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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Mark Smilovits, Individually and on Behalf  
10 of All Others Similarly Situated,

11 Plaintiff,

12 v.

13 First Solar, Inc., Michael J. Ahearn, Robert  
14 J. Gillette, Mark R. Widmar, Jens  
Meyerhoff, James Zhu, Bruce Sohn and  
David Eaglesham,

15 Defendants.

No. CV-12-00555-PHX DGC

**ORDER**

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17 Class Counsel Robbins Geller Rudman & Dowd LLP moves for an award of  
18 \$1,900,000 in attorneys' fees from the \$19,000,000 settlement obtained by opt-out  
19 Plaintiffs Maverick Fund, L.D.C., Maverick Fund USA, Ltd., Maverick Fund II, Ltd.,  
20 Maverick Neutral Fund, Ltd., Maverick Neutral Levered Fund, Ltd., Maverick Long Fund,  
21 Ltd., and Maverick Long Enhanced Fund, Ltd. (collectively, "Maverick"). The motion is  
22 fully briefed and oral argument was held today. The Court will deny the motion.

23 The Court previously entered an order establishing a set-aside account for possible  
24 fee awards from opt-out settlements. Doc. 669. The Court stated that it would "make an  
25 independent determination of the reasonableness of fees to be awarded any counsel from  
26 the Account. Consistent with 15 U.S.C. § 78u-4(a)(6), the Court will ensure that the total  
27 attorneys' fees and expenses awarded by the Court to Class Counsel, from any source  
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1 including the Account, shall not exceed a reasonable percentage of the amount of any  
2 damages and prejudgment interest actually paid to the Class.” *Id.* at 7.

3 The Class Action settled for \$350 million, and the Court awarded Class Counsel  
4 \$65,905,000 in attorneys’ fees (18.83% of the settlement amount) and \$5,263,516.69 in  
5 expenses, with interest. Doc. 731 at 2. The Court found these amounts fair, reasonable,  
6 and appropriate. *Id.* The Court learned from Class Counsel’s fee application, and noted in  
7 its order awarding fees, that “the precise amount of the recovery – 18.83% of the settlement  
8 – is dictated by the fee agreement negotiated at the beginning of this case between Lead  
9 Counsel and Lead Plaintiffs, which are sophisticated entities.” Doc. 731 at 3. Class  
10 Counsel received the maximum amount they were allowed under the fee agreement they  
11 negotiated.

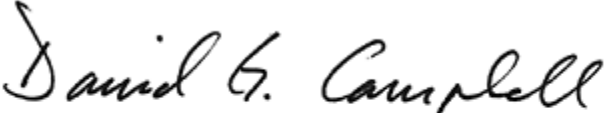
12 The Court concludes that the fees and expenses already paid to Class Counsel  
13 constitute “a reasonable percentage of the amount of any damages and prejudgment interest  
14 actually paid to the class.” 15 U.S.C. § 78u-4(a)(6). Class Counsel themselves established  
15 the reasonableness of this percentage in their agreement with Lead Plaintiffs. Because the  
16 PSLRA provides that “[t]otal attorneys’ fees and expenses awarded by the court to counsel  
17 for the plaintiff class shall not exceed” a reasonable percentage (*id.*), and Class Counsel  
18 themselves established the reasonableness of their percentage, the Court, in its discretion,  
19 will not award more. Class Counsel have been well and fully paid for the work they did in  
20 this litigation, including any work that may have benefitted Maverick.

21 **IT IS ORDERED:**

22 1. Class Counsel’s application for additional attorneys’ fees (Doc. 737) is  
23 **denied**. Money in the “First Solar Securities Class Action Fee and Expense Account” shall  
24 be remitted pro rata to the opt-out plaintiffs from whose settlements it was withheld.

25 2. The motion to seal (Doc. 742) is **granted**.

26 Dated this 4th day of September, 2020.

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David G. Campbell  
Senior United States District Judge