

1 Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
Michael P. Lehmann
2 California Bar No. 77152
One Embarcadero Center
3 Suite 2440
San Francisco, CA 94111
4 Telephone: (415) 986-3321
Facsimile: (415) 986-3643
5

6 Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
Steven J. Toll
Daniel S. Sommers
7 Matthew B. Kaplan
1100 New York Avenue, N.W.
8 Suite 500, West Tower
Washington, DC 20005
9 Telephone: (202) 408-4600
Facsimile: (202) 408-4699
10

11 Counsel for Movant Shahpour Javidzad

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 IN RE LDK SOLAR SECURITIES
LITIGATION
16
17 This Document Relates to:
ALL ACTIONS
18
19
20
21
22
23

MASTER FILE NO.: C-07-05182-WHA

**SUPPLEMENTAL NOTICE OF MOTION
AND MOTION OF SHAHPOUR
JAVIDZAD FOR APPOINTMENT AS
LEAD PLAINTIFF; MEMORANDUM IN
SUPPORT THEREOF**

CLASS ACTION

Date: January 3, 2008
Time: 9:00 a.m.
Judge: Hon. William Alsup
Courtroom: Courtroom 9, 19th Floor

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on January 3, 2007, at 9:00 a.m., or at such other time as shall be set by the Court, before the Hon. William Alsup at the United States Courthouse located at 450 Golden Gate Ave., San Francisco, California 94102, Shahpour Javidzad (“Movant”) will move, and hereby does move, the Court for an order appointing Movant as Lead Plaintiff in this class action litigation. This Notice of Motion and Motion and Memorandum in Support Thereof supplements and replaces in its entirety Mr. Javidzad’s November 21, 2007 Notice of Motion and Motion and Memorandum in Support Thereof (docket no. 23), as authorized by the Court’s Order of November 30, 2007 (docket no. 35).

Movant makes this motion on the grounds that he is the “most adequate plaintiff” under the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4. This motion is based on this Notice of Motion and Motion and accompanying Memorandum, the accompanying Declaration of Matthew B. Kaplan, the pleadings and other filings in this matter, and such other written or oral argument permitted by the Court.

17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Movant respectfully submits this memorandum of law in support of his motion for an order appointing him as Lead Plaintiff in this consolidated class action. On information and belief Movant has the most significant financial interest in the outcome of the case and is precisely the type of investor who should be appointed as Lead Plaintiff.

II. THE CLAIMS ASSERTED

The complaints in this consolidated litigation allege that Defendants—LDK Solar Co. (“LDK”) and certain of its officers and directors—violated the Securities Exchange Act of 1934 (“Exchange Act”) by making false and misleading statements and failing to disclose information they had a duty to disclose, which conduct artificially inflated the price of LDK common stock (traded in the United States as American Depository Receipts) during the Class Period, August 1

1 through October 8, 2007,¹ causing harm to persons who engaged in transactions in LDK securities
2 during the Class Period. If appointed Lead Plaintiff Movant intends to assert these claims.

3 **III. ARGUMENT**

4 Movant satisfies each of the requirements of the PSLRA and is therefore qualified for
5 appointment as Lead Plaintiff in this Action. The PSLRA establishes a procedure for appointing
6 the Lead Plaintiff in “each private action arising under the [Exchange Act] that is brought as a
7 plaintiff class action pursuant to the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(1).

8 First, the plaintiff who files the initial action must publish a notice to the class within 20 days of
9 filing the action, informing class members of their right to file a motion for appointment as Lead
10 Plaintiffs. 15 U.S.C. § 78u-4(a)(3)(A)(i). Here, the first such notice here was published on
11 October 9, 2007 and is available at [http://www.marketwatch.com/news/story/coughlin-stoia-
12 geller-rudman-/story.aspx?guid=%7B9BE26242-CA2E-41C4-973F-6E8A7DB41876%7D](http://www.marketwatch.com/news/story/coughlin-stoia-geller-rudman-/story.aspx?guid=%7B9BE26242-CA2E-41C4-973F-6E8A7DB41876%7D).

13 The PSLRA further provides that within 90 days after the publication of the notice of
14 pendency, or as soon as practicable after the actions have been consolidated, the Court shall
15 consider any motion made by a class member and “shall appoint as Lead Plaintiff the member or
16 members of the purported plaintiff class that the court determines to be most capable of
17 adequately representing the interests of class members. 15 U.S.C. § 78u-4(a)(3)(B)(i). To
18 make this determination:

19 [T]he court shall adopt a presumption that the most adequate
20 plaintiff in any private action arising under this title is the person
21 or group of persons that –

22 (aa) has either filed the complaint or made a motion in
23 response to a notice. . . [within 60 days of publication of
24 the notice,]

25 ¹ The complaints in this consolidated litigation have differing class periods. The Class
26 Period in the Greenwald complaint, no. 07-5259, is from August 1, 2007 through October 8,
27 2007. The Class Period in the Candelore (no. 07-5182), O’Reilly (no. 07-5205) and Karkonan
28 (no. 07-5752) complaints, is from August 1 through October 3. August 1, 2007 through October
8, 2007 is the appropriate class period to use for determining who should be appointed lead
plaintiff because “the use of the longer, most inclusive class period...is proper, as it encompasses
more potential class members. *In re Doral Fin. Corp. Sec. Litig.*, 414 F. Supp. 2d 398, 402-403
(S.D.N.Y. 2006).

1 (bb) in the determination of the court, has the largest
2 financial interest in the relief sought by the class; and

3 (cc) otherwise satisfies the requirements of Rule 23 of
4 the Federal Rules of Civil Procedure.

5 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). As set forth below, Movant is the “most
6 adequate plaintiff” and should be appointed as the Lead Plaintiff.

7 A. Movant Has Satisfied The PSLRA’s Procedural Requirements

8 The 60-day time period during which applications for appointment as the Lead Plaintiff
9 may be made expires on December 10, 2007. Movant has moved within the statutory 60-day
10 time period and is willing to serve as a representative party on behalf of the Class.

11 Movant has also filled out and filed with this motion, as Attachment A to the Declaration
12 of Matthew B. Kaplan, the Court Questionnaire to Lead Plaintiff Candidates that the Court
13 instructed Lead Plaintiff Movants to complete (docket no. 9).

14 B. Movant has the Largest Financial Interest

15 Movant is presumptively the most adequate plaintiff because, on information and belief,
16 he has the largest financial interest in the relief sought by the Class of any Lead Plaintiff movant.
17 As set forth in great detail in Attachments B and C to the accompanying Declaration of Matthew
18 B. Kaplan, as a result of his transactions in LDK securities during the Class Period Movant
19 suffered losses of approximately \$1,499,599.² The vast majority of these losses were the direct
20 result of Movant’s purchases of LDK common stock during the Class Period. The balance was
21 the result of options transactions during the class period.³

22
23 ² The losses suffered by Movant, as detailed herein, are not the same as legally
24 compensable damages, measurement of which is often a complex legal question that generally
25 cannot be determined at this stage of the litigation. The approximate losses can, however, be
26 determined from information from the Movant and publicly available information concerning the
27 market for LDK securities.

28 ³ Most of Mr. Javidzad’s options transactions during the Class Period consisted of the
writing of put options. Generally, individuals who write put options, like purchasers of the
underlying common stock, believe that the price of the common stock will increase. Mr.
Javidzad lost a substantial amount on his options transactions, however, because, instead of
increasing, the price of LDK stock dropped sharply when the information about fraudulent
conduct at LDK was revealed to the market.

1 As of this filing, Movant does not know of any motion for appointment as Lead Plaintiff
2 by a class member who claims to have sustained a greater financial loss as a result of his
3 transactions during the Class Period.

4
5 C. Movant Satisfies the Requirements of Rule 23

6 In addition to meeting the requirements set forth above, a Lead Plaintiff must
7 preliminarily fulfill the requirements of Rule 23 of the Federal Rules of Civil Procedure.
8 Rule 23(a) provides that certification of a plaintiff class is appropriate if the following
9 prerequisites are met:

10 (1) the class is so numerous that joinder of all members is
11 impracticable, (2) there are questions of law or fact common to the
12 class, (3) the claims or defenses of the representative parties are
13 typical of the claims or defenses of the class, and (4) the
14 representative parties will fairly and adequately protect the
15 interests of the class.

16 Only two of these prerequisites—typicality and adequacy—directly address individual
17 characteristics of class representatives. Consequently, in deciding a Lead Plaintiff motion, the
18 Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer
19 examination of the remaining requirements until the Lead Plaintiff moves for class certification.
20 *Takeda v. Turbodyne Technologies*, 67 F. Supp. 2d 1129, 1131-35 (C.D. Cal. 1999); *In re Oxford*
21 *Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998). This is supported by the
22 PSLRA, which provides that the most adequate plaintiff presumption may be rebutted only by
23 proof that the plaintiff “will not fairly and adequately protect the interests of the class; or . . . is
24 subject to unique defenses that render such plaintiff incapable of adequately representing the
25 class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

26 Here, Movant purchased LDK common stock during the Class Period: (a) at prices
27 alleged to have been artificially distorted by the false and misleading statements issued by
28 Defendants; and (b) was damaged by the alleged fraud. “Typicality . . . is said to require that the
claims of the class representatives be typical of those of the class, and to be satisfied when each
class member’s claim arises from the same course of events, and each class member makes
similar legal arguments to prove the defendant's liability. *Armstrong v. Davis*, 275 F.3d 849,

1 868 (9th Cir. 2001) (internal quotation omitted). Here, Movant’s claim and the other class
2 members’ claims arise from the same course of alleged misrepresentations by Defendants.
3 Movant and all other class members will require the same arguments to prove Defendants’
4 liability. As Movant’s claims are co-extensive with those of the other class members, he
5 satisfies the typicality requirement of Rule 23(a). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
6 1020 (9th Cir. 1998) (“Under the rule’s permissive standards, representative claims are ‘typical’
7 if they are reasonably co-extensive with those of absent class members; they need not be
8 substantially identical.).

9 Movant is also an adequate representative of the Class. “Resolution of two questions
10 determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of
11 interest with other class members and (2) will the named plaintiffs and their counsel prosecute
12 the action vigorously on behalf of the class? *Hanlon*, 150 F.3d at 1020. Movant has no
13 conflicts of interest and the Court has directed that selection of lead counsel be deferred.
14 Movant has indicated that he will protect the interests of the Class and that he will appear before
15 the Court at the hearing on Lead Plaintiff motions.

16 Additional factors weigh in favor of appointing Mr. Javidzad as Lead Plaintiff. Mr.
17 Javidzad is an experienced investor willing and able to and oversee the prosecution of this
18 litigation by Class Counsel. Moreover, the fact that he is a resident of California will facilitate
19 his ability to monitor this case.

20 **IV. CONCLUSION**

21 In light of the foregoing, Mr. Javidzad requests that the Court appoint him to serve as
22 Lead Plaintiff in this Action and grant such other relief as the Court deems proper.

23 Dated: December 10, 2007

COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.

/s/Michael P. Lehmann

26 Michael P. Lehmann
27 Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
California Bar No. 77152
One Embarcadero Center
Suite 2440
San Francisco, CA 94111
Telephone: (415) 986-3321
Facsimile: (415) 986-3643

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

Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
Steven J. Toll
Daniel S. Sommers
Matthew B. Kaplan
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

Counsel for Movant Shahpour Javidzad