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14
 15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 IN RE SUNPOWER CORPORATION
 SHAREHOLDER DERIVATIVE
 18 LITIGATION

Lead Case No. 3:16-cv-05312-RS

(Consolidated with Case Nos. 5:16-cv-05381-RS and 3:16-cv-05988-RS)

**STIPULATION AND ~~[PROPOSED]~~
 ORDER OF VOLUNTARY DISMISSAL
 WITHOUT PREJUDICE**

20 This Document Relates To:

21 ALL ACTIONS

1 Pursuant to Rules 23.1(c) and 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure,
2 plaintiffs Bernard Stern, Peter Moscone, and Melvin Brenner (collectively, "Plaintiffs"), defendants
3 Thomas H. Werner, Charles D. Boynton, Bernard Clément, Ladislav Paszkiewicz, Daniel Lauré,
4 Catherine A. Lesjak, Thomas R. McDaniel, Pat Wood III, Arnaud Chaperon, Denis Giorno, Jean-
5 Marc Otero del Val, and Humbert de Wendel (the "Individual Defendants"), and nominal defendant
6 SunPower Corporation ("SunPower" and, collectively with the Individual Defendants,
7 "Defendants"),¹ by and through their undersigned counsel, submit this stipulation and [proposed]
8 order to voluntarily dismiss the above-captioned action without prejudice and state as follows:

9 WHEREAS, Plaintiffs' individual shareholder derivative actions were consolidated by the
10 Court on November 15, 2016 (the "Consolidated Action") (Dkt. No. 12);

11 WHEREAS, there was a consolidated securities fraud class action brought on behalf of a
12 putative class of SunPower shareholders and asserting claims arising from facts common to the
13 Consolidated Action pending in this Court and captioned *In re SunPower Corporation Securities*
14 *Litigation*, Case No. 3:16-cv-04710-RS (the "Securities Action");

15 WHEREAS, the Parties met and conferred regarding coordination of the Consolidated
16 Action with the related Securities Action and agreed that it was in the best interests of SunPower to
17 temporarily stay the Consolidated Action pending resolution of defendants' anticipated motion to
18 dismiss in the Securities Action;

19 WHEREAS, the Parties submitted a stipulation providing for the filing of a consolidated
20 complaint and for the above-described stay (Dkt. No. 14), which was approved and entered by the
21 Court on December 13, 2016 (the "Stay Order") (Dkt. No. 15);

22 WHEREAS, on January 13, 2017, Plaintiffs filed their Verified Consolidated Stockholder
23 Derivative Complaint (Dkt. No. 22);

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27 ¹ Plaintiffs and Defendants are collectively referred to herein as the "Parties."
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1 WHEREAS, in the Securities Action, on October 9, 2018, the Court entered an order
2 granting defendants' motion to dismiss without leave to amend and, on October 10, 2018, the Court
3 entered judgment in favor of defendants in the Securities Action;

4 WHEREAS, the deadline for plaintiffs in the Securities Action to file a notice of appeal
5 from the Court's judgment has passed;

6 WHEREAS, Plaintiffs now wish to voluntarily dismiss this Consolidated Action without
7 prejudice, with each party to bear their own costs and fees, and Defendants do not oppose such a
8 dismissal; and

9 WHEREAS, the Parties respectfully submit that notice of said dismissal is unnecessary to
10 protect the interests of SunPower and its shareholders for the following reasons: (i) Plaintiffs seek
11 dismissal without prejudice; (ii) there has been no settlement or compromise between the Parties
12 nor attempts to seek such; (iii) there has been no collusion among the Parties; and (iv) neither
13 Plaintiffs nor their counsel have received nor will receive any consideration from Defendants for the
14 dismissal.

15 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by the Parties,
16 through their respective counsel of record, pursuant to Rules 23.1(c) and 41(a)(1)(A)(ii) of the
17 Federal Rules of Civil Procedure and subject to Court approval, as follows:

- 18 1. This Consolidated Action is dismissed in its entirety without prejudice.
- 19 2. Each Party shall bear their own costs, fees, and expenses, including attorneys' fees.
- 20 3. For the reasons noted above, notice of this dismissal is not required.

21 **IT IS SO STIPULATED.**

22 Dated: November 20, 2018

ROBBINS ARROYO LLP

23 /s/ Ashley R. Rifkin

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Lead Counsel for Plaintiffs

Dated: November 20, 2018

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I, Ashley R. Rifkin, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order of Voluntary Dismissal Without Prejudice. In compliance with Civil L.R. 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Ashley R. Rifkin
ASHLEY R. RIFKIN

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/20/18


HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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