and obligations  
relating to indemnification or advancement of defense costs arising from the  
Company's or any of its subsidiary's, division's or related or affiliated entity's  
certificate of incorporation or bylaws, Delaware law, or any indemnification  
agreement or similar agreement.

13 Each SunPower shareholder is hereby placed on notice that the Settlement, if approved, is  
14 intended to foreclose their ability to seek legal or equitable relief from SunPower or the Individual  
15 Defendants (and certain defined persons affiliated therewith) relating to the issues alleged or the  
16 facts and circumstances set forth in the Actions. If shareholders have questions concerning the  
17 scope of the release, or its impact, they are encouraged to seek independent legal advice.

#### 18 **IV. YOUR RIGHT TO ATTEND THE SETTLEMENT HEARING**

19  
20 On \_\_\_\_\_, 2013, at \_\_\_\_\_, a hearing (the "Settlement Hearing") will be held  
21 before the Superior Court of the State of California, Santa Clara County, the Honorable James P.  
22 Kleinberg, Department 1, located at 191 North First Street, San Jose, CA 95113 to determine,  
23 among other things: (1) whether the terms of the Settlement, including an award of attorneys' fees  
24 and expenses in a total amount not to exceed \$1,000,000.00 (the "Fee and Expense Amount") to  
25 Plaintiffs' Counsel in the Actions, upon the terms and conditions set forth in the Stipulation, should  
26 be approved as fair, reasonable, and adequate; (2) whether the Actions should be dismissed and with  
27 prejudice; and (3) whether an award of \$2,000.00 (the "Incentive Amounts"), payable from the Fee  
28

1 and Expense Amount or any portion thereof awarded, should be awarded to each of the Plaintiffs in  
2 recognition for their service in the Actions.

3 Any Current SunPower Shareholder may, but is not required to, appear in person at the  
4 Settlement Hearing. ***CURRENT SUNPOWER SHAREHOLDERS WHO HAVE NO***  
5 ***OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE SETTLEMENT***  
6 ***HEARING OR TAKE ANY OTHER ACTION.*** If you want to be heard at the Settlement Hearing,  
7 then you must comply with the procedures for objecting, which are set forth below.

8 The Court has the right to change the Settlement Hearing date or time without further  
9 notice. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date and  
10 time before going to the Court.

## 11 **V. YOUR RIGHT TO OBJECT TO THE SETTLEMENT**

12  
13 You have the right to object to any aspect of the proposed Settlement. You must object in  
14 writing, and you may request to be heard at the Settlement Hearing. ***IF YOU CHOOSE TO***  
15 ***OBJECT, THEN YOU MUST COMPLY WITH THE FOLLOWING PROCEDURES.***

### 16 **A. You Must Make Detailed Objections in Writing**

17  
18 Any objections must be submitted in writing and must contain the following information:

- 19 1. your name, legal address, and telephone number;
- 20 2. proof of current ownership of SunPower common stock, including the number of  
21 shares of SunPower common stock and the date of purchase, as well as documentary evidence of  
22 when such stock ownership was acquired;
- 23 3. a detailed statement of your specific position with respect to the matters to be heard  
24 at the Settlement Hearing, including a statement of each objection being made;
- 25 4. the grounds for each objection or the reasons for your desiring to appear and to be  
26 heard;
- 27 5. written notice of whether you intend to appear at the Settlement Hearing; and



6. copies of any papers you intend to submit to the Court, along with the names of any witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony.

The Court will not consider any objection that does not substantially comply with the above requirements.

**B. You Must Timely Deliver Written Objections to the Court, Plaintiffs' Counsel, and Defendants' Counsel**

***YOUR WRITTEN OBJECTIONS MUST BE ON FILE WITH THE CLERK OF THE COURT NO LATER THAN \_\_\_\_\_, 2013. The Clerk's address is:***

Clerk of the Court  
SUPERIOR COURT OF CALIFORNIA  
191 North First Street  
San Jose, CA 95113

***YOU ALSO MUST DELIVER COPIES OF THE MATERIALS TO PLAINTIFFS' COUNSEL AND DEFENDANTS' COUNSEL SO THEY ARE RECEIVED NO LATER THAN \_\_\_\_\_, 2013. Counsel's addresses are:***

Kip B. Shuman  
Rusty E. Glenn  
THE SHUMAN LAW FIRM  
885 Arapahoe Ave.  
Boulder, CO 80302  
Telephone: (303) 861-3003  
Facsimile: (303) 484-4886

*Co-Lead Counsel for State Plaintiffs*

and

Jordan Eth  
Judson E. Lobdell  
**MORRISON & FOERSTER LLP**  
425 Market Street  
San Francisco, CA 94105

1 Telephone: (415) 268-7000  
2 Facsimile: (415) 268-7522

3 ***Counsel for SunPower Corporation and Individual Defendants W. Steve Albrecht,***  
4 ***Betsy S. Atkins, Pat Wood III, Thomas R. McDaniel, Thomas H. Werner, T.J. Rodgers,***  
5 ***Uwe-Ernst Bufo, Dennis Arriola, Emmanuel Hernandez, John B. Rodman.***

6 Sara B. Brody  
7 SIDLEY AUSTIN LLP  
8 555 California Street, Suite 2000  
9 San Francisco, CA 94104  
10 Telephone: (415) 772-1279  
11 Facsimile: (415) 772-7400

12 ***Counsel for Individual Defendant Mariano M. Trinidad***

13 The Court will not consider any objection that is not timely filed with the Court or not  
14 timely delivered to Plaintiffs' Counsel and Defendants' counsel. Any Person or entity who fails to  
15 object or otherwise request to be heard in the manner prescribed above will have waived the right to  
16 object to any aspect of the Settlement or otherwise request to be heard (including the right to  
17 appeal), and will be forever barred from raising such objection or request to be heard in this or any  
18 other related action or proceeding, but shall otherwise be bound by the Judgment to be entered and  
19 the releases given.

20 Inquiries regarding the Settlement may be made to Counsel for the Plaintiffs: Kip B.  
21 Shuman, The Shuman Law Firm, 885 Arapahoe Ave., Boulder, CO 80302, Telephone: (303) 861-  
22 3003.

23 **PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

24 DATED \_\_\_\_\_, 2013

25 BY ORDER OF THE SANTA CLARA  
26 SUPERIOR COURT

1 THE SHUMAN LAW FIRM  
KIP B. SHUMAN  
2 RUSTY E. GLENN  
885 Arapahoe Ave.  
3 Boulder, CO 80302  
Telephone: (303) 861-3003  
4 Facsimile: (303) 484-4886

5 HARWOOD FEFFER LLP  
ROBERT I. HARWOOD  
6 MATTHEW M. HOUSTON  
488 Madison Avenue, 8th Floor  
7 New York, NY 10022  
Telephone: (212) 935-7400  
8 Facsimile: (212) 753-3630

9 Co-Lead Counsel for Plaintiffs

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 IN RE SUNPOWER CORPORATION )  
SHAREHOLDER DERIVATIVE )  
14 LITIGATION )

Lead Case No. 1:09-CV-158522

(Consolidated with Case No. 1:09-CV-159022)

15 This Document Relates To: )

SUMMARY NOTICE OF DERIVATIVE  
SETTLEMENT

16 ALL ACTIONS )  
17 )

18  
19 **EXHIBIT D**  
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1       **TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF**  
2       **COMMON STOCK OF SUNPOWER CORPORATION (“SUNPOWER”) AS OF \_\_\_\_\_**  
3       **\_\_\_\_, 2013.**

4       This notice concerns the settlement of a putative shareholder derivative action entitled *In re*  
5       *SunPower Corp. Shareholder Derivative Litigation* in California Superior Court, Santa Clara County,  
6       Case No. 1:09-CV-158522 (the “State Action”), as well as certain related putative shareholder  
7       derivative actions (collectively, the “Actions”).

8       YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Superior Court of the State of  
9       California, Santa Clara County, that a hearing will be held on \_\_\_\_\_, 2014, at \_\_\_\_\_, before  
10      the Honorable James P. Kleinberg, in Dept. 1, located at 191 North First Street, San Jose, CA 95113  
11      for the purpose of determining: (1) whether the proposed settlement of the claims in the Actions should  
12      be approved by the Court as fair, reasonable, and adequate; (2) whether, thereafter, the Actions should  
13      be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement; and (3) whether  
14      the application of Plaintiffs’ Counsel for the payment of attorneys’ fees and expenses and Plaintiffs’  
15      incentive awards should be approved.

16      If you are a current record holder of SunPower common stock as of \_\_\_\_\_, 2013  
17      your rights may be affected by the settlement of the Actions. You may obtain and/or review copies  
18      of the Stipulation and Agreement of Settlement, the full Notice and all related documents during  
19      regular business hours at the offices of the Clerk of the Court, at the Investor Relations portion  
20      SunPower’s corporate website ([investors.sunpowercorp.com](http://investors.sunpowercorp.com)), or by contacting Plaintiffs’ Counsel  
21      Kip B. Shuman, The Shuman Law Firm, 885 Arapahoe Ave., Boulder, CO 80302, Telephone: (303)  
22      861-3003. These documents describe the information that must be provided and the necessary steps  
23      current record holders of SunPower common stock must take in order to make an objection to the  
24      settlement and/or to appear at the settlement hearing.

25      Any person who does not object in the manner provided for shall be deemed to have waived any  
26      objection such person had or may have had to the settlement and shall forever be barred, in these  
27      proceedings or in any other proceeding, from making any objection to or otherwise challenging the  
28      settlement of the Actions, the Stipulation and Agreement of Settlement, or any provision thereof, the  
29      Final Judgment dismissing the State Action, the application and award of attorneys’ fees and

1 reimbursement of litigation expenses, and/or any other proceedings herein, and shall have no right to  
2 appeal therefrom.

3 PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE FOR  
4 INFORMATION.

1 THE SHUMAN LAW FIRM  
KIP B. SHUMAN  
2 RUSTY E. GLENN  
885 Arapahoe Ave.  
3 Boulder, CO 80302  
Telephone: (303) 861-3003  
4 Facsimile: (303) 484-4886

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7 New York, NY 10022  
Telephone: (212) 935-7400  
8 Facsimile: (212) 753-3630

9 Co-Lead Counsel for Plaintiffs

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SANTA CLARA

13 IN RE SUNPOWER CORPORATION )  
SHAREHOLDER DERIVATIVE )  
14 LITIGATION )

Lead Case No. 1:09-CV-158522

(Consolidated with Case No. 1:09-CV-159022)

15 This Document Relates To: )

[PROPOSED] FINAL ORDER AND  
JUDGMENT

16 ALL ACTIONS )

17 Judge: Hon. James P. Kleinberg  
Dept: 1

18  
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20  
21 **EXHIBIT E**  
22  
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1 This matter came before the Court for hearing pursuant to the Order of this Court, dated  
2 \_\_\_\_\_, 2013 (the “Preliminary Approval Order”), on the application of the parties to the State  
3 Action for approval of the proposed settlement (the “Settlement”) set forth in the Stipulation and  
4 Agreement of Settlement dated \_\_\_\_\_, 2013, and the exhibits thereto (the “Stipulation”);

5 The Court has reviewed and considered all documents, evidence, objections (if any), and  
6 arguments presented in support of or against the Settlement; the Court being fully advised of the  
7 premises and good cause appearing therefore, enters this Final Order and Judgment.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9 1. This Final Order and Judgment incorporates by reference the definitions in the  
10 Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the  
11 Stipulation (in addition to those capitalized terms defined herein).

12 2. This Court has jurisdiction over the subject matter of the State Action, including all  
13 matters necessary to effectuate the Settlement, and over all Settling Parties.

14 3. The Court finds that the notice provided to Current SunPower Shareholders constituted  
15 the best notice practicable under the circumstances. The notice fully satisfied the requirements of due  
16 process.

17 4. The Court finds that, during the course of the litigation of the Actions, Defendants,  
18 Defendants’ Counsel, Plaintiffs, and Plaintiffs’ Counsel at all times complied with the requirements of  
19 California Code of Civil Procedure §128.7 and all other similar laws and/or rules governing  
20 professional conduct.

21 5. The Court finds that the terms of the Stipulation are fair, reasonable, and adequate as to  
22 each of the Settling Parties, and hereby finally approves the Stipulation in all respects, and orders the  
23 Settling Parties to perform its terms to the extent the Settling Parties have not already done so.

24 6. The State Action and all claims contained therein, as well as all of the Released Claims,  
25 are dismissed with prejudice. The Settling Parties are to bear their own costs, except as otherwise  
26 provided in the Stipulation.

27 7. Upon the Effective Date, SunPower, Plaintiffs (acting on their own behalf and  
28 derivatively on behalf of SunPower), and each of SunPower’s shareholders shall be deemed to have,

1 and by operation of this Final Order and Judgment shall have, fully, finally, and forever released,  
2 relinquished, and discharged all Released Claims (including Unknown Claims) against the Released  
3 Persons, and any and all claims arising out of, relating to, or in connection with, the defense, settlement  
4 or resolution of the Actions against the Released Persons. SunPower, Plaintiffs (acting on their own  
5 behalf and derivatively on behalf of SunPower) and each of SunPower's shareholders shall be deemed  
6 to have, and by operation of the Final Order and Judgment shall have, covenanted not to sue the  
7 Released Persons with respect to all such Released Claims, and shall be permanently barred and  
8 enjoined from instituting, commencing, or prosecuting any of the Released Claims against any of the  
9 Released Persons except to enforce the releases and other terms and conditions contained in the  
10 Stipulation and/or this Final Judgment.

11 8. Upon the Effective Date, each of the Defendants shall be deemed to have, and by  
12 operation of this Final Order and Judgment shall have, fully, finally, and forever released, relinquished,  
13 and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising  
14 out of, relating to, or in connection with, the commencement, prosecution, assertion, settlement, or  
15 resolution of the Actions or the Released Claims. Nothing herein shall in any way impair or restrict the  
16 rights of any of the Settling Parties to enforce the terms of the Stipulation.

17 9. The Court hereby approves the Fee and Expense Amount in accordance with the  
18 Stipulation and finds that the Fee and Expense Amount is fair and reasonable. The Court hereby  
19 approves the Incentive Amounts for which application was made in connection with the Settlement  
20 Hearing.

21 10. Neither the Stipulation (including any exhibits attached thereto), nor the Settlement, nor  
22 any act performed or document executed pursuant to or in furtherance of the Stipulation or the  
23 Settlement: (a) is or may be deemed to be or may be offered, attempted to be offered, or used in any  
24 way by the Settling Parties as a presumption, a concession or an admission of, or evidence of, the  
25 validity or invalidity of any claim or defense or of any liability or wrongdoing whatsoever; or (b) is or  
26 may be deemed to be or may be used as a presumption, concession, admission or evidence of any  
27 liability, fault, or omission of any of the Released Persons in any civil, criminal, or administrative  
28 proceeding in any court, administrative agency, or other tribunal. Neither the Stipulation nor the



1 Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation  
2 or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of  
3 the Settlement, and except that the Released Persons may file the Stipulation and/or this Final Order and  
4 Judgment in any action that may be brought against them in order to support a defense or counterclaim  
5 based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith  
6 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or  
7 similar defense or counterclaim. The Settling Parties may file the Stipulation and documents executed  
8 pursuant and in furtherance thereto in any action to enforce the Settlement.

9 11. Without affecting the finality of this Final Order and Judgment in any way, this Court  
10 hereby retains continuing jurisdiction with respect to implementation and enforcement of the terms of  
11 the Stipulation, the Settlement provided for therein, and the provisions of this Final Order and  
12 Judgment.

13 12. In the event that the Settlement does not become effective in accordance with the terms  
14 of the Stipulation, this Final Order and Judgment shall be vacated and rendered null and void, and all  
15 orders entered and releases delivered in connection with the Stipulation and this Final Order and  
16 Judgment shall be null and void, except as otherwise provided for in the Stipulation.

17 13. This Final Order and Judgment is a final, appealable judgment and should be entered  
18 forthwith by the Clerk dismissing the State Action with prejudice.

19 IT IS SO ORDERED.

20 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JAMES A. KLEINBERG  
SUPERIOR COURT JUDGE