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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SESL RECOVERY, LLC, a Delaware limited liability company

Plaintiff,

v.

DEUTSCHE BANK SECURITIES, INC.,

Defendant.

CASE NO. CGC-18-572159

COMPLAINT

1. **FRAUDULENT MISREPRESENTATION**
2. **FRAUDULENT OMISSION**
3. **AIDING AND ABETTING FRAUDULENT MISREPRESENTATION**
4. **AIDING AND ABETTING FRAUDULENT OMISSION**
5. **CONSPIRACY TO DEFRAUD**
6. **NEGLIGENT MISREPRESENTATION**

Jury Trial Demanded

Plaintiff SESL Recovery, LLC ("Plaintiff" or "SESL") alleges upon knowledge as to itself and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. Plaintiff seeks to recover hundreds of millions of dollars in losses caused by the fraudulent and grossly negligent misrepresentations and omissions of Deutsche Bank Securities, Inc. ("DB Securities") concerning the financial condition of SunEdison, Inc. ("SunEdison" or the "Company"). DB Securities duped a group of lenders into loaning $725 million to SunEdison under the Second Lien Facility,[1] only *three months* before SunEdison collapsed into bankruptcy on April 21, 2016, so that it could reap tens of millions of dollars in fees, and to protect the $1 billion of loans by it and its affiliates to SunEdison that it knew were in jeopardy. DB Securities callously concluded that other investors should unwittingly bear the risk of SunEdison's demise through lies and deception.

2. In the years preceding its bankruptcy, SunEdison experienced meteoric growth, transforming it from a manufacturer of solar panel components into one of the world's largest renewable energy companies. As SunEdison's longtime, go-to investment bank, DB Securities facilitated SunEdison's access to the capital markets, which was essential to SunEdison's capital-intensive business model. DB Securities considered SunEdison to be one of its "most important clients," while SunEdison considered DB Securities to be its "partner," given their "many battles together over the years."

3. DB Securities' special knowledge of SunEdison's financial condition in the years, months, and weeks leading up to the funding of the Second Lien Facility—including that SunEdison was on the brink of financial collapse in the fall of 2015—can hardly be overstated. In just the several years prior to the Second Lien Loan, DB Securities facilitated more than ten financing transactions that raised billions of dollars for SunEdison and generated hundreds of millions of dollars in fees for DB Securities. Based on its central role in those transactions, and as a major creditor of SunEdison, DB Securities had a front row seat as SunEdison's business rapidly

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[1] Capitalized terms not defined in the Preliminary Statement are defined in the body of the complaint.

expanded, and unique access to SunEdison's confidential financial information as its fortunes declined. DB Securities thus developed an intimate knowledge of the finances and operations of SunEdison's business.

4. For example, in September 2015, DB Securities lent SunEdison $80 million to acquire a fifty percent interest in a solar power project in Utah known as Three Cedars. DB Securities' loan was secured by the Three Cedars project itself, including its underlying assets, cash inflows, and revenue-producing contracts. DB Securities soon became aware that a massive, overdue payable imperiled the viability of the Three Cedars project, which served as the collateral securing DB Securities' $80 million loan. Specifically, DB Securities learned that SunEdison was late paying, and apparently unable to pay, $89 million to Flextronics, a critical supplier to SunEdison that was threatening to withhold delivery of solar panels necessary to complete the project. In response, DB Securities exercised its right under the loan agreement to monitor the cash flow of the Three Cedars project in granular detail and approve all material payments. In the course of doing so, DB Securities became so alarmed about SunEdison's financial condition that DB Securities required cash inflows from the project to be used to pay Flextronics "directly," rather than through SunEdison, because DB Securities was "worried" SunEdison would use the cash to meet its own "liquidity [needs] versus [paying] Flextronics." At virtually the same time that DB Securities was expressing these concerns, it was participating, preparing, and transmitting to prospective Second Lien Lenders written presentations showing that SunEdison had more than enough cash and enterprise value to cover the Second Lien Facility obligations.

5. DB Securities knew that SunEdison's $89 million overdue payable to Flextronics was not an isolated incident; to the contrary, DB Securities knew that SunEdison faced an existential crisis. In mid-December 2015, SunEdison urgently pressed DB Securities to extend $44 million in credit to pay overdue accounts payable. As emphatically confirmed in a December 17, 2015 internal SunEdison email, "DB WILL NOT" do so. Thus, there is no doubt that DB Securities had special and exclusive knowledge of SunEdison's dire financial condition and undoubtedly was acutely aware no later than the fall of 2015.

6. At or about the same time, SunEdison engaged DB Securities to serve as the investment bank on the Second Lien Facility. The purported purpose of the Second Lien Facility, as represented by DB Securities to potential lenders, was to "replenish" SunEdison's cash needed to fund the development of new projects, not to pay down a mountain of past-due payables, avoid defaulting on other debt, and otherwise stave off imminent bankruptcy. DB Securities knew better, but said nothing. To the contrary, in a series of financial presentations, as well as in written and oral responses to due diligence requests, DB Securities deceived the Second Lien Lenders by lying about SunEdison's financial condition and hiding critical facts that would have scared the Second Lien Lenders away.

7. DB Securities was no mere conduit of information from SunEdison to the Second Lien Lenders. Rather, DB Securities, in concert with SunEdison, actively formulated and shaped the information that was disclosed to (and withheld from) the Second Lien Lenders. DB Securities' misrepresentations and omissions included the following:

- An analysis showing that SunEdison had ample liquidity to execute its business plan when, in fact, the Company had hundreds of millions of dollars in delinquent accounts payable to its suppliers and other creditors.
- Failing to disclose that SunEdison owed $89 million to a critical vendor and that DB Securities had a financial interest in ensuring that this vendor was paid.
- Failing to disclose that the Second Lien Financing would not be sufficient, and that SunEdison would need hundreds of millions of dollars of additional financing, to keep the business afloat.
- Representing that SunEdison's Services Business alone was worth $2.231 billion, and that the cash flow generated from it would provide sufficient collateral to support repayment of the Second Lien Loan when, in fact, it was practically worthless and was sold for less than $10 million in SunEdison's chapter 11 proceeding.
- Stating that the timeline for the offering was tight because SunEdison wanted to demonstrate market access and remove perceived liquidity issues when, in fact, the Company was cash-starved and on the brink of collapse.

8. Based on its special and exclusive knowledge of SunEdison's true financial condition, DB Securities was well aware that the foregoing representations and omissions, among

others, were false, incomplete, or, at a minimum, without any reasonable ground for believing such statements to be true. For example, DB Securities recognized that SunEdison's Services Business was "key to [the] collateral package" and that the Second Lien Lenders would rely on the enterprise value of the Services Business set forth in the Lender Presentations in deciding whether to enter into the Second Lien Facility. DB Securities also knew—and failed to disclose—that SunEdison could not quantify the enterprise value of the Services Business "with any degree of accuracy" due to the "lack of historical financials." Far from disclosing that the enterprise value could not be stated "with any degree of accuracy," DB Securities represented to prospective Second Lien Lenders in late December 2015 and early January 2016 that it had vetted and validated the Services Business forecasts and valuations in the Lender Presentations. DB Securities thus made and vouched for critical representations concerning the "key" collateral securing the Second Lien Facility knowing that prospective Second Lien Lenders would rely on those representations and that they were either false or, at the very least, without a reasonable basis in fact.

9. DB Securities had powerful financial incentives to deceive the Second Lien Lenders. First, DB Securities expected to make, and did make, $26 million in fees on the transaction. Second, DB Securities knew that SunEdison intended to use and did use the proceeds of the Second Lien Facility to, among other things, pay down a critical vendor and eliminate a threat to the collateral securing DB Securities' loan to SunEdison. Third, as of November 9, 2015, DB Securities and its affiliates had $938 million of total exposure to SunEdison. By inducing the prospective lenders to enter into the Second Lien Facility subordinated to DB Securities' outstanding loans, DB Securities thereby reduced its own risk of loss from SunEdison's impending collapse, and effectively shifted that risk to the Second Lien Lenders, while at the same time pocketing a huge fee. Tellingly, and unbeknownst to the Second Lien Lenders, DB Securities held a *negligible* amount of the Second Lien Loan when it closed, even though it was the Administrative Agent under the facility. DB Securities thus was unwilling to accept the risk that it sought to offload on the Second Lien Lenders.

10. As a direct and proximate result of DB Securities' fraudulent misrepresentations and omissions, Plaintiff, the successor in interest to the Second Lien Lenders, has suffered hundreds of millions of dollars in damages. DB Securities' representations and omissions assured the Second Lien Lenders that SunEdison had the financial wherewithal to meet its obligations under the Second Lien Facility. But for DB Securities' representations and omissions, none of the Second Lien Lenders would have loaned SunEdison $725 million pursuant to the Second Lien Facility. Unlike DB Securities' parent, Deutsche Bank AG (as a first lien lender), who received cash payment in full under the Company's bankruptcy plan, the Second Lien Lenders' recovery represents only a small fraction of what they were owed in the bankruptcy proceedings.

11. Accordingly, Plaintiff brings this action to recover the damages caused by DB Securities' fraudulent misrepresentations and omissions in an amount to be determined at trial of at least $447 million.

JURISDICTION AND VENUE

12. Pursuant to Section 410.10 of the California Code of Civil Procedure, this Court has personal jurisdiction over DB Securities because the claims herein arise from actions it purposefully directed at the State of California. This Court also has personal jurisdiction over DB Securities pursuant to Section 410.10 of the California Code of Civil Procedure because it is a corporation that does business in the State of California.

13. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper because DB Securities resides in San Francisco, California.

PARTIES

14. Plaintiff SESL Recovery, LLC (previously defined as "Plaintiff" or "SESL") is a limited liability company formed under the laws of the State of Delaware. SESL has acquired the claims asserted herein through assignments from certain of the original lenders in the Second Lien Facility ("Second Lien Lenders") and certain transferees of the original Second Lien Lenders. Each such transferor to SESL either was an original Second Lien Lender under the Second Lien Credit Agreement dated January 11, 2016 (the "Second Lien Facility") or acquired all tort claims—including the claims set forth herein—pursuant to standard forms governing the sale of

loans promulgated by the Loan Syndications & Trading Association—directly or indirectly from the original Second Lien Lenders.

15. Defendant Deutsche Bank Securities, Inc. (previously defined as "DB Securities") is an investment banking and financial services corporation. DB Securities was SunEdison's primary investment bank in the six years preceding the Company's bankruptcy, participating in at least ten separate financing transactions. DB Securities has offices located at 101 California Street, 26th Floor, San Francisco, California 94111.

16. Non-party SunEdison, Inc. (previously defined as "SunEdison" or the "Company") was, at all relevant times, a company in the business of designing, constructing, and operating solar, wind, hydroelectric, and other renewable energy plants. On April 21, 2016, SunEdison filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. *See In re SunEdison, Inc. et al.*, No. 16-10992-SMB (Bankr. S.D.N.Y. filed April 21, 2016).

17. Non-parties TerraForm Power, Inc. ("TERP") and TerraForm Global, Inc. ("Global," and together with TERP, the "YieldCos") were partially-owned subsidiaries of SunEdison prior to its bankruptcy. At all relevant times, SunEdison controlled 90% or more of the voting power on the board of directors of each of the YieldCos. In addition, under management services agreements, SunEdison was responsible for carrying out all day-to-day management, accounting, banking, treasury, administrative, and regulatory functions and obligations of each of the YieldCos.

FACTS

I. BACKGROUND

A. SunEdison's Business Model.

18. SunEdison was an international renewable energy company that developed, financed, installed, owned, and operated renewable energy assets. SunEdison was also a renewable energy asset manager, providing operations, maintenance, monitoring, and reporting services to safeguard and maximize the performance of its customers' renewable energy assets.

Prior to its bankruptcy, SunEdison was one of the largest renewable energy companies in the world.

19. In the relevant time period, SunEdison's primary business activity was to underwrite and develop new renewable energy projects and negotiate long-term "power purchase agreements" ("PPAs") with utility companies to provide electricity generated from the projects. Once a project was complete, it would be sold, or "dropped down," to a YieldCo. The YieldCos, partially-owned by SunEdison, were publicly-traded subsidiaries formed to own and hold operating assets, such as PPAs. The YieldCos were designed to raise capital to purchase operating assets from SunEdison by, among other things, issuing equity to public investors in return for steady dividends made possible by the predictable, contractual cash flow generated by those assets. SunEdison's business model contemplated that the proceeds from the sale of a completed project by SunEdison to a YieldCo would be used to finance other renewable energy projects. Accordingly, SunEdison's business model necessitated considerable amounts of cash flow and liquidity to finance projects to their completion, thereby realizing the profits received from selling finished projects.

20. SunEdison's business model included providing operations and maintenance, asset management, and monitoring services to completed renewable energy projects, including projects sold to and held by the YieldCos (the "Services Business").

21. Beginning in 2014, the Company took on significant debt to fund the development and construction of renewable energy projects. In 2014 alone, SunEdison's debt more than doubled from $2.6 billion to $5.4 billion. By the end of the second quarter of 2015, SunEdison's debt had escalated to $10.7 billion.

22. As SunEdison later admitted to the Bankruptcy Court—but affirmatively concealed from, and misrepresented to, the Second Lien Lenders until that time—the Company began to experience a "liquidity challenge" by no later than the spring of 2015.

B. <u>DB Securities' Relationship With SunEdison.</u>

23. For a decade or more, DB Securities and SunEdison worked together in a close "partnership." DB Securities was SunEdison's primary investment bank. Indeed, DB Securities

was the go-to investment bank and lender to SunEdison's predecessor, MEMC Electronic Materials. As DB Securities stated in an email to SunEdison on January 6, 2016, SunEdison was one of its "most important clients."

24. As SunEdison's primary investment bank, DB Securities served as syndication agent, lead arranger, and/or bookrunner in at least ten separate financing transactions in the six years preceding the Company's bankruptcy. In these capacities, DB Securities was responsible for assessing the Company's financing requirements and credit quality to evaluate the viability of taking the Company into the credit market. Thus, DB Securities was intimately familiar with prevailing market conditions and their effects on the Company's credit profile. In addition, DB Securities and its affiliates, including Deutsche Bank AG, London Branch ("Deutsche Bank London") and Deutsche Bank AG, New York Branch ("Deutsche Bank New York"), loaned money directly to the Company on multiple occasions.

25. In the two years leading up to the closing on the Second Lien Facility on January 11, 2016, DB Securities or its affiliates were involved in the following transactions, among others:

- On or about February 28, 2014, DB Securities served as a joint lead arranger, joint syndication agent, and joint bookrunner in connection with a $265 million credit facility for SunEdison (the "First Lien Credit Facility").
- On or about March 26, 2014, DB Securities served as lead arranger, bookrunner, structuring bank, and documentation agent in connection with a financing agreement with SunEdison to provide a senior secured revolving credit facility in an amount up to $150 million, with a term ending March 26, 2017 (the "Construction Facility"). The Construction Facility was used to support the development and acquisition of new projects in the United States and Canada.
- In or around May 2014, DB Securities, among others, led a private placement offering of convertible bonds totaling $750 million to garner proceeds for TERP's growth.
- On or about October 23, 2014, DB Securities underwrote a financing with SunEdison for the construction of the Vega solar plant. At the time of the transaction, the Company's then vice-president of project finance was quoted extolling the financing as "another testament to the strength of the relationship" between SunEdison and DB Securities.
- On or about January 29, 2015, Deutsche Bank London served as the administrative agent and the calculation agent in connection with a $410 million margin loan with certain lenders to fund the $2.4 billion acquisition of First Wind (defined below as

the "Margin Loan"). Deutsche Bank London committed over $76 million to the Margin Loan.

- In or around July 2015, DB Securities served as a joint bookrunner in an initial public offering of 45 million shares of Global's Class A common stock, representing gross proceeds of $675 million.
- On or about August 12, 2015, DB Securities provided SunEdison with $150 million in connection with the Dominion/Four Brothers solar project.
- On or about August 17, 2015, DB Securities, as part of a syndicate of banks, committed to providing $700 million in connection with a debt commitment letter entered with SunEdison, to create a $1 billion warehouse investment vehicle for the acquisition, construction financing, and placement into operation of utility scale solar and wind projects.
- On or about August 18, 2015, DB Securities served as a representative of several underwriters in connection with an underwriting agreement with SunEdison.
- On or about August 19, 2015, DB Securities served as co-lead underwriter and joint book-running manager of the Company's $650 million Preferred Offering.
- In September 2015, DB Securities lent SunEdison $80 million to acquire a fifty percent interest in a solar power project in Utah known as Three Cedars.

26. Thus, during the two-year period preceding the bankruptcy filing, DB Securities had a front row seat to the Company's financial position, with access to detailed information concerning the Company's finances and operations. As a result, DB Securities had an intimate and unique understanding of SunEdison's business and finances at the time it made representations to the Second Lien Lenders in connection with the Second Lien Facility.

C. <u>The Margin Loan.</u>

27. On January 29, 2015, SunEdison entered into a $410 million, two-year Margin Loan Agreement (the "Margin Loan") with Deutsche Bank London, among others, to fund the $2.4 billion acquisition of First Wind Holdings, LLC. As SunEdison later informed the Bankruptcy Court, "[t]he terms of the Margin Loan . . . were integral to SunEdison's liquidity position."

28. As collateral for the Margin Loan, SunEdison pledged, among other things, 32.2 million shares of its Class B common stock in TERP.[2] In addition, the Margin Loan provided

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[2] SunEdison was the exclusive owner of TERP's Class B shares, which were convertible to shares of TERP's publicly traded Class A common stock ("common stock").

that, if the value of the Class B stock—as measured by the trading price of TERP's publicly-traded common stock—fell below specified levels, SunEdison had to post additional collateral.

29. In August 2015, as the market price of TERP stock plummeted, SunEdison was required to post $152 million in cash collateral on the Margin Loan. In October 2015, SunEdison was required to post an additional $91 million in cash collateral on the Margin Loan.

30. In November 2015, the Margin Loan was amended to avoid a default, requiring SunEdison to pre-pay the Margin Loan lenders, including Deutsche Bank London, a total of $439 million, further exacerbating the Company's already hobbled cash position. In fact, as SunEdison would later concede to the Bankruptcy Court, and contrary to what the Second Lien Lenders were told in the offering materials (emphasis added): "[The] prepayment [on the Margin Loan], which amounted to $439 million, ***drained SunEdison's cash reserves and fundamentally changed it and the YieldCos' financial outlook***."

31. DB Securities knew that the repayment could deal a devastating blow to the Company. As SunEdison's go-to investment bank and lender, DB Securities had been extending credit—and declining to extend credit—to SunEdison repeatedly throughout 2015, and was thus privy to detailed financial information about the Company.

D. <u>The Second Lien Facility.</u>

32. On January 11, 2016, SunEdison entered into the "Second Lien Facility." In relevant part, the Second Lien Facility consisted of: (i) $500 million aggregate principal amount of Tranche A-1 term loans, and (ii) $225 million aggregate principal amount of Tranche A-2 term loans.

33. The Second Lien Facility was entered into by and among SunEdison as borrower, Deutsche Bank New York as Administrative Agent, DB Securities, Barclays Bank PLC, MacQuarie Capital (USA) Inc., and Keybanc Capital Markets as joint lead arrangers and bookrunners, and the Second Lien Lenders under the Second Lien Facility. DB Securities was also the Sole Syndication Agent and Sole Documentation Agent.

34. As a lead arranger and the Sole Syndication Agent for the Second Lien Facility, DB Securities presented the lenders with the opportunity to enter into the facility. If DB Securities

failed to sell the Second Lien Loan, it would have not received any meaningful fee income. Thus, in this capacity, and as a significant lender to whom SunEdison owed almost a billion dollars, DB Securities had every incentive to paint a rosy (albeit inaccurate) picture of SunEdison in order to close the Second Lien Facility and lower the risk that SunEdison would not repay its existing obligations to DB Securities and its affiliates.

35. Based on its special knowledge of information not available to the Second Lien Lenders regarding SunEdison's financial condition and liquidity, the concealment of which rendered any second lien debt offering fundamentally misleading and unfair, DB Securities had a duty to disclose its knowledge of SunEdison's true financial condition to the Second Lien Lenders. Had DB Securities disclosed its knowledge of the Company's true financial condition and liquidity, none of the Second Lien Lenders would have entered into the Second Lien Facility. Instead, DB Securities misled the Second Lien Lenders through fraudulent and grossly negligent misrepresentations and omissions while declining itself (or through its affiliates) to lend any money under this agreement. In doing so, DB Securities sought to protect the interests of itself and its affiliates as existing creditors of SunEdison.

II. DB SECURITIES' KNOWLEDGE OF SUNEDISON'S FINANCIAL CONDITION.

36. In the months preceding the closing of the Second Lien Loan, DB Securities became privy to even more of the Company's financial information. Indeed, at or about the same time DB Securities was making and vouching for unduly optimistic statements to the Second Lien Lenders concerning the Company's financial condition, DB Securities was well aware that the Company was, in fact, facing an existential liquidity crisis.

37. In September 2015, DB Securities evaluated loaning SunEdison as much as $100 million to acquire a fifty percent interest in a solar power project in Utah known as Three Cedars. DB Securities elected to loan SunEdison $80 million secured by the Three Cedars project itself, including its underlying assets, cash flows, and revenue-producing contracts.

38. Within weeks, DB Securities became aware that a massive, overdue payable imperiled the viability of the Three Cedars project, *i.e.*, the collateral securing DB Securities' $80 million loan. Specifically, DB Securities learned that SunEdison was late paying, and

apparently unable to pay, $89 million to Flextronics, a critical third-party supplier that was threatening to withhold delivery of solar panels necessary to complete the project.

39. In response, DB Securities exercised its right under the loan agreement to monitor the cash flow of the Three Cedars project in granular detail and approve all material payments. In the course of doing so, DB Securities became so alarmed about SunEdison's financial condition that DB Securities required cash inflows from the project to be used to pay Flextronics "directly," rather than through SunEdison. In doing so, DB Securities demonstrated that it had reason to doubt, and did not trust, that SunEdison would handle restricted cash (*e.g.*, cash ostensibly restricted to use on designated development projects) appropriately.

40. When SunEdison later sought to use cash from the Three Cedars project because "we really need cash for the company," SunEdison's finance department stated "Deutsche Bank will not agree to do this," explaining on January 6, 2016 that (emphasis added):

> Payment will go directly to the vendor and will not go through SunE[dison] . . . ***DB is worried that we will use funds for [SunEdison's] liquidity versus to pay Flextronics***. For that reason, we will be paying Flextronics directly.

41. While expressing these serious concerns about SunEdison's liquidity on January 6, 2016, just one day earlier, on January 5, 2016, DB Securities assured prospective Second Lien Lenders in a written presentation that SunEdison had and would continue to have a billion dollars of liquidity or more throughout 2016.

42. By October 2015, SunEdison's past due accounts payable were huge and "growing fast at $308M." Consequently, SunEdison turned to its major creditor and partner, DB Securities, for loans or other financing at least six times between October 2015 and the closing of the Second Lien Facility in January 2016. DB Securities—which was intimately familiar with SunEdison's financial condition and uniquely positioned to assess its credit worthiness—rejected many of SunEdison's requests for funding during this time period, opting instead to limit its own exposure in the face of what it knew to be SunEdison's dire straits. Based on the number of these requests and the amount SunEdison sought in this compressed period, among other things, DB Securities

clearly knew that SunEdison was suffering from a liquidity crisis that was not disclosed to the Second Lien Lenders.

43. For example, in September 2015, DB Securities declined the Company's request to draw $100 million from a loan facility. Specifically, on September 28, 2015, SunEdison asked if DB Securities would "count cash in construction" so that SunEdison could "pull in 100M" on a credit line. The DB Securities managing director later responsible for communicating with the Second Lien Lenders responded that it was not "something [he] could get credit there on" because SunEdison was "not close to the milestone draws." DB Securities declined to extend SunEdison the $100M.

44. Similarly, on October 13, 2015, DB Securities rejected SunEdison's proposed $515 million Vivint term loan. Vinod Mukani, DB Securities' Director, stated: "Unfortunately we will have to pass on the Term Loan ask at this time."

45. At about the same time, DB Securities evaluated SunEdison's financial condition closely in connection with, among other things, a $75 million revolver it reluctantly extended to one of SunEdison's YieldCos, TERP. "After seemingly being ready to sign in for $75 million in June/July [DB Securities had] been avoiding the topic." As reported in an internal SunEdison email dated October 27, 2015, the "most recent feedback" was that DB Securities was at its "max capacity vs. SUNE/TERP and need[ed] to get out of the [M]argin [L]oan exposure."

46. On November 9, 2015, SunEdison asked DB Securities' global head of credit to increase DB Securities' total exposure to SunEdison "from 1B to 1.2B." In response, DB Securities' global "head of credit flew over from the UK to discuss SUNE, current market etc." Ultimately, SunEdison "cleared the internal exposure hurdles within DB and [had] a path to execute on a 75M revolver commitment at TERP." As SunEdison acknowledged, "increasing that facility [was] mission critical to the enterprise." This was clearly the case because SunEdison, faced with the looming maturity of the Margin Loan, was running out of money.

47. On or about November 17, 2015, the Margin Loan was amended to avoid a default, requiring SunEdison to pre-pay the Margin Loan lenders, including DB Securities and its affiliate

Deutsche Bank London, a total of $439 million. Deutsche Bank London was paid approximately $79 million ($61 million in cash and the rest in Class B shares).

48. Within weeks, SunEdison was in a full-blown liquidity crisis, and DB Securities knew it. SunEdison urgently requested that DB Securities extend $44 million in credit to pay overdue accounts payable. Specifically, United Overseas Bank Limited ("UOB") agreed to fund $44 million immediately, but only if another bank, such as DB Securities, would issue a letter of credit ("LC") for the same amount, thereby effectively securing the loan.

49. On December 16, 2015, SunEdison communicated by email and telephone with DB Securities—including two of the lead DB Securities employees facilitating the Second Lien Facility, Anantha Ramamurti and Colin Phinisey—to secure "approvals [] to issue the LC." SunEdison also asked UOB to press DB Securities to approve the LC, stating "we need your help very badly to increase the DB Americas line to $44M." UOB agreed to "push as hard as possible."

50. Nevertheless, as SunEdison emphatically confirmed in an internal email on December 17, 2015, "DB WILL NOT issue a financial LC which is what this is. We have been issuing it appears A LOT of them and our lenders will not do it anymore. NONE of our lenders [will]." (emphasis in original). At the very same time, DB Securities was regularly communicating with the Second Lien Lenders, including through presentations that painted a far more positive picture of SunEdison's financial condition.

51. Based on DB Securities' special and exclusive knowledge of SunEdison's true financial condition and liquidity—specifically, SunEdison's dire accounts payable situation—DB Securities had a duty to impart correct and truthful information to the Second Lien Lenders, which it failed to do.

III. <u>DB SECURITIES' MISREPRESENTATIONS AND OMISSIONS</u>.

52. As joint lead arrangers and bookrunners and the Sole Syndication Agent and Sole Documentation Agent for the Second Lien Facility, DB Securities—in particular, Riaz Ladhabhoy, Colin Phinisey, and other DB Securities' employees working in its San Francisco offices—prepared a series of investor presentations to the prospective Second Lien Lenders concerning the financial condition of SunEdison (the "Lender Presentations"). They also communicated directly

with the Second Lien Lenders, answering diligence questions and providing supplemental explanations to the Lender Presentations.

A. Misrepresentations and Omissions in the Lender Presentations.

53. DB Securities was responsible for preparing Lender Presentations concerning SunEdison's financial condition and communicating those Lender Presentations to prospective lenders, including a "liquidity analysis," a "collateral analysis," and an "analysis on [the Company's] services business." In particular, DB Securities, through its duly authorized representatives, Riaz Ladhabhoy, Anantha Ramamurti, Ian Dorrington, Colin Phinisey, and Matthew Friend, prepared and provided the following Lender Presentations, among others, to the Second Lien Lenders:[3]

- A lender deck uploaded to a data room for Second Lien Lenders (the "Data Room") on December 2, 2015 (the "December 2nd Lender Presentation");
- A lender deck uploaded to the Data Room on December 5, 2015 (the "December 5th Lender Presentation");
- A lender deck uploaded to the Data Room on December 8, 2015 (the "December 8th Lender Presentation");
- A lender deck uploaded to the Data Room on December 11, 2015 (the "December 11th Lender Presentation");
- A lender deck uploaded to the Data Room on December 15, 2015 (the "December 15th Lender Presentation");
- A Business Update uploaded to the Company's website in the "Investors" section on December 24, 2015 (the "December 24th Lender Presentation"); and
- A Business Update uploaded to the Company's website in the "Investors" section on January 5, 2016 (the "January 5th Lender Presentation").

54. As set forth below, the Lender Presentations contained material misrepresentations and omissions concerning SunEdison's financial condition, SunEdison's intended use of the proceeds of the Second Lien Facility, the cash flow and value of SunEdison's Services Business,

[3] Other DB Securities employees involved in preparing the Lender Presentations and communicating with the Second Lien Lenders include Jody Zhang, Conor Hartnett, Brian Moore, Rishi-A Patel, Michiel Morsink, Andrew Jesionowski, and Gregory Leveto.

and SunEdison's liquidity. These representations were made with the specific purpose of inducing the Second Lien Lenders to invest in the Second Lien Facility. Based on DB Securities' peculiar and special knowledge and access to SunEdison's financial condition, the Second Lien Lenders' reliance on the Lender Presentations was reasonable and foreseeable.

1. The Company's Intended Use of the Proceeds.

55. Each of the Lender Presentations stated that the proceeds of the Second Lien Facility would be used to "[r]eplenish cash used for Margin Loan," to refinance the original Second Lien Loan, and for general corporate purposes. The Lender Presentations made specifically clear that, with the cash from the Second Lien Facility, SunEdison would have sufficient cash to drive its business forward and grow. These representations were false and misleading.

56. Indeed, a December 7, 2015 email explained that SunEdison's inability to make a $6 million payment to a vendor was putting "three India PPAs at risk," noting that SunEdison was unable to make the payment because "that cash was used to pay the margin loan." Moreover, recognizing that SunEdison intended to use the proceeds of the Second Lien Facility to make payments on past due payables, a senior employee in SunEdison's finance department stated what had become patently obvious: "I don't think we are paying anything until the 2nd lien happens."

57. DB Securities knew or should have known that the proceeds of the Second Lien Facility would in not, in fact, "replenish" the $410 million in cash that SunEdison had used to pre-pay the Margin Loan because SunEdison had already spent and owed hundreds of millions of dollars in past due payables, including $89 million that SunEdison owed to Flextronics alone. And DB Securities had specific knowledge that SunEdison was seeking a $44 million letter of credit in December 2015 to pay off past due payables; the very same month that DB Securities was marketing the Second Lien Facility through misrepresentations and omissions concerning the intended use of proceeds. SunEdison later admitted that these "[s]ignificant vendor obligation[s]" were one of the key causes of the Company's collapse by March 2016—just two months after the Second Lien Facility closed.

58. Neither DB Securities nor the Company disclosed these material facts to the Second Lien Lenders. Instead, the December 2nd, December 5th, December 8th and December 15th

Lender Presentations represented that the bulk of the proceeds of the Second Lien Facility ($583 million) would be used for general corporate purposes, including replenishing cash used for the Margin Loan.

59. These presentations, including the January 5th Lender Presentation, stated that SunEdison had and would continue to have significant liquidity at the end of 2015 and throughout 2016 when DB Securities knew, or should have known, that was not true.

60. Had DB Securities or the Company disclosed to the Second Lien Lenders that SunEdison owed hundreds of millions of dollars in past due accounts payable, and that DB Securities had a powerful economic incentive to ensure that SunEdison raised sufficient cash to pay the $89 million owed to Flextronics, none of the Second Lien Lenders would have entered into the Second Lien Facility, as they would have understood that the amounts being lent would not be sufficient to enable SunEdison to continue to operate.

2. The Company's Services Business.

61. DB Securities recognized that SunEdison's Services Business was "key to [the] collateral package" for the Second Lien Facility. With that knowledge, DB Securities grossly misrepresented the cash flow and value of the Services Business to induce the Second Lien Lenders to enter into the Second Lien Facility.

62. On December 1 and 2, 2015, DB Securities and SunEdison exchanged a series of emails concerning information to be included in the Lender Presentations. In that exchange, DB Securities asked SunEdison, "[i]s it possible to also send historical revenue and gross profit for services?" SunEdison replied (emphasis added): "Honestly, during the services infancy . . . Financials were intermixed, ***we wouldn't be able to pull anything with any degree of accuracy.***" DB Securities responded by asking SunEdison to confirm that there was "nothing additional we can include for any quarters in 2015."

63. On December 3, 2015, DB Securities emailed SunEdison "a current list of diligence items," including "specific questions on each slide" of the Lender Presentation. DB Securities stressed (emphasis added), "***[s]ervices value is key to our collateral package and liquidity*** and ***given lack of historical financials*** on this (we expect this to be focus of investors so

this is really something we need to think of ways to address), we need as much detail as possible to explain this. This is very important." Thus, DB Securities was aware that the Second Lien Lenders were looking at the Services Business value as a key factor in deciding whether to invest in the Second Lien Facility.

64. And in fact, DB Securities was responsible for putting together the Services Business forecasts and valuations in the Lender Presentations for SunEdison, sending SunEdison the backup for the Services Business valuation slides and drafting the content for those slides.

65. DB Securities was also responsible for communicating with prospective lenders concerning the Services Business forecasts and valuations. In direct communications in late December 2015 and early January 2016, DB Securities represented to prospective lenders that it had vetted and validated the Services Business forecasts and valuations in the Lender Presentations. For example, Riaz Ladhabhoy, managing director of DB Securities, specifically represented to Tennenbaum Capital Partners ("Tennenbaum"), a Second Lien Lender, that DB Securities had tested and validated the Services Business cash flow numbers in the Lender Presentations. Given DB Securities' familiarity with SunEdison's business, Tennenbaum reasonably and foreseeably relied on DB Securities' representations concerning these numbers.

66. Similar misrepresentations were made to other Second Lien Lenders. As DB Securities stated in a December 22, 2015 email to SunEdison, "diligence topics center[ed] on substantiation of historical and projected EBITDA" for the Services Business and the lack of "detail on the services business [had] been a stumbling block with many investors." When SunEdison offered to hold a diligence teleconference with the Second Lien Lenders, DB Securities stressed, "[t]hey want backup for the numbers on the page" in the Lender Presentations concerning the Services Business.

67. However, DB Securities knew but failed to disclose to the Second Lien Lenders that the "historical revenue and gross profit" for the Services Business—and, thus, the "enterprise value" supposedly derived from that information (as set forth in the Lender Presentations)—could not be determined "with any degree of accuracy." Thus, DB Securities made the representations to the Second Lien Lenders concerning the Services Business forecasts and valuations knowing that

those representations were false, or, at the very least, made without reasonable grounds for believing such statements to be true.

68. The December 11th, December 24th, and January 5th Lender Presentations, which were prepared by DB Securities, each projected SunEdison's revenues and cash flow for 2016 at $443 million and $223 million, respectively, and an enterprise value of $2.231 billion *for this business segment alone*. These Lender Presentations contained no qualifications or any language indicating that these numbers did not have "any degree of accuracy." At this valuation, the Services Business represented more than twenty percent of the total value of the entire Company. And unlike forecasts or projections, DB Securities represented to the Second Lien Lenders that these future revenues were based on contractual amounts due SunEdison under various services contracts.

69. DB Securities set forth this information concerning the Services Business in the following table included in the Lender Presentations:

Services Business Valuation Forecasts

$ in millions	1Q16	2Q16	3Q16	4Q16	2016
O&M Revenue	21	22	24	24	92
IPP PPA Revenue	34	34	34	33	134
SLB PPA Revenue	18	18	18	18	72
3rd Party O&M Revenue	23	30	41	52	146
Total Revenues	**96**	**104**	**116**	**128**	**443**
O&M Costs	15	16	17	17	64
IPP Costs	6	6	6	6	22
SLB Costs	12	12	12	12	47
3rd Party Costs	9	16	21	29	74
Total Costs	**41**	**49**	**55**	**63**	**208**
% of sales	*43%*	*47%*	*47%*	*49%*	*47%*
O&M Profit	6	7	7	7	28
IPP Gross Profit	28	28	28	28	112
SLB Gross Profit	6	6	6	6	24
3rd Party Gross Profit	14	14	20	24	71
Total Gross Profit	**54**	**55**	**61**	**65**	**235**
% margin	*57%*	*53%*	*53%*	*51%*	*53%*
OpEx	(3)	(3)	(3)	(3)	(12)
% of sales	*3%*	*3%*	*3%*	*2%*	*3%*
EBITDA	**51**	**51**	**58**	**62**	**223**
% margin	*54%*	*50%*	*50%*	*49%*	*50%*

Comps' 2016 median EBITDA multiple: 11.5x

Valuation multiple for Services business: 10.0x

Enterprise value: $2,231m

SunEdison

70. This slide, included in the December 11th, December 24th, and January 5th Lender Presentations, was false and materially misleading.

71. DB Securities knew that the inflation of the Services Business revenues and margin figures infected the entirety of the Lender Presentations delivered to the Second Lien Lenders. By its own admission, DB Securities knew the Services Business was a "key" component of the collateral that would secure the Second Lien Loan. Thus, by publishing and vouching for the Lender Presentations, including statements of revenue and cash flows for the Services Business set forth in them, DB Securities made material misrepresentations concerning SunEdison's financial condition.

72. On January 4, 2016, DB Securities hosted a teleconference with one or more Second Lien Lenders concerning final due diligence on the Company, including "[v]alidation of disclosed" EBITDA for the Services Business. During that teleconference, DB Securities represented that the EBITDA numbers in the Lender Presentations were valid, even though DB Securities had not in fact validated the numbers and knew that those numbers could not be validated "with any degree of accuracy." Indeed, a director in SunEdison's finance department marveled at the misrepresentation regarding the Services Business' valuation in the December 24th Lender Presentation, asking: "[w]hat did we say to justify this view [on the Services Business figures]? Nothing operationally is going to cut it."

73. DB Securities knowingly, or, at a minimum, with gross negligence, misled investors because it never validated the Services Business numbers. Nor did it want to because that would have jeopardized the Second Lien Facility, the fees that DB Securities would garner, the likelihood that DB Securities would be repaid on the Three Cedars facility and on SunEdison's other outstanding obligations to DB Securities and its affiliates, and the credit support to be provided for other loans DB Securities had extended to SunEdison. Notably, the Services Business sold for less than $10 million in bankruptcy, a far cry from the $2.23 billion in enterprise value DB Securities represented to the Second Lien Lenders.

3. **<u>The Company's Massive Liquidity Shortfall.</u>**

74. As early as the first quarter of 2015, SunEdison was experiencing a major cash shortfall and could not pay even ordinary, recurring accounts payable. DB Securities was well

aware of this liquidity crisis. But rather than disclose to the Second Lien Lenders that the Company was facing an existential crisis, DB Securities concealed the true financial condition of the Company.

75. Even worse, the Lender Presentations affirmatively and falsely showed that SunEdison had ample liquidity to execute on its business plan, when in fact, as DB Securities knew or should have known, the Second Lien Facility would not be anywhere near sufficient to execute the Company's business plan, which would have required hundreds of millions of dollars of additional financing.

76. At the very same time that DB Securities was representing to the Second Lien Lenders, orally and in the Lender Presentations, that SunEdison was a solvent enterprise with over a billion dollars in cash on the balance sheet and adequate collateral to service all of its financings, the Company's panicked internal emails leave no doubt that SunEdison was in fact facing an existential liquidity crisis, where payments of only a few million dollars were either impossible or stretched the Company to the breaking point.

77. For example, on October 7, 2015, a SunEdison employee in the finance department emailed colleagues in preparation for the "CFO call," commenting that the Q4 Cash tracker "tells me we will be completely out of free cash in two weeks."

78. In late November 2015, a SunEdison employee requested that finance authorize a few million dollars to pay an invoice that was long past due. When SunEdison's finance department resisted, the employee replied with exasperation in a November 23, 2015 email:

> We are not asking for $15m! Just the minimum to kick the can and continue with the business. Could you please instruct [SunEdison's finance department] to give us some breath here???

SunEdison's finance department still refused, explaining (emphasis added):

> ***We have been compiling "critical" pays for the past 3 weeks which have not been addressed***, and many of them need to be paid shortly or risk [adverse consequences].

79. Similarly ominous, in an internal SunEdison email dated December 14, 2015—the day before DB Securities published the December 15th Lender Presentation to the data room—one

senior employee in SunEdison's finance department emailed another, "Saw some of the cash numbers . . . Wow," and followed up: "Are we going to survive?" The answer to that question—which DB Securities knew and concealed from the Second Lien Lenders—was plainly no, even after the Second Lien Facility closed, which was supposed to "replenish" the cash on SunEdison's balance sheet but was, in fact, mostly already spent.

80. By the end of the year, the situation was so dire that, on December 29, 2015, the Vice President of FP&A emailed another SunEdison executive, warning him "do not spend anything" because "one payment of $500k could have a major impact on us." As of December 31, 2015, SunEdison's total amount of past due accounts payable was $712 million (of this amount, $478 million in payables were listed as "critical payment."). That same day, a senior employee in SunEdison's finance department emailed SunEdison's CEO concerning the "breakdown" of how the proceeds of the Second Lien Facility would be used, stating bluntly that even if "$500MM [were used to] pay all of the critical pays . . . [that] would still leave [SunEdison] with $200MM past due [payables]."

81. At this point, the Company was in desperate straits and began working with FTI Consulting and the law firm Kirkland & Ellis LLP on "priority" and "highly confidential" "contingency planning."

82. In a January 8, 2016 email, a senior employee in SunEdison's finance department circulated a list of "expenses to be paid from the 2nd lien proceeds," noting that he had "tried to assign [the expenses] to certain categories such as '[k]eep on the lights,'" and that even with the proceeds of the Second Lien Facility, "we may not get the full $38 MM requested."

83. On March 17, 2016—only two months after the Second Lien Facility closed on January 11, 2016—SunEdison approached the Second Lien Lenders once again, with its proverbial hat in hand, seeking an additional $310 million. SunEdison pointed to a slew of factors that necessitated the massive, additional cash infusion—all factors that existed and were known to SunEdison and DB Securities (but not to the Second Lien Lenders) before the Second Lien Facility closed. SunEdison's "[s]ignificant vendor obligations"—well-known to DB Securities but concealed from the Second Lien Lenders by DB Securities—was one of the factors cited by

SunEdison for its apparent collapse and need for additional cash. This amounted to an admission that the representations in the Lender Presentations concerning SunEdison's financial condition were false.

84. Based on DB Securities' awareness of the accounts payable backlog and the Company's desperate need for additional financing in the months leading up to the Second Lien Facility, DB Securities knew or should have known that the proceeds of the Second Lien Facility would not satisfy the Company's cash needs. Had the Second Lien Lenders known this fact and that the Company would need significant additional capital within months, they would not have entered into the Second Lien Facility.

B. DB Securities' Other Misrepresentations and Omissions.

85. DB Securities addressed diligence questions from most if not all of the original Second Lien Lenders, including by email and on multiple due diligence calls. DB Securities kept an internal record, tracking the questions asked and the answers provided.

86. For example, on or around December 17, 2015, DB Securities exchanged emails with one of the investors in the Second Lien Facility (whose headquarters is in California), including providing responses in the form of a due diligence questionnaire supplied by the investor ("Questionnaire Response"). The Questionnaire Response contained representations by DB Securities regarding the performance of the Company and its projections not included in the Lender Presentations, including, for example, the margins for the operations and maintenance companies and the Company's overall financial outlook.

87. Further, in the Questionnaire Response, DB Securities represented that the Company's cash balance exceeded $1.3 billion as of September 30, 2015, which DB Securities knew or should have known to be false based on the accounts payable backlog and the Company's desperate need for financing. In response to other questions from the investor, DB Securities directed the investor to information contained in the Company's publicly filed SEC reports, which DB Securities knew or should have known contained false and erroneous information because by this point, DB Securities was well-aware that SunEdison was cash strapped.

88. DB Securities also made direct misrepresentations to the Second Lien Lenders in oral communications. For example, DB Securities knew that the "immediate timing of the 2nd Lien" was of concern to the Second Lien Lenders from the outset of the diligence process, and coordinated with SunEdison in misleading the lenders as to why the offering had to close immediately.

89. In a December 2015 call with Tennenbaum, Ladhaboy represented that the timeline for the offering was tight because the Company wanted to demonstrate its market access and clear up any perceived liquidity issues. In reality, the Company was drowning in unpaid accounts payable and facing imminent collapse—facts that DB Securities knew but did not disclose to the Second Lien Lenders.

C. <u>DB Securities' Misrepresentations and Omissions Are Exposed.</u>

90. On February 29, 2016, just over a month after the Second Lien Facility closed, SunEdison announced that it was unable to timely file its 2015 Annual Report on Form 10-K due to "ongoing inquiries and investigations by the Audit Committee of the Company's Board of Directors . . . based on allegations made by former executives of the Company concerning the accuracy of the Company's anticipated financial position previously disclosed."

91. SunEdison further announced that, "based on certain additional issues raised by a current and former employee" of SunEdison, the Audit Committee initiated an additional investigation into SunEdison's anticipated financial position. If found to have merit, SunEdison stated that it "may be required to reassess the Company's liquidity position as well as the disclosures in the Form 10-K, including whether the Company may require greater liquidity than previously anticipated and/or whether the sources are sufficient to meet its requirements."

92. By March 16, 2016—only two months after the Second Lien Facility supposedly "replenished" SunEdison's cash—the Company's free cash balance had dropped to near zero and was projected to drop to negative $261 million by mid-June. Facing what it described as a "serious degradation in [its] liquidity position and near term liquidity challenges," the Company went back to the capital markets seeking yet another "$310 million of financing necessary … to continue [its] core business op[erations]."

93. Specifically, in a March 16, 2016 Lender Presentation to potential lenders (the "March 16th Presentation"), including the Second Lien Lenders, the Company outlined the putative causes of its latest liquidity crisis. In the March 16th Presentation, the Company did not point to some unexpected or one-time event subsequent to the closing of the Second Lien Facility to explain the "serious degradation in [its] liquidity position." To the contrary, the Company expressly pointed to a series of "headwinds beginning in Q3 2015"—*i.e.*, the quarter preceding the closing—to explain its predicament.

94. For example, the Company pointed to the Margin Loan payoff ("$439 called and repaid in Q3-Q4"), operating expenses necessary to execute on its core business plan ("planned dropdowns in yieldcos, $800M cash OpEx projection"), and market conditions evident before the Second Lien Facility closed ("significant energy markets headwinds in targeted emerging markets"). None of these pre-existing factors could or did explain the apparently rapid deterioration in the Company's liquidity position as compared to its position as described by the Company and DB Securities in the Lender Presentations.

95. In addition, the March 16th Presentation estimated total cash outflows in the first quarter of 2016 at $991 million. Significantly, the Company stated that "72% of Q1 outflows [were] direct costs for projects in construction of development." Thus, the vast majority of the enormous cash outflow was attributable to ordinary course of business expenses for projects that the Company knew about and, in most cases, had been in development for years. Again, such ordinary course expenses could not and did not explain the sharp contrast between the Company's liquidity position as described in the Lender Presentations and its liquidity position as described in the March 16th Presentation.

96. The March 16th Presentation did, however, hint at what the Company and DB Securities had misrepresented in the Lender Presentations and concealed from the Second Lien Lenders. Specifically, the March 16th Presentation identifies "significant vendor obligations" as a "material challenging event"—an "event" that was already well underway and known to both the Company and DB Securities when they prepared the Lender Presentations, which are completely silent about any such vendor obligations. The March 16th Presentation also identifies, without any

explanation, a supposed "reduction in margin and volume expectations" in the Services Business—the stability and value of which was touted in the Lender Presentations as a primary source of collateral securing the Second Lien Facility. Both of these "material challenging events" were known to and should have been disclosed by the Company and DB Securities to the Second Lien Lenders.

97. In sum, there was no unexpected, intervening event to explain the Company's need for yet another cash infusion in March 2016. Rather, the Company was suffering from the very same liquidity strains that it and DB Securities had concealed by misrepresenting the value of the Services Business and concealing a mountain of overdue payables. The March 16th Presentation was, thus, tantamount to an admission that the pre-closing Lender Presentations concerning the Company's financial condition were false, misleading, and omitted critical facts. Had the Second Lien Lenders known that SunEdison would need a significant capital infusion within two months of closing the Second Lien Facility, they would not have entered into the facility.

98. On March 28, 2016, after the close of trading, the *Wall Street Journal* ("*WSJ*") reported that the SEC was investigating SunEdison's disclosures to investors about how much cash the Company had on hand during 2015. In an article titled "SEC Investigating SunEdison's Disclosures to Investors About Its Liquidity," investors learned both that the SEC was investigating the Company and previously undisclosed facts about the Company's financial condition (much of it discussed above). First, the article reported that, "officials in the SEC's enforcement unit [were] looking into whether SunEdison overstated its liquidity [in the fall of 2015] when it told investors it had more than $1 billion in cash." Second, the *WSJ* article provided multiple behind-the-scenes facts about the Company's financial condition in the fall of 2015. The *WSJ* article further reported that, "[b]y late 2015, SunEdison had stopped paying some contractors and suppliers and was scrambling internally for ways to raise cash."

D. <u>SunEdison Files Chapter 11.</u>

99. On April 21, 2016, SunEdison and twenty-five affiliated entities filed petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court of the Southern District of

New York. SunEdison said it would use the bankruptcy process to reduce its borrowings, which stood at more than $16 billion, including TERP's and Global's debt.

100. SunEdison's "First Day" Affidavit submitted to the Bankruptcy Court concedes, among other things, the following (emphasis added):

- "[The] prepayment [on the Margin Loan], which amounted to $439 million, drained SunEdison's cash reserves and **fundamentally changed its and the YieldCos' financial outlook**."

101. Neither SunEdison nor DB Securities ever disclosed the foregoing facts concerning SunEdison's financial condition to the original Second Lien Lenders, including that it was "facing significantly difficult financial prospects." To the contrary, SunEdison and DB Securities expressly represented to the Second Lien Lenders that, with the Second Lien Facility, the Company had significant value.

102. DB Securities' misrepresentations concerning the Services Business were just as egregious. Specifically, throughout the Second Lien offering, SunEdison and DB Securities repeatedly represented that, based on existing contracts, SunEdison's Services Business generated $223 million in cash annually and was worth over $2 billion.

103. Despite having reassured investors that DB Securities had "validated" the cash flows, that business sold in bankruptcy for less than $10 million.

E. DB Securities' Fraudulent Scheme Paid Off.

104. SunEdison's "First Day" Affidavit confirms that, at the time of the bankruptcy filing, SunEdison held a debt obligation of $688 million on the First Lien Credit Facility. Though the Company declared bankruptcy soon after the Second Lien Facility closed, DB Securities and/or its affiliates were repaid in full on their First Lien debt.

FIRST CAUSE OF ACTION

(Fraudulent Misrepresentation)

105. Plaintiff repeats and re-alleges paragraphs 1 through 104 hereof as though fully set forth herein.

106. In order to induce the Second Lien Lenders to enter into the Second Lien Facility, DB Securities knowingly made misrepresentations, including:

- An analysis in the Lender Presentation showing that SunEdison had ample liquidity to execute its business plan when, in fact, the Company had hundreds of millions of dollars in delinquent accounts payable to its suppliers and other creditors, and was facing an existential liquidity crisis;
- The representations in the Lender Presentations that the Services Business, one of the key assets to be pledged to the Second Lien Lenders to secure the debt, had an "enterprise value" of $2.231 billion and was projected to generate $223 million of cash flow for 2016 alone when, in fact, none of those numbers could be validated "with any degree of accuracy";
- That the Company's cash balance exceeded $1.3 billion as of September 30, 2015 when, in fact, the Company had been experiencing a "liquidity challenge" by no later than Spring 2015 and was on the brink of imminent collapse; and
- That the tight timeline for the offering was because SunEdison wanted to demonstrate market access and remove any perceived liquidity issues when, in fact, the Company was cash-starved and on the brink of collapse.

107. At the time DB Securities made the foregoing representations, DB Securities knew or should have known that they were false or, at a minimum, incomplete and misleading without the disclosure of additional information. DB Securities made the foregoing misrepresentations motivated, in part, by its own economic incentive to ensure that SunEdison raise sufficient cash and reduce and/or protect its overall exposure to the Company.

108. DB Securities' misrepresentations were material to the Second Lien Lenders' decision to enter into the Second Lien Facility. Had the Second Lien Lenders known as DB Securities did, for example, that the purported enterprise value of the Services Business set forth in the Lender Presentations was speculative and grossly inflated or that SunEdison had a massive

accounts payable backlog, the Second Lien Lenders would not have entered into the Second Lien Facility.

109. The Second Lien Lenders reasonably relied on DB Securities' misrepresentations in deciding to enter into the Second Lien Facility and had no reason to suspect that DB Securities' representations in the Lender Presentations might be false. Before the signing of the Second Lien Facility, the Second Lien Lenders were in no position to discover the falsity of DB Securities' misrepresentations even with the exercise of due diligence.

110. As a direct and proximate result of the foregoing, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial of at least $447 million.

111. Defendant's conduct was intentional, fraudulent, oppressive, malicious, and done with reckless disregard of its consequences, entitling Plaintiff to an award of exemplary damages under California law.

SECOND CAUSE OF ACTION
(Fraudulent Omission)

112. Plaintiff repeats and re-alleges paragraphs 1 through 111 hereof as though fully set forth herein.

113. DB Securities knew and intentionally failed to disclose to the Second Lien Lenders information concerning the financial condition of SunEdison, which was not known to, or reasonably discoverable by, the Second Lien Lenders, including:

- That SunEdison had hundreds of millions of dollars in past due accounts payable;
- That SunEdison owed $89 million in critical payments to a vendor, which vendor DB Securities had a financial interest in ensuring was paid;
- That SunEdison could not determine the Services Business financials "with any degree of accuracy";
- That the Second Lien financing would not be sufficient to execute the Company's business plan, and that SunEdison would need hundreds of millions of dollars of additional financing to keep the business afloat; and

- That although DB Securities was the administrative agent on the Second Lien financing, neither DB Securities, nor its affiliates, were significant lenders on that loan.

114. DB Securities had a duty to disclose to the Second Lien Lenders its knowledge concerning the financial condition of SunEdison for the following reasons, among others: (i) having participated in more than a dozen financing transactions relating to SunEdison, DB Securities had special knowledge of SunEdison's financial condition, (ii) it knew that the Second Lien Lenders were induced to participate in the Second Lien Facility based on false representations of fact, and (iii) its failure to disclose the facts to the Second Lien Lenders rendered the Second Lien Facility fundamentally unfair.

115. The Second Lien Lenders reasonably relied on DB Securities' representations and had no reason to believe that DB Securities had knowingly failed to disclose information concerning the financial condition of SunEdison. Before the signing of the Second Lien Facility, the Second Lien Lenders were in no position to discover the true financial condition of SunEdison even with the exercise of due diligence.

116. Had DB Securities disclosed to the Second Lien Lenders, for example, that SunEdison owed hundreds of millions of dollars in past due accounts payable, and that DB Securities had a powerful economic incentive to ensure that SunEdison raised sufficient cash to pay the $89 million owed to a vendor, the Second Lien Lenders would not have entered into the Second Lien Facility.

117. As a direct and proximate result of the foregoing, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial of at least $447 million.

118. Defendant's conduct was intentional, fraudulent, oppressive, malicious, and done with reckless disregard of its consequences, entitling Plaintiff to an award of exemplary damages under California law.

THIRD CAUSE OF ACTION
(Aiding and Abetting Fraudulent Misrepresentation)

119. Plaintiff repeats and re-alleges paragraphs 1 through 118 hereof as though fully set forth herein.

120. DB Securities aided and abetted the Company's independently actionable tort of fraudulently inducing the Second Lien Lenders to enter into the Second Lien Facility through fraudulent misrepresentations.

121. In order to induce the Second Lien Lenders to enter into the Second Lien Facility, the Company knowingly made misrepresentations, including:

- An analysis in the Lender Presentation showing that SunEdison had ample liquidity to execute its business plan when, in fact, the Company had hundreds of millions of dollars in delinquent accounts payable to its suppliers and other creditors, and was facing an existential liquidity crisis;
- The representations in the Lender Presentation that the Services Business, one of the key assets to be pledged to the Second Lien Lenders to secure the debt, had an "enterprise value" of $2.231 billion and was projected to generate $223 million of cash flow for 2016 alone when, in fact, none of those numbers could be validated "with any degree of accuracy";
- That the Company's cash balance exceeded $1.3 billion as of September 30, 2015 when, in fact, the Company had been experiencing a "liquidity challenge" by no later than Spring 2015 and was on the brink of imminent collapse; and
- That the tight timeline for the offering was because SunEdison wanted to demonstrate market access and remove any perceived liquidity issues when, in fact, the Company was cash-starved and on the brink of collapse.

122. At the time the Company made the foregoing representations, the Company knew or should have known that they were false or, at a minimum, incomplete and misleading without the disclosure of additional information. The Company made the foregoing misrepresentations motivated, in part, by its economic incentive to continue operating for as long as possible as a going concern.

123. The Company's misrepresentations were material to the Second Lien Lenders' decision to enter into the Second Lien Facility. Had the Second Lien Lenders known as the Company knew, for example, that the purported enterprise value of the Services Business set forth

in the Lender Presentations was speculative and grossly inflated or that SunEdison had a massive accounts payable backlog, the Second Lien Lenders would not have entered into the Second Lien Facility.

124. The Second Lien Lenders reasonably relied on the Company's misrepresentations in deciding to enter into the Second Lien Facility and had no reason to suspect that the Company's representations in the Lender Presentations might be false. Before the signing of the Second Lien Facility, the Second Lien Lenders were in no position to discover the falsity of the Company's misrepresentations even with the exercise of due diligence.

125. DB Securities had actual knowledge of the Company's scheme to fraudulently induce the Second Lien Lenders to enter into the Second Lien Facility by misrepresenting the true financial condition of the Company. DB Securities' actual knowledge of the Company's fraudulent scheme can be inferred from the fact, among others, DB Securities secretly acknowledged the "lack of historical financials" for the Services Business in contemporaneous emails with the Company, while at the same time representing to prospective lenders that it had vetted and validated the Services Business forecasts and valuations in the Lender Presentations, including graphs and charts that purported to reflect historical financials. DB Securities' actual knowledge of the Company's fraudulent scheme can also be inferred from the fact that DB Securities knew—but failed to disclose to the Second Lien Lenders—that SunEdison had a massive accounts payable backlog.

126. DB Securities provided the Company substantial assistance in achieving the fraudulent scheme by, among other things: (i) affirmatively assisting the Company in consummating the Second Lien Facility, including by preparing false and misleading Lender Presentations and making oral misrepresentations to the Second Lien Lenders; and (ii) enabling the Company's fraudulent scheme to proceed by failing to disclose its knowledge of the Company's true financial condition, even after being put on notice that the Second Lien Lenders misapprehended the Company's financial condition.

127. As a direct and proximate result of the foregoing, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be

determined at trial of at least $447 million. DB Securities' conduct was a substantial factor in causing harm to the Second Lien Lenders.

128. Defendant's conduct was intentional, fraudulent, oppressive, malicious, and done with reckless disregard of its consequences, entitling Plaintiff to an award of exemplary damages under California law.

FOURTH CAUSE OF ACTION
(Aiding and Abetting Fraudulent Omission)

129. Plaintiff repeats and re-alleges paragraphs 1 through 128 hereof as though fully set forth herein.

130. DB Securities aided and abetted the Company's independently actionable tort of fraudulently inducing the Second Lien Lenders to enter into the Second Lien Facility through fraudulent omission.

131. The Company knew and intentionally failed to disclose to the Second Lien Lenders information concerning its financial condition that was not known to, or reasonably discoverable by, the Second Lien Lenders, including:

- That SunEdison had hundreds of millions of dollars in past due accounts payable;
- That SunEdison owed $89 million in critical payments to a vendor, which vendor DB Securities had a financial interest in ensuring was paid;
- That SunEdison could not determine the Services Business financials "with any degree of accuracy"; and
- That the Second Lien financing would not be sufficient to execute the Company's business plan, and that SunEdison would need hundreds of millions of dollars of additional financing, to keep the business afloat.

132. The Company had a duty to disclose to the Second Lien Lenders its knowledge concerning its financial condition for the following reasons, among others: (i) the Company had special knowledge of its own financial condition, (ii) it knew that the Second Lien Lenders were induced to participate in the Second Lien Facility based on false representations of fact, and (iii) its failure to disclose the facts to the Second Lien Lenders rendered the Second Lien Facility fundamentally unfair.

133. The Second Lien Lenders reasonably relied on the Company's representations and had no reason to believe that the Company had knowingly failed to disclose information concerning its financial condition. Before the signing of the Second Lien Facility, the Second Lien Lenders were in no position to discover the true financial condition of SunEdison even with the exercise of due diligence.

134. Had the Company disclosed to the Second Lien Lenders, for example, that SunEdison owed hundreds of millions of dollars in past due accounts payable or that the proceeds of the Second Lien Facility would be insufficient to keep the Company solvent for even a few months, the Second Lien Lenders would not have entered into the Second Lien Facility.

135. DB Securities had actual knowledge of the Company's scheme to fraudulently induce the Second Lien Lenders to enter into the Second Lien Facility by omitting material facts concerning the true financial condition of the Company. DB Securities' actual knowledge of the Company's fraudulent scheme can be inferred from the fact, among others, that DB Securities secretly acknowledged the "lack of historical financials" for the Services Business in contemporaneous emails with the Company, while at the same time publishing to the Second Lien Lenders Lender Presentations containing Services Business forecasts and valuations, including graphs and charts that purported to reflect historical financials. DB Securities' actual knowledge of the Company's fraudulent scheme can also be inferred from the fact that DB Securities knew—but failed to disclose to the Second Lien Lenders—that SunEdison had a massive accounts payable backlog.

136. DB Securities provided the Company substantial assistance in achieving the fraudulent scheme by, among other things: (i) affirmatively assisting the Company in consummating the Second Lien Facility, including by preparing false and misleading Lender Presentations and making oral misrepresentations to the Second Lien Lenders; and (ii) enabling the Company's fraudulent scheme to proceed by failing to disclose its knowledge of the Company's true financial condition, even after being put on notice that the Second Lien Lenders misapprehended the Company's financial condition.

137. As a direct and proximate result of the foregoing, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial of at least $447 million. DB Securities' conduct was a substantial factor in causing harm to Plaintiff.

138. Defendant's conduct was intentional, fraudulent, oppressive, malicious, and done with reckless disregard of its consequences, entitling Plaintiff to an award of exemplary damages under California law.

FIFTH CAUSE OF ACTION
(Conspiracy to Defraud)

139. Plaintiff repeats and re-alleges paragraphs 1 through 138 hereof as though fully set forth herein.

140. The First and Second Causes of Action adequately state independently actionable torts for fraudulent misrepresentation and fraudulent omission against DB Securities, and the Third and Fourth Causes of Action adequately state corresponding independently actionable torts for fraudulent misrepresentation and fraudulent omission against the Company.

141. As part of a common scheme to fraudulently induce the Second Lien Lenders to enter into the Second Lien Facility, DB Securities and the Company agreed to deceive them concerning the true financial condition of the Company. Specifically, DB Securities and the Company agreed to induce the Second Lien Lenders to enter into the Second Lien Facility by, among other things: (i) misrepresenting the value of the Services Business in the Lender Presentations, and (ii) concealing hundreds of millions of dollars in delinquent accounts payable the Company owed to its suppliers and other creditors.

142. DB Securities and the Company committed overt acts, jointly and independently, in furtherance of their conspiracy, including, among other things, preparing false and misleading Lender Presentations and making oral misrepresentations to the Second Lien Lenders in due diligence communications. DB Securities' and the Company's agreement to cooperate in a fraudulent scheme to defraud the Second Lien Lenders can be inferred from their joint and

independent conduct in furtherance of that scheme. As co-conspirators, DB Securities and the Company are liable for each other's acts and declarations in furtherance of their conspiracy to defraud the Second Lien Lenders.

143. DB Securities and the Company knowingly and intentionally participated in a common scheme to deceive the Second Lien Lenders concerning the true financial condition of the Company. DB Securities' knowing and intentional participation in the common scheme can be inferred from the fact, among others, that DB Securities secretly acknowledged the "lack of historical financials" for the Services Business in contemporaneous emails with the Company, while at the same time representing to prospective lenders, including the Second Lien Lenders, that it had vetted and validated the Services Business forecasts and valuations in the Lender Presentations, including graphs and charts that purported to reflect historical financials.

144. As a direct and proximate result of the independently actionable torts for fraudulent misrepresentation and fraudulent omission set forth in the First and Second Causes of Action, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial of at least $447 million. As co-conspirators, DB Securities and the Company are jointly and severally liable for all compensatory damages awarded to Plaintiff.

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

145. Plaintiff repeats and re-alleges paragraphs 1 through 144 hereof as though fully set forth herein.

146. DB Securities, acting with gross negligence, made material misrepresentations concerning SunEdison's financial condition, or, at the very least, made those representations without reasonable grounds for believing such statements to be true. These misrepresentations include without limitation:

- An analysis in the Lender Presentation showing that SunEdison had ample liquidity to execute its business plan when, in fact, the Company had hundreds of millions of dollars in delinquent accounts payable to its suppliers and other creditors, and was facing an existential liquidity crisis;

- The representations in the Lender Presentation that the Services Business, one of the key assets to be pledged to the Second Lien Lenders to secure the debt, had an "enterprise value" of $2.231 billion and was projected to generate $223 million of cash flow for 2016 alone when, in fact, none of those numbers could be validated "with any degree of accuracy";
- That the Company's cash balance exceeded $1.3 billion as of September 30, 2015 when, in fact, the Company had been experiencing a "liquidity challenge" by no later than Spring 2015 and was on the brink of imminent collapse; and
- That the tight timeline for the offering was because SunEdison wanted to demonstrate market access and remove any perceived liquidity issues when, in fact, the Company was cash-starved and on the brink of collapse.

147. At the time that DB Securities made the foregoing representations, DB Securities knew or should have known these statements were loaded with inaccuracies and misleading half-truths based on DB Securities' intimate knowledge of SunEdison's financial condition.

148. As joint lead arrangers and bookrunners and the Sole Syndication Agent and Sole Documentation Agent for the Second Lien Facility, DB Securities was responsible for vetting and preparing Lender Presentations concerning SunEdison's financial condition and communicating those Lender Presentations to the Second Lien Lenders. DB Securities communicated these Lender Presentations with the specific purpose of informing the Second Lien Lenders of material facts necessary to make an informed judgment about whether to enter into the Second Lien Facility. In making these representations, as well as written and oral responses to due diligence requests from the Second Lien Lenders, DB Securities knew that the Second Lien Lenders, like other reasonable investors, intended to rely on such information.

149. In addition to preparing Lender Presentations concerning SunEdison's financial condition for the Second Lien Lenders, on several occasions in the months leading up to the Second Lien Facility, DB Securities evaluated SunEdison's financial condition in connection with making loans to SunEdison, most of which DB Securities ultimately rejected. And, most egregiously, DB Securities had direct knowledge that SunEdison had hundreds of millions of dollars in delinquent accounts payable. Taken together, DB Securities had unique, special, and exclusive knowledge regarding SunEdison's true financial condition.

150. Because DB Securities' misrepresentations and misleading half-truths involved information that was peculiarly and exclusively within DB Securities' knowledge, the Second Lien Lenders' reliance on these representations was foreseeable and reasonable.

151. Further, DB Securities' peculiar, unique, and exclusive knowledge of SunEdison's financial condition, coupled with DB Securities' deliberate representations that the financial information in the Lender Presentations was accurate, and that DB Securities' representations were intended for a limited audience—the Second Lien Lenders—established a special position of confidence and trust with the Second Lien Lenders. As such, DB Securities had a duty to impart correct and truthful information on the Second Lien Lenders.

152. As a direct and proximate result of the foregoing, the Second Lien Lenders have been damaged and Plaintiff is entitled to recover compensatory damages in an amount to be determined at trial of at least $447 million.

153. Defendant's conduct was intentional, fraudulent, oppressive, malicious, and done with reckless disregard of its consequences, entitling Plaintiff to an award of exemplary damages under California law.

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WHEREFORE, Plaintiff is entitled to a judgment:

1. against DB Securities on Plaintiff's first, second, third, fourth, fifth, and sixth causes of action, awarding Plaintiff compensatory damages in an amount to be determined at trial;
2. punitive and special damages in the maximum amount permitted by law;
3. interest, costs, and expenses incurred in this action; and
4. such other and further relief as the Court deems just and proper.

DATED: December 17, 2018

KASOWITZ BENSON TORRES LLP

By: [signature]

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JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

DATED: December 17, 2018

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