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

8 In re First Solar Derivative Litigation,

No. CV-12-00769-PHX-DGC

9 **ORDER**

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11 On September 14, 2012, nominal Defendant First Solar filed a motion to stay this  
12 derivative action pending resolution of a securities class action that involves substantially  
13 the same issues (*Smilovitz v. First Solar Inc., et al.*, No. 2:12-cv-00555-DGC). Doc. 38.  
14 The motion has been fully briefed. Docs. 40, 42. For the reasons that follow the Court  
15 will grant Defendant's motion and stay the derivative suit pending resolution of the class  
16 action.<sup>1</sup>

17 **I. Background.**

18 First Solar manufactures solar panel modules. On February 28, 2012, the  
19 company announced that losses from a manufacturing excursion or defect had been  
20 greater than the company anticipated and that the revenue and earnings for the fourth  
21 quarter of 2011 had been lower than expected. Doc. 38 at 6-7. The company also  
22 announced that it had increased its warranty reserve to account for additional product  
23 failures in hot climates. *Id.* The next day, First Solar's stock prices decreased 11% and  
24 several lawsuits followed.

25 Both the class action before this Court and this derivative suit allege that officers

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27 <sup>1</sup> The request for oral argument is denied because the issues have been fully  
28 briefed and oral argument will not aid the Court's decision. *See* Fed. R. Civ. P. 78(b);  
*Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 and directors of First Solar withheld material information regarding the product defects,  
2 manipulated its cost-per-watt metric and warranty reserves, and engaged in insider  
3 trading. The derivative suit names additional director and officer defendants and includes  
4 several state law claims, but both the derivative suit and the class action rely on the same  
5 misrepresentations, omissions, and underlying facts. First Solar moves to stay the  
6 derivative suit for three reasons: (1) prosecuting this case now creates a risk of  
7 prejudicing the defense of the Securities Class Action, (2) Plaintiffs' requested relief  
8 depends on the outcome of the Securities Class Action, and (3) because the cases are  
9 based on the same events and will require litigation of the same issues, staying this case  
10 will promote judicial efficiency. Doc. 38 at 11.

## 11 **II. Legal Standard.**

12 "A district court has discretionary power to stay proceedings in its own court."  
13 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. North*  
14 *American Co.*, 299 U.S. 248, 254 (1936)). The Court must weigh the competing interests  
15 affected by the granting or refusal of the stay, including "the possible damage which may  
16 result from the granting of stay, the hardship or inequity which a party may suffer in  
17 being required to go forward, and the orderly course of justice measured in terms of the  
18 simplifying or complicating of issues, proof, and questions of law which could be  
19 expected to result from a stay." *Id.* (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir.  
20 1962)). The Court may also consider whether it is "efficient for its own docket and the  
21 fairest course for the parties to enter a stay pending resolution of independent  
22 proceedings which bear upon the case," even if the issues in such proceedings are not  
23 necessarily controlling of the action before the Court. *Id.* (quoting *Levy v. Certified*  
24 *Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)). However, a "stay  
25 should not be granted unless it appears likely the other proceedings will be concluded  
26 within a reasonable time in relation to the urgency of the claims presented to the court."  
27 *Id.* (quoting *Levy*, 593 F.2d. at 864).

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