

In re SunEdison, Inc. Securities Litigation

COURT: United States District Court for the Southern District of New York

CASE NUMBER: 16-md-2742-PKC

CASE LEADERS: Salvatore J. Graziano, Katherine M. Sinderson

Please note the Claim Form is no longer available.

This is a securities class action on behalf of all persons and entities who purchased or acquired the common stock of SunEdison, Inc. ("SunEdison" or the "Company") from after the close of trading on September 2, 2015 through April 3, 2016, or who purchased or acquired SunEdison preferred stock from its offering on August 18, 2015 through November 9, 2015, inclusive. This action asserts claims under the federal securities laws against SunEdison, SunEdison CEO Ahmad Chatila ("Chatila"), SunEdison's former directors, and the underwriters of an August 2015 offering of preferred stock (collectively, "Defendants").

Settlement of the Action

The Court-appointed Lead Plaintiff Municipal Employees' Retirement System of Michigan ("MERS") and Named Plaintiff Arkansas Teacher Retirement System ("ATRS," and together with MERS, "Plaintiffs"), on behalf of themselves and the Class, reached a settlement of this action for a cash payment of \$74 million with a potential additional supplemental payment of up to \$2 million.

Following the final approval hearing on October 25, 2019, the Court entered the Judgment finally approving the Settlement and resolving all claims in the Action. The Court also entered separate Orders approving the Plan of Allocation for the proceeds of the Settlement and awarding Plaintiffs' Counsel attorneys' fees and expenses.

If you are a member of the Class, your rights will be affected and you may be eligible for a payment from the Settlement. The Class consists of:

- (1) all persons and entities who purchased or otherwise acquired shares of SunEdison common stock from after the close of trading on September 2, 2015 through and including April 3, 2016, and were damaged thereby (the "Exchange Act Subclass"); and
- (2) all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock from August 18, 2015 through November 9, 2015, inclusive, pursuant or traceable to the registered public Preferred Offering on or about August 18, 2015, and were damaged thereby (the "Securities Act Subclass").

It is possible for you to be a member of either or both subclasses described above. Certain persons are excluded from the Class by definition as set forth in paragraph 31 of the [Settlement Notice](#). Other persons are excluded from the Exchange Act Subclass and/or Securities Act Subclass pursuant to requests made in connection with the Class Notice, which was mailed to Class members beginning in April 2019. Persons excluded by request are set forth on Appendix 1 and Appendix 2 to the [Stipulation and Agreement of Settlement](#).

Please read the [Settlement Notice](#) to fully understand your rights and options. A copy of the [Settlement Notice](#) can be found on the **Case Documents** page. You may also visit the case website, SunEdisonSecuritiesLitigation.com, for more information about the Settlement.

Background

The action alleges that the executives of SunEdison, at one time one of the largest renewable energy companies in the world, misled investors concerning its financial condition. Specifically, Plaintiffs allege that, throughout the Class Period, SunEdison's senior executives defrauded investors through a series of misrepresentations concerning the Company's liquidity position, debt profile, and the viability of SunEdison's business strategy.

Investors began to learn the truth about the Company's financial condition through a series of corrective disclosures. For example, beginning in November 2015, the Company disclosed that it had reclassified approximately \$740 million worth of "non-recourse" debt as "recourse," thereby admitting that the Company had misrepresented the nature of its debt and that, in truth, the lenders on these obligations could recover directly from the Company. In addition, SunEdison disclosed that it had entered into a one-year \$170 million loan with Goldman Sachs at an effective 15% interest rate in August 2015—i.e., at the same time that the Company was assuring investors that its liquidity position was strong. Contrary to Defendants' representations, analysts explained that a loan with these terms demonstrated that the Company had "emergency cash needs" because no borrower would be forced to take out a loan on such terms other than a "distressed company." As a result of the disclosures of SunEdison's true financial condition, the Company's stock has declined over 95% from its Class Period high.

History of the Litigation

On March 24, 2016, the Honorable Rodney W. Sippel of the United States District Court for the Eastern District of Missouri appointed MERS as Lead Plaintiff and BLB&G as Lead Counsel.

On April 21, 2016, SunEdison filed for bankruptcy before the United States Bankruptcy Court for the Southern District of New York. On April 25, 2016, SunEdison filed a notice of bankruptcy filing, notifying the District Court for the Eastern District of Missouri that any further action against the Company was stayed pursuant to the automatic bankruptcy stay of United States Bankruptcy Code. On April 26, 2016, in light of SunEdison's notice of bankruptcy, the District Court for the Eastern District of Missouri issued an order administratively closing the action. On July 19, 2016, the Court issued an order permitting Lead Plaintiff to file a consolidated amended securities class action complaint (the "CAC") against non-debtor defendants. Lead Plaintiff filed the CAC, three days later, on July 22, 2016, against, among others, SunEdison's former CEO, its Class Period directors, and the underwriters of SunEdison's August 2015 Preferred Offering.

In July 2016, Lead Plaintiff filed a motion before the United States Judicial Panel on Multidistrict Litigation (the "MDL Panel") to transfer this case and multiple other related cases pending nationwide to the Southern District of New York. On October 4, 2016, the MDL Panel granted Lead Plaintiff's motion and transferred this case to Judge Castel of the Southern District of New York.

On March 21, 2017, Plaintiffs filed a Second Amended Consolidated Class Action Complaint (the "SAC"). On March 6, 2018, after full briefing on Defendants' motions to dismiss the SAC, Judge Castel issued a decision sustaining in part the SAC for Section 11 claims related to the August 2015 Offering and Section 10(b) claims arising from a September 2, 2015 statement by Defendant Chatila.

Discovery in the Action commenced in March 2018. Defendants and third parties produced more than 300,000 documents, totaling more than 2,260,000 pages, to Plaintiffs. Plaintiffs produced over 12,000 pages of documents to Defendants, and Plaintiffs' market-efficiency expert produced more than 22,000 additional pages of documents to Defendants. Between October 2018 and February 2019, Plaintiffs deposed 19 fact witnesses, including nine

former senior executives or high-ranking employees of SunEdison or related companies TerraForm Power and TerraForm Global, four former directors of SunEdison, and six representatives of the Underwriter Defendants. In connection with Plaintiffs' class-certification motion, Defendants deposed one representative from each Plaintiff, as well as Plaintiffs' market-efficiency expert Dr. Steven Feinstein. The Parties also served and responded to interrogatories and requests for admission and exchanged numerous letters, including disputes between the Parties and with nonparties, concerning discovery issues, several of which were submitted to the Court for resolution.

On June 13, 2018, Lead Plaintiff filed a motion for class certification. Following briefing on the motion, on January 7, 2019, the Court issued an Opinion and Order granting the class certification motion with a modified class as described herein. The "Class" certified by the Court consists of two subclasses: (1) all persons and entities who purchased or otherwise acquired shares of SunEdison common stock between September 2, 2015 and April 4, 2016, and were damaged thereby (the "Exchange Act Subclass"); and (2) all persons and entities who purchased or otherwise acquired shares of SunEdison preferred stock between August 18, 2015 and November 9, 2015, inclusive, pursuant or traceable to the registered public offering on or about August 18, 2015, and were damaged thereby (the "Securities Act Subclass," and together with the Exchange Act Subclass, the "Class"). The Court also appointed MERS as the Class Representative for the Exchange Act Subclass and ATRS as Class Representative for the Securities Act Subclass (MERS and ATRS, together, the "Class Representatives"), and appointed BLB&G as Class Counsel. A copy of the Notice of Pendency of Class Action can be viewed on the **Case Documents** page.

On June 11, 2019, following multiple mediation sessions and extended settlement negotiations, the Parties reached an agreement in principle to settle the Action in return for a total cash payment by or on behalf of Defendants of \$74 million, with the possibility of an additional contingent payment of up to \$2 million more.

On July 11, 2019, the Parties entered into the Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed on the **Case Documents** page or at SunEdisonSecuritiesLitigation.com.

On July 12, 2019, Plaintiffs filed a motion for preliminary approval of the Settlement, requesting that the Court authorize notice of the Settlement to be sent to the Class and schedule a date for hearing on final approval of the Settlement and related matters. On July 16, 2019, the Court entered its Order Preliminarily Approving Settlement and Providing for Settlement Notice, which scheduled a hearing for October 25, 2019 to consider final approval of the Settlement and related matters.

On September 20, 2019, Plaintiffs and Lead Counsel filed their papers in support of the Settlement, the Plan of Allocation, and the fee and expense application.

Following the final approval hearing on October 25, 2019, the Court entered the Judgment finally approving the Settlement and resolving all claims in the Action. The Court also entered separate Orders approving the Plan of Allocation for the proceeds of the Settlement and awarding Plaintiffs' Counsel attorneys' fees and expenses.

We filed the distribution motion on August 20, 2020. The initial distribution occurred in October 2020. Subsequent distributions will occur on a rolling basis in accordance with the court order.

Case Documents

- Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Settlement Notice")

- August 26, 2020 - Order Approving Distribution
- August 20, 2020 - Notice of Motion for Disbursement of Funds
- August 20, 2020 - Memorandum of Law in Support of Motion for Disbursement of Funds
- August 20, 2020 - Proposed Order
- August 20, 2020 - Declaration of Richard W. Simmons
- August 20, 2020 - Exhibit A
- August 20, 2020 - Exhibit B
- August 20, 2020 - Exhibit C
- August 20, 2020 - Exhibit D
- August 20, 2020 - Exhibit E
- August 20, 2020 - Exhibit F
- August 20, 2020 - Exhibit G
- July 14, 2020 - Pre-Motion Letter Addressed to Judge P. Kevin Castel from Katherine M. Sinderson
- October 25, 2019 - Judgment Approving Class Action Settlement
- October 25, 2019 - Order Approving Plan Of Allocation Of Net Settlement Fund
- October 25, 2019 - Order Awarding Attorney's Fees And Litigation Expenses
- October 18, 2019 - Reply Memorandum of Law in Further Support of (I) Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motions for an Award of Attorney's Fees and Litigation Expenses
- September 20, 2019 - Notice of Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation
- September 20, 2019 - Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation
- September 20, 2019 - Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- September 20, 2019 - Notice of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- September 20, 2019 - Declaration of Salvatore J. Graziano in Support of: (Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- July 16, 2019 - Order Preliminarily Approving Settlement and Providing for Settlement Notice
- July 12, 2019 - Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement and Approval of Dissemination of Notice of Settlement

- July 12, 2019 - Declaration of Richard W. Simmons Regarding Class Notice and Report on Requests for Exclusion Received
- July 11, 2019 - Stipulation and Agreement of Settlement
- April 18, 2019 - Notice of Pendency of Class Action
- March 17, 2017 - Second Amended Consolidated Securities Class Action Complaint
- July 22, 2016 - Amended Consolidated Securities Class Action Complaint