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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

_____, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

SUNPOWER CORPORATION, PETER
FARICY, and MANAVENDRA S. SIAL,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly
2 situated, by and through his attorneys, alleges the following upon information and belief, except as
3 to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s
4 information and belief is based upon, among other things, his counsel’s investigation, which
5 includes without limitation: (a) review and analysis of regulatory filings made by SunPower
6 Corporation (“SunPower” or the “Company”) with the United States (“U.S.”) Securities and
7 Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued
8 by and disseminated by SunPower; and (c) review of other publicly available information
9 concerning SunPower.

10 NATURE OF THE ACTION AND OVERVIEW

11 1. This is a class action on behalf of persons and entities that purchased or otherwise
12 acquired SunPower securities between August 3, 2021 and January 20, 2022, inclusive (the “Class
13 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934
14 (the “Exchange Act”).

15 2. SunPower is a solar energy company that provides hardware, software, and financing
16 options for customers. It also provides “Smart Energy” solutions as part of its initiative to add layers
17 of intelligent control to homes, buildings, and grids through personalized customer interfaces. It
18 operates under two segments: Residential, Light Commercial (“RLC”), which refers to sales of solar
19 energy solutions; and Commercial and Industrial Solutions (“C&I Solutions”), which refers to direct
20 sales of turn-key engineering, procurement, and construction services, as well as sales of energy
21 under power purchase agreements.

22 3. On January 20, 2022, SunPower announced that it had “identified a cracking issue
23 that developed over time in certain factory-installed connectors.” The Company “expects
24 approximately \$27 million of supplier-quality related charges in fourth quarter 2021 and
25 approximately \$4 million in the first quarter of 2022” to replace the faulty connectors.

26 4. On this news, the Company’s share price fell \$3.22, or 16.9%, to close at \$15.80 per
27 share on January 21, 2022, on unusually heavy trading volume.

1 **PARTIES**

2 11. Plaintiff as set forth in the accompanying certification, incorporated by
3 reference herein, purchased SunPower securities during the Class Period, and suffered
4 damages as a result of the federal securities law violations and false and/or misleading
5 statements and/or material omissions alleged herein.

6 12. Defendant SunPower is incorporated under the laws of Delaware with its principal
7 executive offices located in San Jose, California. SunPower’s common stock trades on the
8 NASDAQ exchange under the symbol “SPWR.”

9 13. Defendant Peter Faricy (“Faricy”) was the Company’s Chief Executive Officer
10 (“CEO”) at all relevant times.

11 14. Defendant Manavendra S. Sial (“Sial”) was the Company’s Chief Financial Officer
12 (“CFO”) at all relevant times.

13 15. Defendants Faricy and Sial (collectively the “Individual Defendants”), because of
14 their positions with the Company, possessed the power and authority to control the contents of the
15 Company’s reports to the SEC, press releases and presentations to securities analysts, money and
16 portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were
17 provided with copies of the Company’s reports and press releases alleged herein to be misleading
18 prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance
19 or cause them to be corrected. Because of their positions and access to material non-public
20 information available to them, the Individual Defendants knew that the adverse facts specified
21 herein had not been disclosed to, and were being concealed from, the public, and that the positive
22 representations which were being made were then materially false and/or misleading. The
23 Individual Defendants are liable for the false statements pleaded herein.

24 **SUBSTANTIVE ALLEGATIONS**

25 **Background**

26 16. SunPower is a solar energy company that provides hardware, software, and financing
27 options for customers. It also provides “Smart Energy” solutions as part of its initiative to add layers
28 of intelligent control to homes, buildings, and grids through personalized customer interfaces. It

1 operates under two segments: Residential, Light Commercial (“RLC”), which refers to sales of solar
2 energy solutions; and Commercial and Industrial Solutions (“C&I Solutions”), which refers to direct
3 sales of turn-key engineering, procurement, and construction services, as well as sales of energy
4 under power purchase agreements.

5 **Materially False and Misleading**

6 **Statements Issued During the Class Period**

7 17. The Class Period begins on August 3, 2021.¹ On that day, SunPower announced its
8 second quarter 2021 financial results in a press release that stated, in relevant part:

9 •Met Net Income and Adjusted EBITDA guidance; Strong residential margin growth

10 * * *

11 Second quarter of fiscal year 2021 non-GAAP results exclude net adjustments that,
12 in the aggregate, increased GAAP income by \$65 million, resulting from \$84 million
13 related to a mark-to-market gain on equity investments, \$1 million gain on sale and
14 impairment of residential lease assets. This was partially offset by \$2 million related
15 to results of operations of legacy business exited, \$10 million related to stock-based
16 compensation expense, \$4 million related to litigation costs, \$1 million related to
17 restructuring charges, \$1 million related to business reorganization costs, and \$2
18 million for income taxes and other non-recurring items.

15 **Financial Outlook**

16 For the third quarter, the company expects sequential volume and margin
17 improvements in its residential business with volume expected to grow more than 40
18 percent versus the prior year.

19 Specifically, the company expects third quarter GAAP revenue of \$325 to \$375
20 million, GAAP net loss of \$10 to \$0 million and MW recognized of 125 MW to 150
21 MW. Third quarter Adjusted EBITDA will be in the range of \$21 to \$31 million as
22 linearity has significantly improved compared to the previous two years.

23 For fiscal year 2021, the company expects GAAP revenue of \$1.41 to \$1.49 billion,
24 GAAP net income of \$40 to \$60 million and MW recognized of 540 MW to 610
25 MW. Residential MW recognized are expected to be in the range of 340MW to
26 380MW.

27 For fiscal year 2021, the company's full year Adjusted EBITDA guidance remains
28 unchanged at \$110 to \$130 million inclusive of up to \$10 million incremental spend
on customer experience and digital initiatives that will further accelerate the growth
of SunPower's residential business in 2022 and beyond. . . .

27 ¹ Unless otherwise stated, all emphasis in bold and italics hereinafter is added and all footnotes are
28 omitted.

1 18. On August 4, 2021, SunPower filed its quarterly report on Form 10-Q for the period
2 ended July 4, 2021 (the “2Q21 10-Q”), affirming the previously reported financial results. Under
3 “Risk Factors,” the report stated, in relevant part:

4 ***We depend on a limited number of suppliers, including Maxeon Solar, for certain***
5 ***critical raw materials, components and finished products, including our solar cells***
6 ***and modules. Any supply interruption or delay could adversely affect our business,***
7 ***prevent us from delivering products to our customers within required timeframes,***
8 ***and could in turn result in sales and installation delays, cancellations, penalty***
9 ***payments, or loss of market share.***

10 In connection with the Spin-Off, we entered into a supply agreement pursuant to
11 which Maxeon Solar will exclusively supply us with certain products (the “Supply
12 Agreement”), including solar cells and panels, for use in residential and commercial
13 solar applications in the Domestic Territory (as defined in the Supply Agreement).
14 The Supply Agreement has a two-year term, subject to customary early termination
15 provisions triggered by a breach of the other party (with or without the right to cure
16 depending on the breach) and insolvency events affecting the other party. Under the
17 Supply Agreement, we are required to purchase, and Maxeon Solar is required to
18 supply, certain minimum volumes of products during each calendar quarter of the
19 term. The Supply Agreement also includes reciprocal exclusivity provisions that,
20 subject to certain exceptions, will prohibit us from purchasing the products (or
21 competing products) from anyone other than Maxeon Solar for the Domestic
22 Territory. For products designated for installation on a residence or by a third party
23 for the exclusive use of a specific customer, the exclusivity provisions will last until
24 August 26, 2022 (or the entire initial term). For products procured for direct
25 installation by SunPower and including applications where solar panels are installed
26 for the benefit and use of multiple customers, such as community solar projects, the
27 exclusivity provisions terminated on June 30, 2021. The exclusivity provisions do
28 not apply to off-grid applications, certain portable or mobile small-scale applications
(including applications where solar cells are integrated into consumer products), or
power plant, front-of-the-meter applications where the electricity generated is sold
to a utility or other reseller. ***Because Maxeon Solar is our sole supplier of such***
critical products, any delay or failure of Maxeon Solar to supply the necessary
products, or supply such products in a manner that meets our quality and quantity
requirements, could have a material adverse effect on our business, results of
operations, cash flows, and financial condition.

29 ***To the extent the processes and technologies that our suppliers, including Maxeon***
30 ***Solar, use to manufacture components are proprietary, we may be unable to obtain***
31 ***comparable components from alternative suppliers, and the exclusivity provisions***
32 ***of the supply agreement may prevent us from seeking alternative suppliers except***
33 ***in certain very limited circumstances.*** In addition, the financial markets could limit
34 our suppliers’ ability to raise capital if required to expand their production or satisfy
35 their operating capital requirements. As a result, they could be unable to supply
36 necessary products, raw materials, inventory, and capital equipment which we would
37 require to support our planned sales operations to us, which would in turn negatively
38 impact our sales volume, profitability, and cash flows. The failure of a supplier to
39 supply raw materials or components in a timely manner, or to supply raw materials
40 or components that meet our quality, quantity, and cost requirements, could impair
41 our ability to manufacture our products or could increase our cost of production. If
42 we cannot obtain substitute materials or components on a timely basis or on

1 acceptable terms, we could be prevented from delivering our products to our
2 customers within required time frames.

3 (First emphasis in original).

4 19. The 2Q21 10-Q incorporated by reference the risk factors disclosed in the
5 Company's annual report for the year ended January 3, 2021 (the "2020 10-K"). In relevant part,
6 these risks stated:

7 ***If we have quality issues with our solar and related products, our sales could
8 decrease and our relationships with our customers and our reputation may be
9 harmed.***

10 Products as complex as ours may contain undetected errors or defects, especially
11 when first introduced. For example, our solar panels may contain defects that are not
12 detected until after they are shipped or are installed because we and our suppliers
13 cannot test for all possible scenarios. These defects could cause us to incur significant
14 warranty, non-warranty, and re-engineering costs, which may not be covered by
15 manufacturer warranties, and could significantly affect our customer relations and
16 business reputation. If we deliver products with errors or defects, or if there is a
17 perception that such products contain errors or defects, our credibility and the market
18 acceptance and sales of our products could be harmed. In addition, some of our
19 arrangements with customers include termination or put rights for non-performance.
20 In certain limited cases, we could incur liquidated damages or even be required to
21 buy back a customer's system at fair value on specified future dates if certain
22 minimum performance thresholds are not met.

23 20. On October 5, 2021, SunPower posted an investor presentation regarding its recent
24 acquisition of Blue Raven Solar Holdings, LLC. Therein, the Company provided updates to its
25 financial guidance for third quarter 2021. In relevant part, it stated: "Q3'21: Key guidance metrics
26 are projected to be below the low end of the prior guidance ranges, primarily due to CIS project
27 schedule delays and costs as well as performance of our Light Commercial business."

28 21. On November 3, 2021, SunPower announced its third quarter 2021 financial results
in a press release that stated, in relevant part:

SunPower reported, in line with the company's October 5th update, an Adjusted
EBITDA of \$17.5 million for this quarter including \$(8) million from the CIS
segment and a net loss of \$84.4 million primarily driven by the non-cash mark-to-
market adjustment of the company's holdings of Enphase shares. The company is
considering strategic options for CIS and will provide an update in the fourth quarter
of 2021.

Other quarter highlights include:

- Recognized 121 MW, including 92 MW for residential. The pipeline for new homes systems is robust with visibility toward an incremental 58,000 homes (up to 230 MW), including multi-family housing.

- Residential gross margin was at \$0.69/w for the third quarter, up 50% compared to prior year.

Third quarter non-GAAP results exclude net adjustments that, in the aggregate, increased GAAP loss by \$94 million, resulting from \$86 million related to a mark-to-market loss on equity investments, \$5 million related to stock-based compensation expense, and \$3 million related to other non-recurring items.

Financial Outlook

To provide additional clarity to investors, the company has provided separate guidance for CIS and Legacy business segments for the fourth quarter of 2021.

Fourth quarter GAAP revenue guidance for SunPower, excluding CIS and Legacy business, is \$330 to \$380 million and Adjusted EBITDA guidance is \$28 to \$46 million. Separately for CIS and Legacy business, fourth quarter revenue guidance is \$31 to \$41 million and Adjusted EBITDA guidance is \$(10) to \$(5) million due to project schedules and supply chain impacts, similar to that experienced in the third quarter. ***Fourth quarter GAAP net income guidance, which includes all segments, is \$(5) to \$15 million.***

For the Full Year 2021, revenue and Adjusted EBITDA guidance for SunPower, including CIS and Legacy business, is below the prior guidance of \$1,410 to \$1,490 and \$110 to \$130 million, respectively, primarily due to CIS project schedule delays impacting both revenue and Adjusted EBITDA and lower revenues from Light Commercial.

22. On November 4, 2021, SunPower filed its quarterly report on Form 10-Q for the period ended October 3, 2021, affirming the previously reported financial results. It incorporated by reference the risk factors stated in the 2020 10-K and 2Q21 10-Q and further stated:

We depend on a limited number of suppliers, including Maxeon Solar, for certain critical raw materials, components and finished products, including our solar cells and modules. Any supply interruption or delay could adversely affect our business, prevent us from delivering products to our customers within required timeframes, and could in turn result in sales and installation delays, cancellations, penalty payments, or loss of market share.

In connection with the Spin-Off, we entered into a supply agreement pursuant to which Maxeon Solar will exclusively supply us with certain products (the “Supply Agreement”), including solar cells and panels, for use in residential and commercial solar applications in the Domestic Territory (as defined in the Supply Agreement). The Supply Agreement has a two-year term, subject to customary early termination provisions triggered by a breach of the other party (with or without the right to cure depending on the breach) and insolvency events affecting the other party. Under the Supply Agreement, we are required to purchase, and Maxeon Solar is required to supply, certain minimum volumes of products during each calendar quarter of the term. The Supply Agreement also includes reciprocal exclusivity provisions that, subject to certain exceptions, will prohibit us from purchasing the products (or competing products) from anyone other than Maxeon Solar for the Domestic Territory. For products designated for installation on a residence or by a third party for the exclusive use of a specific customer, the exclusivity provisions will last until August 26, 2022 (or the entire initial term). For products procured for direct

1 installation by SunPower and including applications where solar panels are installed
2 for the benefit and use of multiple customers, such as community solar projects, the
3 exclusivity provisions terminated on June 30, 2021. The exclusivity provisions do
4 not apply to off-grid applications, certain portable or mobile small-scale applications
5 (including applications where solar cells are integrated into consumer products), or
6 power plant, front-of-the-meter applications where the electricity generated is sold
7 to a utility or other reseller. ***Because Maxeon Solar is our sole supplier of such
8 critical products, any delay or failure of Maxeon Solar to supply the necessary
9 products, or supply such products in a manner that meets our quality and quantity
10 requirements, could have a material adverse effect on our business, results of
11 operations, cash flows, and financial condition.***

12 ***To the extent the processes and technologies that our suppliers, including Maxeon
13 Solar, use to manufacture components are proprietary, we may be unable to obtain
14 comparable components from alternative suppliers, and the exclusivity provisions
15 of the supply agreement may prevent us from seeking alternative suppliers except
16 in certain very limited circumstances.*** In addition, the financial markets could limit
17 our suppliers' ability to raise capital if required to expand their production or satisfy
18 their operating capital requirements. As a result, they could be unable to supply
19 necessary products, raw materials, inventory, and capital equipment which we would
20 require to support our planned sales operations to us, which would in turn negatively
21 impact our sales volume, profitability, and cash flows. The failure of a supplier to
22 supply raw materials or components in a timely manner, or to supply raw materials
23 or components that meet our quality, quantity, and cost requirements, could impair
24 our ability to manufacture our products or could increase our cost of production. If
25 we cannot obtain substitute materials or components on a timely basis or on
26 acceptable terms, we could be prevented from delivering our products to our
27 customers within required time frames.

28 (First emphasis in original.)

23. The above statements identified in ¶¶ 17-22 were materially false and/or misleading,
and failed to disclose material adverse facts about the Company's business, operations, and
prospects. Specifically, Defendants failed to disclose to investors: (1) that certain connectors used
by SunPower suffered from cracking issues; (2) that, as a result, the Company was reasonably likely
to incur costs to remediate the faulty connectors; (3) that, as a result of the foregoing, SunPower's
financial results would be adversely impacted; and (4) that, as a result of the foregoing, Defendants'
positive statements about the Company's business, operations, and prospects were materially
misleading and/or lacked a reasonable basis.

Disclosures at the End of the Class Period

24. On January 21, 2022, SunPower announced that it had "identified a cracking issue
that developed over time in certain factory-installed connectors." The Company "expects
approximately \$27 million of supplier-quality related charges in fourth quarter 2021 and

1 approximately \$4 million in the first quarter of 2022” to replace the faulty connectors. Specifically,
2 in a press release announcing preliminary fourth quarter 2021 results, SunPower stated, in relevant
3 part:

4 SunPower Corp. (NASDAQ:SPWR), a leading solar technology and energy services
5 provider, today announced it is taking proactive measures to enhance customer care
6 by replacing certain third-party connectors within its Light Commercial Value-
7 Added Reseller (CVAR) and Commercial & Industrial Solutions (CIS) systems.

8 ***Through a product quality assessment, the company has identified a cracking issue***
9 ***that developed over time in certain factory-installed connectors within third-party***
10 ***commercial equipment supplied to SunPower.*** There have been no reported safety
11 incidents attributed to this issue, nor has there been any degradation of performance.
12 Nevertheless, to avoid potential longer-term complications and ensure an excellent
13 lifetime customer experience, SunPower is proactively replacing all of these
14 connectors. The company plans to replace the connectors in impacted equipment
15 largely during 2022. Based on SunPower’s testing, the company expects systems to
16 continue to operate safely while awaiting replacement.

17 ***SunPower expects approximately \$27 million of supplier-quality related charges***
18 ***in fourth quarter 2021 and approximately \$4 million in the first quarter of 2022 as***
19 ***it pursues recovery of costs from the suppliers. The charges are expected to be***
20 ***funded with cash on hand.***

21 GAAP Revenue for fourth quarter 2021 is expected to fall within the previously
22 guided range of \$361 to \$421 million. Excluding the charge, fourth quarter adjusted
23 EBITDA results are expected to be at the low end of SunPower’s previously
24 disclosed guidance range of \$18 to \$41 million[.]. Factors affecting fourth quarter
25 adjusted EBITDA include approximately \$6.5 million of Residential EBITDA
26 effectively pushed into 2022 as the result of weather in California and COVID
27 impacts. Another \$3 million was invested in sales and marketing to rapidly expand
28 SunPower’s serviceable solar market to more customers in underpenetrated areas
nationally.

25. On this news, the Company’s share price fell \$3.22, or 16.9%, to close at \$15.80 per
share on January 21, 2022, on unusually heavy trading volume.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased
or otherwise acquired SunPower securities between August 3, 2021 and January 20, 2022, inclusive,
and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers
and directors of the Company, at all relevant times, members of their immediate families and their
legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had
a controlling interest.

1 27. The members of the Class are so numerous that joinder of all members is
2 impracticable. Throughout the Class Period, SunPower's shares actively traded on the NASDAQ.
3 While the exact number of Class members is unknown to Plaintiff at this time and can only be
4 ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or
5 thousands of members in the proposed Class. Millions of SunPower shares were traded publicly
6 during the Class Period on the NASDAQ. Record owners and other members of the Class may be
7 identified from records maintained by SunPower or its transfer agent and may be notified of the
8 pendency of this action by mail, using the form of notice similar to that customarily used in securities
9 class actions.

10 28. Plaintiff's claims are typical of the claims of the members of the Class as all members
11 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that
12 is complained of herein.

13 29. Plaintiff will fairly and adequately protect the interests of the members of the Class
14 and has retained counsel competent and experienced in class and securities litigation.

15 30. Common questions of law and fact exist as to all members of the Class and
16 predominate over any questions solely affecting individual members of the Class. Among the
17 questions of law and fact common to the Class are:

18 (a) whether the federal securities laws were violated by Defendants' acts as
19 alleged herein;

20 (b) whether statements made by Defendants to the investing public during the
21 Class Period omitted and/or misrepresented material facts about the business, operations, and
22 prospects of SunPower; and

23 (c) to what extent the members of the Class have sustained damages and the
24 proper measure of damages.

25 31. A class action is superior to all other available methods for the fair and efficient
26 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
27 damages suffered by individual Class members may be relatively small, the expense and burden of
28

1 individual litigation makes it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action.

3 **UNDISCLOSED ADVERSE FACTS**

4 32. The market for SunPower’s securities was open, well-developed and efficient at all
5 relevant times. As a result of these materially false and/or misleading statements, and/or failures to
6 disclose, SunPower’s securities traded at artificially inflated prices during the Class Period. Plaintiff
7 and other members of the Class purchased or otherwise acquired SunPower’s securities relying upon
8 the integrity of the market price of the Company’s securities and market information relating to
9 SunPower, and have been damaged thereby.

10 33. During the Class Period, Defendants materially misled the investing public, thereby
11 inflating the price of SunPower’s securities, by publicly issuing false and/or misleading statements
12 and/or omitting to disclose material facts necessary to make Defendants’ statements, as set forth
13 herein, not false and/or misleading. The statements and omissions were materially false and/or
14 misleading because they failed to disclose material adverse information and/or misrepresented the
15 truth about SunPower’s business, operations, and prospects as alleged herein.

16 34. At all relevant times, the material misrepresentations and omissions particularized in
17 this Complaint directly or proximately caused or were a substantial contributing cause of the
18 damages sustained by Plaintiff and other members of the Class. As described herein, during the
19 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
20 statements about SunPower’s financial well-being and prospects. These material misstatements
21 and/or omissions had the cause and effect of creating in the market an unrealistically positive
22 assessment of the Company and its financial well-being and prospects, thus causing the Company’s
23 securities to be overvalued and artificially inflated at all relevant times. Defendants’ materially false
24 and/or misleading statements during the Class Period resulted in Plaintiff and other members of the
25 Class purchasing the Company’s securities at artificially inflated prices, thus causing the damages
26 complained of herein when the truth was revealed.

1 **LOSS CAUSATION**

2 35. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
3 the economic loss suffered by Plaintiff and the Class.

4 36. During the Class Period, Plaintiff and the Class purchased SunPower's securities at
5 artificially inflated prices and were damaged thereby. The price of the Company's securities
6 significantly declined when the misrepresentations made to the market, and/or the information
7 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
8 causing investors' losses.

9 **SCIENTER ALLEGATIONS**

10 37. As alleged herein, Defendants acted with scienter since Defendants knew that the
11 public documents and statements issued or disseminated in the name of the Company were
12 materially false and/or misleading; knew that such statements or documents would be issued or
13 disseminated to the investing public; and knowingly and substantially participated or acquiesced in
14 the issuance or dissemination of such statements or documents as primary violations of the federal
15 securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their
16 receipt of information reflecting the true facts regarding SunPower, their control over, and/or receipt
17 and/or modification of SunPower's allegedly materially misleading misstatements and/or their
18 associations with the Company which made them privy to confidential proprietary information
19 concerning SunPower, participated in the fraudulent scheme alleged herein.

20 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
21 **(FRAUD-ON-THE-MARKET DOCTRINE)**

22 38. The market for SunPower's securities was open, well-developed and efficient at all
23 relevant times. As a result of the materially false and/or misleading statements and/or failures to
24 disclose, SunPower's securities traded at artificially inflated prices during the Class Period. On
25 November 1, 2021, the Company's share price closed at a Class Period high of \$33.85 per share.
26 Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities
27 relying upon the integrity of the market price of SunPower's securities and market information
28 relating to SunPower, and have been damaged thereby.

1 39. During the Class Period, the artificial inflation of SunPower’s shares was caused by
2 the material misrepresentations and/or omissions particularized in this Complaint causing the
3 damages sustained by Plaintiff and other members of the Class. As described herein, during the
4 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
5 statements about SunPower’s business, prospects, and operations. These material misstatements
6 and/or omissions created an unrealistically positive assessment of SunPower and its business,
7 operations, and prospects, thus causing the price of the Company’s securities to be artificially
8 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
9 shares. Defendants’ materially false and/or misleading statements during the Class Period resulted
10 in Plaintiff and other members of the Class purchasing the Company’s securities at such artificially
11 inflated prices, and each of them has been damaged as a result.

12 40. At all relevant times, the market for SunPower’s securities was an efficient market
13 for the following reasons, among others:

14 (a) SunPower shares met the requirements for listing, and was listed and actively
15 traded on the NASDAQ, a highly efficient and automated market;

16 (b) As a regulated issuer, SunPower filed periodic public reports with the SEC
17 and/or the NASDAQ;

18 (c) SunPower regularly communicated with public investors via established
19 market communication mechanisms, including through regular dissemination of press releases on
20 the national circuits of major newswire services and through other wide-ranging public disclosures,
21 such as communications with the financial press and other similar reporting services; and/or

22 (d) SunPower was followed by securities analysts employed by brokerage firms
23 who wrote reports about the Company, and these reports were distributed to the sales force and
24 certain customers of their respective brokerage firms. Each of these reports was publicly available
25 and entered the public marketplace.

26 41. As a result of the foregoing, the market for SunPower’s securities promptly digested
27 current information regarding SunPower from all publicly available sources and reflected such
28 information in SunPower’s share price. Under these circumstances, all purchasers of SunPower’s

1 securities during the Class Period suffered similar injury through their purchase of SunPower’s
2 securities at artificially inflated prices and a presumption of reliance applies.

3 42. A Class-wide presumption of reliance is also appropriate in this action under the
4 Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
5 because the Class’s claims are, in large part, grounded on Defendants’ material misstatements and/or
6 omissions. Because this action involves Defendants’ failure to disclose material adverse
7 information regarding the Company’s business operations and financial prospects—information that
8 Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery.
9 All that is necessary is that the facts withheld be material in the sense that a reasonable investor
10 might have considered them important in making investment decisions. Given the importance of
11 the Class Period material misstatements and omissions set forth above, that requirement is satisfied
12 here.

13 **NO SAFE HARBOR**

14 43. The statutory safe harbor provided for forward-looking statements under certain
15 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The
16 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.
17 In addition, to the extent certain of the statements alleged to be false may be characterized as forward
18 looking, they were not identified as “forward-looking statements” when made and there were no
19 meaningful cautionary statements identifying important factors that could cause actual results to
20 differ materially from those in the purportedly forward-looking statements. In the alternative, to the
21 extent that the statutory safe harbor is determined to apply to any forward-looking statements
22 pleaded herein, Defendants are liable for those false forward-looking statements because at the time
23 each of those forward-looking statements was made, the speaker had actual knowledge that the
24 forward-looking statement was materially false or misleading, and/or the forward-looking statement
25 was authorized or approved by an executive officer of SunPower who knew that the statement was
26 false when made.

1 **FIRST CLAIM**

2 **Violation of Section 10(b) of The Exchange Act and**
3 **Rule 10b-5 Promulgated Thereunder**
4 **Against All Defendants**

5 44. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
6 set forth herein.

7 45. During the Class Period, Defendants carried out a plan, scheme and course of conduct
8 which was intended to and, throughout the Class Period, did: (i) deceive the investing public,
9 including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other
10 members of the Class to purchase SunPower's securities at artificially inflated prices. In furtherance
11 of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the
12 actions set forth herein.

13 46. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
14 statements of material fact and/or omitted to state material facts necessary to make the statements
15 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a
16 fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially
17 high market prices for SunPower's securities in violation of Section 10(b) of the Exchange Act and
18 Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal
19 conduct charged herein or as controlling persons as alleged below.

20 47. Defendants, individually and in concert, directly and indirectly, by the use, means or
21 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
22 continuous course of conduct to conceal adverse material information about SunPower's financial
23 well-being and prospects, as specified herein.

24 48. Defendants employed devices, schemes and artifices to defraud, while in possession
25 of material adverse non-public information and engaged in acts, practices, and a course of conduct
26 as alleged herein in an effort to assure investors of SunPower's value and performance and continued
27 substantial growth, which included the making of, or the participation in the making of, untrue
28 statements of material facts and/or omitting to state material facts necessary in order to make the
statements made about SunPower and its business operations and future prospects in light of the

1 circumstances under which they were made, not misleading, as set forth more particularly herein,
2 and engaged in transactions, practices and a course of business which operated as a fraud and deceit
3 upon the purchasers of the Company's securities during the Class Period.

4 49. Each of the Individual Defendants' primary liability and controlling person liability
5 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
6 directors at the Company during the Class Period and members of the Company's management team
7 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities
8 as a senior officer and/or director of the Company, was privy to and participated in the creation,
9 development and reporting of the Company's internal budgets, plans, projections and/or reports;
10 (iii) each of these defendants enjoyed significant personal contact and familiarity with the other
11 defendants and was advised of, and had access to, other members of the Company's management
12 team, internal reports and other data and information about the Company's finances, operations, and
13 sales at all relevant times; and (iv) each of these defendants was aware of the Company's
14 dissemination of information to the investing public which they knew and/or recklessly disregarded
15 was materially false and misleading.

16 50. Defendants had actual knowledge of the misrepresentations and/or omissions of
17 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
18 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'
19 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose
20 and effect of concealing SunPower's financial well-being and prospects from the investing public
21 and supporting the artificially inflated price of its securities. As demonstrated by Defendants'
22 overstatements and/or misstatements of the Company's business, operations, financial well-being,
23 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the
24 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by
25 deliberately refraining from taking those steps necessary to discover whether those statements were
26 false or misleading.

27 51. As a result of the dissemination of the materially false and/or misleading information
28 and/or failure to disclose material facts, as set forth above, the market price of SunPower's securities

1 was artificially inflated during the Class Period. In ignorance of the fact that market prices of the
2 Company's securities were artificially inflated, and relying directly or indirectly on the false and
3 misleading statements made by Defendants, or upon the integrity of the market in which the
4 securities trades, and/or in the absence of material adverse information that was known to or
5 recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during
6 the Class Period, Plaintiff and the other members of the Class acquired SunPower's securities during
7 the Class Period at artificially high prices and were damaged thereby.

8 52. At the time of said misrepresentations and/or omissions, Plaintiff and other members
9 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other
10 members of the Class and the marketplace known the truth regarding the problems that SunPower
11 was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class
12 would not have purchased or otherwise acquired their SunPower securities, or, if they had acquired
13 such securities during the Class Period, they would not have done so at the artificially inflated prices
14 which they paid.

15 53. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
16 and Rule 10b-5 promulgated thereunder.

17 54. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
18 other members of the Class suffered damages in connection with their respective purchases and
19 sales of the Company's securities during the Class Period.

20 **SECOND CLAIM**

21 **Violation of Section 20(a) of The Exchange Act**
22 **Against the Individual Defendants**

23 55. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
24 set forth herein.

25 56. Individual Defendants acted as controlling persons of SunPower within the meaning
26 of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and
27 their ownership and contractual rights, participation in, and/or awareness of the Company's
28 operations and intimate knowledge of the false financial statements filed by the Company with the

1 SEC and disseminated to the investing public, Individual Defendants had the power to influence and
2 control and did influence and control, directly or indirectly, the decision-making of the Company,
3 including the content and dissemination of the various statements which Plaintiff contends are false
4 and misleading. Individual Defendants were provided with or had unlimited access to copies of the
5 Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be
6 misleading prior to and/or shortly after these statements were issued and had the ability to prevent
7 the issuance of the statements or cause the statements to be corrected.

8 57. In particular, Individual Defendants had direct and supervisory involvement in the
9 day-to-day operations of the Company and, therefore, had the power to control or influence the
10 particular transactions giving rise to the securities violations as alleged herein, and exercised the
11 same.

12 58. As set forth above, SunPower and Individual Defendants each violated Section 10(b)
13 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position
14 as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange
15 Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members
16 of the Class suffered damages in connection with their purchases of the Company's securities during
17 the Class Period.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

20 (a) Determining that this action is a proper class action under Rule 23 of the Federal
21 Rules of Civil Procedure;

22 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
23 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
24 wrongdoing, in an amount to be proven at trial, including interest thereon;

25 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
26 action, including counsel fees and expert fees; and

27 (d) Such other and further relief as the Court may deem just and proper.

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.