

**** E-filed January 4, 2010 ****

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 9

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14 Attorneys for Defendants Thomas H. Werner,
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 15 Betsy S. Atkins, Uwe-Ernst Bufe,
 Thomas R. McDaniel, Pat Wood, III,
 16 Dennis V. Arriola, Emmanuel T. Hernandez,
 Daniel S. Shugar, Douglas J. Richards,
 17 Bruce R. Ledesma, Marty T. Reese,
 and nominal defendant SunPower Corporation
 18

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 RICHARD LOGAN, Derivatively on)
 Behalf of SUNPOWER CORPORATION,)
 22)
 Plaintiff,)
 23)

24 v.)

25 THOMAS H. WERNER, DENNIS V.)
 ARRIOLA, EMMANUEL T.)
 26 HERNANDEZ, W. STEVE ALBRECHT,)
 BETSY S. ATKINS, PAT WOOD, III,)
 THOMAS R. MCDANIEL, THURMAN J.)
 27 RODGERS, and UWE-ERNST BUFE,)

28 Defendants,)

Case No. C 09-05731-HRL

Honorable Howard R. Lloyd

) STIPULATION AND ~~PROPOSED~~ ORDER
) REGARDING CONSOLIDATING ACTIONS,
) APPOINTING LEAD PLAINTIFFS AND
) LEAD COUNSEL, SCHEDULING, AND
) RELATED MATTERS

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v.
SUNPOWER CORPORATION, a
Delaware corporation,
Nominal Defendant.

DAVID CLARKE, Derivatively on Behalf
of SUNPOWER CORPORATION,
Plaintiff,

v.
THOMAS H. WERNER, T.J. RODGERS,
W. STEVE ALBRECHT, BETSY S.
ATKINS, UWE-ERNST BUFE, THOMAS
R. MCDANIEL, PAT WOOD III,
DENNIS V. ARRIOLA, EMMANUEL T.
HERNANDEZ, DANIEL S. SHUGAR,
DOUGLAS J. RICHARDS, BRUCE R.
LEDESMA, MARTY T. REESE, AND
DOES 1-20,
Defendants,

v.
SUNPOWER CORPORATION, a
Delaware corporation,
Nominal Defendant.

Case No. C 09-05925-JSW
Honorable Judge Jeffrey S. White

1 WHEREAS, there are presently two related shareholder derivative actions against certain of
2 the officers and directors of SunPower Corporation ("SunPower ") on file in this Court;

3 WHEREAS, in an effort to assure consistent rulings and decisions and the avoidance of
4 unnecessary duplication of effort, all of the counsel for the parties in the related SunPower
5 shareholder derivative actions currently on file in this Court enter into this stipulation. The counsel
6 are: (1) Robbins Umeda LLP on behalf of plaintiff Richard Logan; (2) Johnson Bottini LLP on
7 behalf of plaintiff David Clarke; and (4) Morrison & Foerster LLP on behalf of nominal defendant
8 SunPower Corporation and individual defendants Thomas H. Werner, Thurman J. Rodgers, W. Steve
9 Albrecht, Betsy S. Atkins, Uwe-Ernst Bufe, Thomas R. McDaniel, Pat Wood, III, Dennis V. Arriola,
10 Emmanuel T. Hernandez, Daniel S. Shugar, Douglas J. Richards, Bruce R. Ledesma, and Marty T.
11 Reese;

12 WHEREAS, on November 16, 2009, SunPower issued a press release announcing an internal
13 investigation by its Audit Committee; and

14 WHEREAS, the parties agree that it would be duplicative and wasteful of the Court's
15 resources for defendants named in plaintiffs' shareholder derivative actions to have to respond to the
16 individual complaints prior to the agreed upon consolidation and filing of a consolidated complaint.

17 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by plaintiffs and
18 defendants, through their respective counsel of record, as follows:

19 1. The following actions are hereby related and consolidated for all purposes, including
20 pre-trial proceedings and trial:

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Logan v. Werner, et al.</i>	No. C 09-05731-HRL	December 4, 2009
<i>Clarke v. Werner, et al.</i>	No. C 09-05925-JSW	December 17, 2009

24
25 2. Every pleading filed in the consolidated action, or in any separate action included
26 herein, shall bear the following caption:
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 IN RE SUNPOWER CORPORATION) Master File No. C 09-05731-HRL
4 SHAREHOLDER DERIVATIVE)
5 LITIGATION)

6 This Document Relates To:)

7 ALL ACTIONS)

8 3. The files of the consolidated action shall be maintained in one file under Master File
9 No. C 09-05731-HRL.

10 4. Counsel for plaintiffs and defendants agree to meet and confer in good faith to
11 arrange a schedule for the designation of an operative complaint or the filing of a Consolidated
12 Derivative Complaint ("Consolidated Complaint") and a briefing schedule concerning any
13 responsive pleading to the Consolidated Complaint within ten (10) days after the public
14 announcement of the results and completion of the internal investigation. If the parties cannot agree
15 to a schedule, plaintiff shall either designate a complaint as operative or file a Consolidated
16 Derivative Complaint within thirty (30) days after the public announcement of the results and
17 completion of the internal investigation, and defendants shall respond to the complaint within thirty
18 (30) days.

19 5. If any defendant challenges plaintiffs' standing to maintain this derivative action on
20 demand futility grounds – i.e., that plaintiffs failed to satisfy the requirements of Federal Rules of
21 Civil Procedure 23.1 or Delaware Chancery Court Rule 23.1 by failing to plead facts sufficient to
22 raise a reasonable doubt that a pre-litigation demand on SunPower 's Board of Directors would have
23 been futile, it is Lead Plaintiffs' position that demand futility should be determined as it relates to the
24 designated complaint or Consolidated Complaint based on the membership of the Board on the date
25 plaintiff Logan filed his original complaint (December 4, 2009). By agreeing to this stipulation,
26 defendants do not waive any argument they may have that demand futility should be determined

1 based on the membership of the Board on the date of the filing of any amended complaint or at any
2 other point in time.

3 6. The Lead Plaintiffs for these consolidated actions are Richard Logan and David
4 Clarke.

5 7. The Co-Lead Counsel for plaintiffs for the conduct of these consolidated actions are:

6 ROBBINS UMEDA LLP
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14 and

15 JOHNSON BOTTINI, LLP
16 FRANK J. JOHNSON
17 FRANCIS A. BOTTINI, JR.
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23 8. Plaintiffs' Co-Lead Counsel shall have sole authority to speak for plaintiffs in matters
24 regarding pre-trial procedure, trial and settlement and shall make all work assignments in such
25 manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative
26 or unproductive effort.

27 9. Plaintiffs' Co-Lead Counsel shall be responsible for coordinating all activities and
28 appearances on behalf of plaintiffs. No motion, request for discovery or other pre-trial or trial
proceedings shall be initiated or filed by any plaintiff except through plaintiffs' Co-Lead Counsel.

10. Plaintiffs' Co-Lead Counsel shall be available and responsible for communications to
and from this Court, including distributing orders and other directions from the Court to counsel.
Plaintiffs' Co-Lead Counsel shall be responsible for creating and maintaining a master service list of
all parties and their respective counsel.

1 11. Defendants' counsel may rely upon all agreements made with plaintiffs' Co-Lead
2 Counsel, or other duly authorized representative of plaintiffs' Co-Lead Counsel, and such
3 agreements shall be binding on all plaintiffs.

4 12. Defendants take no position as to the appointment of Lead Plaintiffs or Co-Lead
5 Counsel.

6 13. This Order shall apply to each case, arising out of the same or substantially the same
7 transactions or events as these cases, which is subsequently filed in, remanded to or transferred to
8 this Court.

9 14. When a derivative case that properly belongs as part of the *In re SunPower*
10 *Corporation Shareholder Derivative Litigation*, Lead Case No. C 09-05731-HRL, is hereafter filed
11 in the Court or transferred here from another court, this Court requests the assistance of counsel in
12 calling to the attention of the clerk of the Court the filing or transfer of any case which might
13 properly be consolidated as part of the *In re SunPower Corporation Shareholder Derivative*
14 *Litigation*, Lead Case No. C 09-05731-HRL, and counsel are to assist in assuring that counsel in
15 subsequent actions receive notice of this Order.

16 15. By agreeing to this stipulation, the parties do not consent to the jurisdiction of the
17 magistrate judge.

18 16. Defendants' counsel shall appear for and accept service on behalf of all defendants
19 not already served.

20 DATED: December 30, 2009

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27 *[Proposed] Co-Lead Counsel and Counsel for*
28 *Plaintiff Richard Logan*

1 DATED: December 30, 2009

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9 *[Proposed] Co-Lead Counsel and Counsel for
10 Plaintiff David Clarke*

11 DATED: December 30, 2009

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20 McDaniel, Pat Wood, III, Dennis V. Arriola,
21 Emmanuel T. Hernandez, Daniel S. Shugar,
22 Douglas J. Richards, Bruce R. Ledesma, Marty
23 T. Reese, and nominal defendant SunPower
24 Corporation*

25 * * *

26 **ORDER**

27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 January 4, 2010

DATED

HONORABLE HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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1 I, Jordan Eth, am the ECF User whose ID and password are being used to file this
2 Stipulation and [Proposed] Order Regarding Consolidating Actions, Appointing Lead Plaintiffs
3 and Lead Counsel, Scheduling, and Related Matters. In compliance with General Order No. 45,
4 X.B., I hereby attest that Frank Johnson and Mark M. Umeda have concurred in this filing.

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6 /s/ Jordan Eth
JORDAN ETH

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