

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT BRUCE, et al.,
Plaintiffs,

v.

SUNTECH POWER HOLDINGS CO.,
LTD, et al.,
Defendants.

Case No. [12-cv-04061-RS](#)

**ORDER OF FINAL APPROVAL AND
FINAL JUDGMENT**

WHEREAS the Court has been informed that Plaintiffs James Bachesta, Thanh Le and Chen Weifeng (collectively “Lead Plaintiffs”), and Defendant Zhengrong Shi (“Defendant”) have reached a mutually agreeable settlement of this Action and have entered into a Stipulation of Settlement, executed on August 14, 2015 (the “Stipulation”);

WHEREAS this matter came before the Court for hearing on February 11, 2016, pursuant to the Order for Notice and Hearing entered on October 8, 2015, on the application of the Lead Plaintiffs for final approval of the Settlement as set forth in the Stipulation;

WHEREAS The Court has heard all persons properly appearing and requesting to be heard, read and considered the motion and supporting papers and found good cause appearing;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Order of Final Approval and Final Judgment (the “Judgment”) incorporates by reference the definitions in the Stipulation, and all capitalized terms used in this Judgment that are not otherwise identified herein have the meanings assigned to them as set forth in the Stipulation.

1 2. The Court has jurisdiction over the subject matter of the Action and over all Parties to
2 the Action, including all members of the Class.

3 3. On February 11, 2016, the Court held a Final Approval Hearing, after due and
4 proper notice, to consider the fairness, reasonableness and adequacy of the proposed Stipulation.
5 In reaching its decision in this Action, the Court considered the Stipulation, the Court file in this
6 case, and the presentation by Co-Lead Counsel on behalf of the Lead Plaintiffs and the Class in
7 support of the fairness, reasonableness and adequacy of the Settlement.

8 4. As recognized in the Order for Notice and Hearing, the Court previously
9 conditionally certified a Class for settlement purposes only, pursuant to Federal Rules of Civil
10 Procedure 23(a) and (b)(3).

11 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby affirms
12 its decision certifying the following Class for purposes of settlement only:

13 All persons or entities who purchased or otherwise acquired Suntech American
14 Depository Shares or Suntech 3.0% Convertible Senior Notes between August 18,
15 2010 and July 30, 2012, inclusive, and who were damaged thereby as alleged in the
16 Operative Complaint or the Amended Complaint. Excluded from the Class are
17 Defendant, Suntech, all directors and officers of Suntech during the Class Period,
18 and members of their immediate families and their legal representatives, heirs,
successors, or assigns and any trust, company, entity or affiliate controlled or
owned by any of the excluded persons and entities, or in which Defendant or
Suntech has or had a controlling interest.

19 6. The Court finds, for the purposes of the Settlement only, that the prerequisites to a
20 class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been
21 satisfied in that: (a) the number of Class Members is so numerous that joinder of all members
22 thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the
23 claims of the Court-appointed Lead Plaintiffs are typical of the claims of the Class they represent;
24 (d) the Lead Plaintiffs have and will continue to fairly and adequately represent the interests of the
25 Class; (e) the questions of law and fact common to the Class Members predominate over any
26 questions affecting only individual Class Members; and (f) a class action is superior to other
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1 available methods for the fair and efficient adjudication of the controversy.

2 7. In the Order for Notice and Hearing, the Court preliminarily approved the Notice
3 and found that the proposed form and content of the Notice to the Class Members satisfied the
4 requirements of due process, as well as the Private Securities Litigation Reform Act of 1995
5 (“PSLRA”), 15 U.S.C. § 78u4(a)(7). The Court reaffirms that finding and holds that the best
6 practicable notice was given to Class Members under the circumstances and constitutes due and
7 sufficient notice of the Settlement, Stipulation in support thereof and Final Approval Hearing to all
8 persons affected by and/or entitled to participate in the Settlement or the Final Approval Hearing.
9 No Class Member is relieved from the terms of the Settlement, including the releases provided for
10 therein, based on the contention or proof that such Class Member failed to receive actual or
11 adequate notice. The Court finds that a full opportunity has been afforded to Class Members to
12 object to the Settlement and/or to participate in the Final Approval Hearing. Furthermore, the
13 Court hereby affirms that due and sufficient notice has been given to the appropriate State and
14 Federal officials pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C § 1715.

15 8. The Court has determined that the Settlement is fair, reasonable and adequate and is
16 hereby finally approved in all respects. In making this determination, the Court has considered
17 factors with respect to fairness, which include “(1) the strength of the plaintiff’s case; (2) the risk,
18 expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
19 action status throughout trial; (4) the amount offered in settlement; (5) the extent of discovery
20 completed; (6) the experience and views of counsel; (7) the presence of a governmental
21 participant; (8) the reaction of the class members to the proposed settlement; and (9) the absence
22 of collusion in the settlement procedure.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575
23 (9th Cir. 2004).

24 9. The Court has considered the submissions of the Parties along with the entire
25 record in this Action, all of which show that there remains substantial risk and uncertainty as to
26 whether Lead Plaintiffs and the Class will ultimately prevail on their claims. In light of this risk
27 and uncertainty, the Court finds that the benefits available directly to the Class Members, as

1 reflected in the payment set forth in ¶ 10, represent a fair, reasonable and adequate resolution.

2 10. Defendant has agreed to pay or cause to be paid \$5,000,000 in cash for the benefit
3 of the Class. Among other things, the recovery of individual Class Members depends on the
4 number of shares of Suntech American Depository Shares and the amount of Suntech 3.0%
5 Convertible Senior Notes those Class Members purchased and sold and the prices and amounts of
6 transactions by other Class Members who filed claims.

7 11. The Court finds that the proposed Plan of Allocation is fair, just, reasonable and
8 adequate and is finally approved in all respects.

9 12. In addition to finding the terms of the proposed Settlement to be fair, reasonable
10 and adequate, the Court determines that there was no fraud or collusion between the Parties or
11 their counsel in negotiating the terms of the Settlement, and that all negotiations were made at
12 arm's length. Furthermore, the terms of the Stipulation make it clear that the process by which the
13 Settlement was achieved was fair. Finally, there is no evidence of unethical behavior, want of
14 skill or lack of zeal on the part of Co-Lead Counsel.

15 13. This Judgment shall be binding on all Class Members, including Lead Plaintiffs,
16 except for the Class Members who filed timely and valid requests for exclusion, as listed on
17 Exhibit 1, attached hereto. Further, the Action and Released Claims are hereby dismissed with
18 prejudice as against Defendant, Suntech and all Released Persons. The Parties are to bear their
19 own costs, except as otherwise provided in the Stipulation.

20 14. Upon the Effective Date, Lead Plaintiffs on behalf of each Class Member, shall be
21 deemed to have, and by operation of the Judgment shall have, fully, finally and forever released,
22 relinquished and discharged all Released Claims against the Released Persons, whether or not any
23 individual Class Member executes and delivers the Proof of Claim.

24 15. Upon the Effective Date, Lead Plaintiffs and each Class Member and anyone
25 claiming through or on behalf of any of them, by operation of this Judgment, shall be forever
26 barred and enjoined from commencing, instituting or continuing to prosecute any action or any
27 proceeding in any court of law or equity, arbitration, tribunal, administrative forum or other forum

1 of any kind, asserting any of the Released Claims against any of the Released Persons.

2 16. Upon the Effective Date, Defendant, on behalf of himself and the Released
3 Persons, shall hereby be deemed to have, and by operation of this Judgment shall have, fully,
4 finally and forever, released, relinquished, settled and discharged the Lead Plaintiffs, the members
5 of the Class, and any of their attorneys, including Co-Lead Counsel, and shall be permanently
6 barred and enjoined from instituting, commencing, or prosecuting any Settled Defendant's Claims
7 against any of them directly, indirectly or in any other capacity.

8 17. In accordance with 15 U.S.C. § 78u-4(f)(7) and any other applicable law or
9 regulation, any and all claims which are brought by any Person or entity against Defendants (a) for
10 contribution or indemnification arising out of any Released Claims, or (b) where the damage to the
11 claimant is measured by reference to the claimant's liability to the Lead Plaintiffs or the Class, are
12 hereby permanently barred and discharged. Any such claims brought by Defendants against any
13 Person or entity (other than Persons or entities whose liability to Lead Plaintiffs or the Class is
14 extinguished by this Judgment) are likewise permanently barred and discharged. Notwithstanding
15 the foregoing, nothing in this Judgment shall bar or otherwise affect any rights or claims of any
16 Released Person under any directors' and officers' liability insurance or other applicable insurance
17 coverage.

18 18. The Court finds and concludes that during the course of this Action, the Defendant,
19 Lead Plaintiffs and their respective counsel complied with the requirements of Rule 11 of the
20 Federal Rules of Civil Procedure. No Party or their respective counsel violated any of the
21 requirements of Rule 11 of the Federal Rules of Civil Procedure with respect to any of the
22 complaints filed in this Action, any responsive pleadings to any of the above complaints or any
23 motion with respect to any of the above complaints. The Court further finds that Lead Plaintiffs
24 and Co-Lead Counsel adequately represented the Class Members for purposes of entering into and
25 implementing the Settlement.

26 19. The Court finds that the law firms preliminarily approved as Co-Lead Counsel in
27 its prior Order for Notice and Hearing are comprised of competent and experienced attorneys and

1 have adequately and aggressively represented the interests of the Class Members. The Court
2 therefore certifies and appoints the law firms of Cohen Milstein Sellers & Toll PLLC and
3 Pomerantz LLP to serve as Class Counsel on behalf of the Class for purposes of this settlement
4 only.

5 20. For purposes of this settlement only, the Court hereby certifies James Bachesta,
6 Thanh Le and Chen Weifeng as Class Plaintiffs representing the Class defined herein.

7 21. The Court hereby awards Class Counsel 28 % of the balance of the settlement
8 funds and interests after deduction of (1) settlement administration expenses and (2) costs awarded
9 herein, to be allocated among plaintiffs' counsel in the sole discretion of Class Counsel. Class
10 Counsel shall also receive \$95,445.21 for reimbursement of expenses.

11 22. The attorneys' fees and expenses approved by the Court herein shall be payable
12 from the Settlement Fund to Class Counsel five (5) Business Days after entry of this Judgment,
13 notwithstanding the existence of any potential appeal or collateral attack on this Judgment.

14 23. Without further order of the Court, the Parties may agree to reasonable extensions
15 of time to carry out any of the provisions of the Stipulation.

16 24. If the Settlement is terminated as provided in the Stipulation or the Effective Date
17 otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no
18 further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall
19 be without prejudice to the rights of the Parties, and the Parties shall revert to their respective
20 positions in the Action immediately prior to their execution of the Stipulation as provided therein.

21 25. Nothing in this Judgment shall in any way impair or restrict the rights of the Parties
22 to enforce the terms of the Stipulation.

23 26. Without affecting the finality of this Judgment, the Court reserves continuing and
24 exclusive jurisdiction over all matters relating to the administration, implementation, effectuation
25 and enforcement of the Stipulation, the Settlement and this Judgment.

26 There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of
27 the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

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1 **IT IS SO ORDERED.**

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3 Dated: February 12, 2016



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5 RICHARD SEEBORG
United States District Judge

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