

1 BRIAN J. ROBBINS
 brobbins@robbinsumeda.com
 2 GEORGE C. AGUILAR
 gaguil@robbinsumeda.com
 3 ASHLEY R. PALMER
 apalmer@robbinsumeda.com
 4 ROBBINS UMEDA LLP
 600 B Street, Suite 1900
 5 San Diego, California 92101
 Telephone: 619.525.3990
 6 Facsimile: 619.525.3991

7 MICHAEL GOLDBERG
 info@glancylaw.com
 8 GLANCY BINKOW & GOLDBERG LLP
 1925 Century Park East, Suite 2100
 9 Los Angeles, California 90067

10 Attorneys for Plaintiffs
 Evelyn Sabbag, Vincent Cilirzo, Audrey Cilirzo,
 11 Donald Triskett, Daniel Jaquez, and John R. Klein

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 EVELYN SABBAG, derivatively on Behalf of
 AKEENA SOLAR, INC.

16 Plaintiff,

17 v.

18 BARRY CINNAMON, GARY EFFREN,
 19 EDWARD ROFFMAN, JON WITKIN,
 GEORGE LAURO, PRADEEP JOTWANI, and
 20 DAVID WALLACE

21 Defendants,

22 and

23 AKEENA SOLAR, INC., a Delaware
 corporation,

24 Nominal Defendant.
 25

Lead Case No.: 10-cv-002735-MMC

STIPULATION AND [~~PROPOSED~~]
 ORDER RE VOLUNTARY DISMISSAL
 OF COMPLAINT (FRCP 23.1(c),
 41(a)(1))

1 Plaintiffs Evelyn Sabbag, Vincent and Audrey Cilurzo, Donald Triskett, Daniel Jaquez, and
2 John R. Klein (collectively, "Plaintiffs"), Nominal Defendant Akeena Solar, Inc. ("Akeena"), and
3 Defendants Barry Cinnamon, Gary Effren, Edward Roffman, Jon Witkin, George Lauro, Pradeep
4 Jotwani, and David Wallace, by and through their undersigned counsel, hereby stipulate as follows:

5 WHEREAS, on June 22, 2010, Plaintiff Sabbag filed a shareholder derivative complaint
6 alleging claims for breach of fiduciary duty, abuse of control, mismanagement, waste of corporate
7 assets, unjust enrichment, and impermissible insider trading. Similar shareholder derivative complaints
8 were subsequently filed in the same court under the captions: *Cilurzo v. Cinnamon, et al.*, Case No.
9 5:10-CV-02806-JF; *Triskett v. Cinnamon, et al.*, Case No. 5:10-CV-02992-JF; *Jaquez v. Cinnamon, et*
10 *al.*, 5:10-CV-03020-JF; and *Klein v. Cinnamon, et al.*, Case No. 5:10-CV-03387-JF;

11 WHEREAS, in an Order dated August 25, 2010, the Court consolidated the *Sabbag, Cilurzo,*
12 *Triskett, Jaquez, and Klein* actions for all purposes under File No. 5:10-CV-02735-JF (HRL)
13 ("Consolidated Action");

14 WHEREAS, a shareholder derivative action captioned *Dulgarian v. Cinnamon, et al.*, Case No.
15 1-10-CV-173351 ("State Derivative Action"), was filed in California Superior Court for the County of
16 Santa Clara ("State Court") on May 28, 2010, arising out of the same facts and asserting substantially
17 the same allegations as the Consolidated Action;

18 WHEREAS, on September 10, 2010, Plaintiffs in the Consolidated Action filed a Verified
19 Consolidated Shareholder Derivative Complaint asserting State causes of action for breach of fiduciary
20 duty, unjust enrichment, and waste of corporate assets, and a federal claim against the director
21 Defendants for violation of Section 14(a) of the Securities Exchange Act of 1934;

22 WHEREAS, on September 17, 2010, Defendants moved to dismiss the federal securities claim
23 as time-barred. Defendants also moved to dismiss, or in the alternative to stay, the State law causes of
24 action in light of the pending State Derivative Action;

1 WHEREAS, on October 7, 2010, the Court entered an Order appointing Robbins Umeda LLP
2 and Glancy Binkow & Goldberg LLP as co-lead counsel;

3 WHEREAS, on December 10, 2010, the Court entered an Order dismissing Plaintiffs' Section
4 14(a) claim as time-barred and staying the Consolidated Action in light of the pending State Derivative
5 Action;

6 WHEREAS, the parties in the State Derivative Action reached an agreement to settle the action
7 on behalf of all Akeena shareholders, including Plaintiffs in the Consolidated Action, and to seek
8 approval for the settlement in the State Court. In connection with this settlement, Akeena has agreed to
9 implement and maintain certain corporate governance measures;

10 WHEREAS, on September 20, 2011, plaintiffs in the State Derivative Action filed an unopposed
11 motion seeking: (1) preliminary approval of the terms of the proposed settlement; (2) approval of the
12 form and manner of providing notice to Akeena shareholders (the "Notice"); and (3) a hearing for the
13 State Court to consider final approval of the settlement;

14 WHEREAS, a copy of the Stipulation of Settlement ("Stipulation") is attached hereto as Exhibit
15 1;

16 WHEREAS, on October 7, 2011, the State Court granted preliminary approval of the settlement
17 in the State Derivative Action;

18 WHEREAS, in accordance with the Stipulation and preliminary approval order, Akeena caused
19 the Notice to be published in the *Investor's Business Daily* national financial newspaper and also filed a
20 copy of the Notice with the U.S. Securities and Exchange Commission;

21 WHEREAS, Plaintiffs in the Consolidated Action did not object to the settlement in the State
22 Derivative Action or to the Notice;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160

Co-Lead Counsel for Plaintiffs

DATED: February 17, 2012

MORRISON & FOERSTER LLP
JORDAN ETH
JUDSON E. LOBDELL
CRYSTAL MCKELLAR

s/ Judson E. Lobdell
JUDSON E. LOBDELL

425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

*Attorneys for Defendants Barry Cinnamon, Gary
Effren, Edward Roffman, Jon Witkin, George
Lauro, David Wallace, Pradeep Jotwani, and
Akeena Solar, Inc.*

E-filing attestation: I, George C. Aguilar, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Re Voluntary Dismissal of Complaint (FRCP 23.1(c), 41(a)(1). In compliance with General Order 45, X.B., I hereby attest that Judson E. Lobdell has concurred in this filing.

Dated: February 17, 2012

s/ George C. Aguilar
GEORGE C. AGUILAR

701743_2

1 **ORDER**

2 The Court, having considered the above stipulation of the parties and the exhibits thereto, and
3 good cause appearing therefore, HEREBY ORDERS THAT:

4 The Court hereby directs the Clerk of the Court to enter the dismissal of the above-captioned
5 Consolidated Action pursuant to Federal Rule of Civil Procedure 41(a). The parties shall bear their own
6 attorneys' fees, costs, and expenses incurred in connection with this action. ~~No notice of the dismissal~~
7 ~~shall be required to be given to Akeena's shareholders.~~

9 The Court finds the Notice of Settlement filed in Santa Clara Superior Court Case No. 10-CV-
10 173351, which Notice informed the shareholders of Akeena Solar, Inc. of the terms of the proposed
11 settlement of that action, and which settlement expressly included the voluntary dismissal of the above-
12 titled federal action, constitutes sufficient notice under Rule 23.1(c) of the Federal Rules of Civil
13 Procedure and, accordingly, no further notice of this dismissal need be given.

14 IT IS SO ORDERED.

15
16
17 Dated: February 23, 2012

18 
19 _____
20 HONORABLE MAXINE M. CHENEY
21 UNITED STATES DISTRICT COURT JUDGE
22
23
24
25
26
27
28