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CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

U.S. DISTRICT COURT

IN RE VIVINT SOLAR, INC.
SECURITIES LITIGATION

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Case No. 2:20-cv-00919-JNP-CMR

Honorable Jill N. Parrish

Magistrate Judge Cecilia M. Romero

Before the court is a motion filed by lead plaintiffs Billy Wallace and Kyu S. Jang (Lead Plaintiffs), on behalf of themselves and the settlement class, and defendants Vivint Solar, Inc., David Bywater, and Dana Russell (collectively, Defendants and, together with Lead Plaintiffs, the Parties) for preliminary approval of a settlement agreement reached by the Parties (the Settlement) and for approval of the procedures for providing notice to class members. ECF No. 87. The court GRANTS the stipulated motion.

The court finds that it will likely approve the parties' proposed settlement under Rule 23(e) of the Federal Rules of Civil Procedure. The court further finds that it will likely certify the class the parties have agreed upon (Settlement Class)¹ for purposes of judgment.

¹ The proposed class consists of all persons and entities who purchased or otherwise acquired Vivint Solar common stock between March 5, 2019 and September 26, 2019, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are: (i) Defendants, (ii) Sunrun, (iii) the executive officers and directors of Vivint Solar, (iv) any entity in which any defendant has or had a controlling interest, (v) members of any defendant's immediate family, and (vi) the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded from the proposed class are any persons or entities who exclude themselves by filing a timely request for exclusion in accordance with the requirements set forth below and in the notice.

A hearing pursuant to Federal Rule of Civil Procedure 23 is hereby scheduled to be held before the court, either in person or telephonically at the court's discretion, on May 5, 2022, at 2:00 p.m. Mountain Standard Time (Settlement Hearing) for the following purposes:

(a) to determine whether the proposed settlement is fair, reasonable, and adequate, and should be approved by the court;

(b) to determine whether the proposed Final Order and Judgment (Judgment) as provided under the Stipulation and Agreement of Settlement, dated November 4, 2021 (Stipulation) should be entered, and to determine whether all Released Plaintiff Claims as against the Defendant Releasees and all Released Defendant Claims as against the Plaintiff Releasees shall be settled and released;

(c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Lead Plaintiffs should be finally certified as representatives of the Settlement Class; whether Lead Counsel should be finally appointed as counsel for the Settlement Class;

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the court;

(e) to consider Lead Counsel's application for an award of attorneys' fees and expenses (which may include an application for an award to Lead Plaintiffs for reimbursement of their reasonable costs and expenses directly related to their representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 (PSLRA)); and

(f) to rule upon such other matters as the court may deem appropriate.

2. The court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The court further reserves

the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees or expenses. The court may also adjourn the Settlement Hearing, decide to hold the hearing telephonically, or modify any of the dates herein, without further individual notice to members of the Settlement Class. Any such changes shall be posted on the website of the Claims Administrator.

3. The court approves the form, substance and requirements of the Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys' Fees and Expenses (the Notice), the Proof of Claim and Release Form (Claim Form), and the short-form postcard notice (the Postcard Notice) substantially in the forms annexed to the Stipulation as Exhibits 2, 5, and 6, respectively.

4. The court approves the retention of A.B. Data, Ltd., as the Claims Administrator.

5. The Claims Administrator shall cause the Postcard Notice, substantially in the form annexed to the Stipulation as Exhibit 4, to be mailed or e-mailed within 30 calendar days after entry of this Preliminary Approval Order (Notice Date), to all Settlement Class Members who can be identified through reasonable investigation. The Defendants, to the extent they have not already done so, shall use their best efforts to obtain and provide to Lead Counsel, or the Claims Administrator, transfer records in electronic searchable form containing the names and addresses of record purchasers of Vivint Solar common stock during the Class Period within ten calendar days after entry of this Preliminary Approval Order.

6. The Claims Administrator shall cause the Notice and the Claim Form, substantially in the forms annexed to the Stipulation as Exhibit 5 to be posted on the Claims Administrator's website within 30 calendar days after entry of this Order.

7. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons and entities that purchased or acquired Vivint Solar common stock during the Class Period as record owners but not as beneficial owners. Such nominees SHALL EITHER: (a) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Notice, request from the Claims Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and WITHIN SEVEN (7) CALENDAR DAYS of receipt of those Postcard Notices from the Claims Administrator forward them to all such beneficial owners; or (b) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Notice, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the Postcard Notice promptly to such identified beneficial owners. Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available. Nominees who elect to send the Postcard Notice to their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the above-captioned litigation (the Action). Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

8. Lead Counsel shall, at or before the Settlement Hearing, file with the court proof of mailing of the Postcard Notice and posting of the Notice and Claim Form.

9. The court approves the form of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (Summary Notice) substantially in the form annexed to the Stipulation as Exhibit 3 and directs that Lead Counsel

shall cause the Summary Notice to be published in *Investor's Business Daily* and be transmitted over a recognized wire service (e.g., GlobeNewsire, PR Newswire) within 30 calendar days after the entry of the Preliminary Approval Order. Lead Counsel shall, at or before the Settlement Hearing, file with the court proof of publication of the Summary Notice.

10. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

11. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each claimant shall take the following actions and be subject to the following conditions:

(a) A properly executed Claim Form, substantially in the form annexed to the Stipulation as Exhibit 5, must be submitted to the Claims Administrator, at the address indicated in the Notice, postmarked no later than 30 calendar days after the Settlement Hearing. Such deadline may be further extended by court order or by Lead Counsel in their discretion. Each Claim Form shall be deemed to have been submitted (i) when electronically received via the electronic claims submission process on the Claims Administrator's website with the claimant receiving an electronic confirmation of submission; or (ii) when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid). Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in

the Postcard Notice. Any Settlement Class Member who does not timely submit a Claim Form within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the court, but shall remain bound by all determinations and judgments in this Action concerning the Settlement, as provided by paragraph 18 of this order.

(b) The Claim Form submitted by each claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of her current authority to act on behalf of the claimant must be included in the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Claim Form, each claimant shall submit to the jurisdiction of the court with respect to the claim submitted.

12. Any Settlement Class Member may enter an appearance in this Action, at his, her, or its own expense, individually or through counsel of his, her or its own choice. If any Settlement Class Member does not enter an appearance, he, she, or it will be represented by Lead Counsel.

13. Settlement Class Members shall be bound by all orders, determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such

Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is received no later than 21 calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address and telephone number of the Person seeking exclusion, must state that the sender requests to be “excluded from the Settlement Class in *In re Vivint Solar, Inc. Securities Litigation*, Case No. 2:20-cv-00919-JNP-CMR (D. Utah)” and must be signed by such Person. Such Persons requesting exclusion are also directed to state the information requested in the Notice, including, but not limited to the date(s), price(s), and number(s) of shares of all purchases or acquisitions of Vivint Solar common stock during the Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the court.

14. Putative Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

15. The court will consider any Settlement Class Member’s objection to the Settlement, the Plan of Allocation, or the application for an award of attorneys’ fees or expenses only if such Settlement Class Member has served by hand or by mail his, her, or its written objection and supporting papers, such that they are received on or before 21 calendar days before the Settlement Hearing, upon Lead Counsel: W. Scott Holleman, Bragar Eigel & Squire, P.C., 810 Seventh Avenue, Suite 620, New York, NY 10019; and Defendants’ Counsel: Kevin M. McDonough, Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020; and has filed, either by mail or in person, said objections and supporting papers with the Clerk, United States

District Court, District of Utah, 351 S W Temple, Salt Lake City, UT 84101. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, or the application for an award of attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, or the application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

16. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

17. Pending final determination of whether the Settlement should be approved, Lead Plaintiffs, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Plaintiff Claims against the Defendant Releasees.

18. As provided in the Stipulation, prior to or following the Effective Date, Lead Counsel may pay the Claims Administrator a portion of the reasonable fees and costs associated with giving notice to the Settlement Class and the review of claims and administration of the

Settlement out of the Settlement Fund not to exceed \$200,000 without further approval from the Defendants and without further order of the court.

19. All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the court and served on or before 35 calendar days prior to the date set herein for the Settlement Hearing. If reply papers are necessary, they are to be filed with the court and served no later than seven calendar days prior to the Settlement Hearing.

20. No person who is not a Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the court or otherwise provided in the Stipulation.

21. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the court and shall remain subject to the jurisdiction of the court until such time as such funds shall be disbursed pursuant to the Stipulation or further order of the court.

22. Neither the Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for attorney's fees or expenses submitted by Lead Counsel or Lead Plaintiffs, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Settlement.

23. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then both the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties

shall be deemed to have reverted to their respective litigation positions in the Action as of May 19, 2021.

DATED November 30, 2021.

BY THE COURT:



Honorable Jill N. Parrish
UNITED STATES DISTRICT JUDGE