

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

SUNNOVA ENERGY INTERNATIONAL
INC., WILLIAM J. BERGER, ROBERT S.
LANE, RAHMAN D'ARGENIO,
MATTHEW DENICHILO, DOUG
KIMMELMAN, MARK LONGSTRETH,
MICHAEL C. MORGAN, C. PARK
SHAPER, SCOTT D. STEIMER, BOFA
SECURITIES INC., J.P. MORGAN
SECURITIES LLC, GOLDMAN SACHS
& CO. LLC, CREDIT SUISSE
SECURITIES (USA) LLC, KEYBANC
CAPITAL MARKETS INC., ROBERT W.
BAIRD & CO. INCORPORATED, and
ROTH CAPITAL PARTNERS, LLC,

Defendants.

Case No.: DRAFT

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Law Offices of Howard G. Smith

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Sunnova Energy International Inc. (“Sunnova” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Sunnova; and (c) review of other publicly available information concerning Sunnova.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Sunnova securities pursuant and/or traceable to the registration statement and prospectus (collectively, the “Registration Statement”) issued in connection with the Company’s July 2019 initial public offering (“IPO” or the “Offering”). Plaintiff pursues claims against the Defendants under the Securities Act of 1933 (the “Securities Act”).

2. Sunnova is a residential solar and energy storage service provider. The Company operates under a differentiated residential solar dealer model whereby it partners with local dealers who originate, design, and install solar energy and energy storage systems on behalf of Sunnova.

3. On July 26, 2019, the Company filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the Company sold approximately 14 million shares of common stock at a price of \$12.00 per share. The Company received proceeds of approximately \$152.5 million from the Offering, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used to redeem certain senior convertible notes and for general corporate purposes.

4. On August 19, 2019, Sunnova reported a net loss of \$49.8 million for the three months ended June 30, 2019, compared with \$9.2 million in the prior year period, citing greater

depreciation expenses, higher period-over-period general and administrative expenses, and higher realized and unrealized net losses on interest rate swaps.

5. On this news, the Company's share price fell \$0.85 per share, over 7%, to close at \$10.36 per share on August 20, 2019, thereby injuring investors.

6. By the commencement of this action, Sunnova stock was trading as low as \$9.15 per share, nearly 24% decline from the \$12 per share IPO price.

7. The Registration Statement was false and misleading and omitted to state material adverse facts. Specifically, Defendants failed to disclose to investors: (1) that the Company had incurred greater depreciation expenses and general and administrative expenses; (2) that the Company had incurred greater realized and unrealized net losses on interest rate swaps; (3) that, as a result, the Company was likely to report a net loss after the IPO; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

8. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

9. The claims asserted herein arise under and pursuant to Sections 11, 12, and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o).

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 22 of the Securities Act (15 U.S.C. § 77v).

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b).

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

13. Plaintiff _____, as set forth in the accompanying certification, incorporated by reference herein, purchased or otherwise acquired Sunnova securities pursuant and/or traceable to the Registration Statement issued in connection with the Company's IPO, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant Sunnova is incorporated under the laws of Delaware with its principal executive offices located in Houston, Texas. Sunnova's common stock trades on the New York Stock Exchange ("NYSE") under the symbol "NOVA."

15. Defendant William J. Berger ("Berger") was, at all relevant times, the Chief Executive Officer and Chairman of the Board of Directors of the Company, and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

16. Defendant Robert S. Lane ("Lane") was, at all relevant times, the Chief Financial Officer of the Company, and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

17. Defendant Rahman D'Argenio ("D'Argenio") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

18. Defendant Matthew DeNichilo ("DeNichilo") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

19. Defendant Doug Kimmelman ("Kimmelman") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

20. Defendant Mark Longstreth ("Longstreth") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

21. Defendant Michael C. Morgan ("Morgan") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

22. Defendant C. Park Shaper ("Shaper") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

23. Defendant Scott D. Steimer ("Steimer") was a director of the Company and

signed or authorized the signing of the Company's Registration Statement filed with the SEC.

24. Defendants Berger, Lane, D'Argenio, DeNichilo, Kimmelman, Longstreth, Morgan, Shaper, and Steimer are collectively referred to hereinafter as the "Individual Defendants."

25. Defendant BofA Securities, Inc. ("BofA") served as an underwriter for the Company's IPO.

26. Defendant J.P. Morgan Securities LLC ("J.P. Morgan") served as an underwriter for the Company's IPO.

27. Defendant Goldman Sachs & Co. LLC ("Goldman Sachs") served as an underwriter for the Company's IPO.

28. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") served as an underwriter for the Company's IPO.

29. Defendant KeyBanc Capital Markets Inc. ("KeyBanc") served as an underwriter for the Company's IPO.

30. Defendant Robert W. Baird & Co. Incorporated ("Baird") served as an underwriter for the Company's IPO.

31. Defendant Roth Capital Partners, LLC ("Roth Capital") served as an underwriter for the Company's IPO.

32. Defendants BofA, J.P. Morgan, Goldman Sachs, Credit Suisse, KeyBanc, Baird, and Roth Capital are collectively referred to hereinafter as the "Underwriter Defendants."

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Sunnova securities issued in connection with the Company's IPO. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

34. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Sunnova's shares actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Sunnova shares were traded publicly during the Class Period on the NYSE. Record owners and other members of the Class may be identified from records maintained by Sunnova or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

35. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

36. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

37. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Sunnova; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

38. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as

the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

Background

39. Sunnova is a residential solar and energy storage service provider. The Company operates under a differentiated residential solar dealer model whereby it partners with local dealers who originate, design, and install solar energy and energy storage systems on behalf of Sunnova.

The Company's False and/or Misleading Registration Statement and Prospectus

40. On July 24, 2019, the Company filed its final amendment to the Registration Statement with the SEC on Form S-1/A, which forms part of the Registration Statement. The Registration Statement was declared effective the same day.

41. On July 26, 2019, the Company filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the Company sold approximately 14 million shares of common stock at a price of \$12.00 per share. The Company received proceeds of approximately \$152.5 million from the Offering, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used to redeem certain senior convertible notes and for general corporate purposes.

42. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

43. Under applicable SEC rules and regulations, the Registration Statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the Company's continuing operations.

44. Under "Risk Factors," the Company noted that it has historically incurred operating losses, stating:

Historically, we have incurred operating losses, and we may be unable to achieve or sustain profitability in the future.

We incurred operating losses of \$4.5 million, \$10.4 million and \$13.7 million and net losses of \$35.5 million, \$90.2 million and \$68.4 million for the three months ended March 31, 2019 and for the years ended December 31, 2017 and 2018, respectively. These historical operating losses were due to a number of factors, including increased expenses to fund our growth and related financing needs. We expect to incur significant expenses as we finance the expansion of our operations and implement additional internal systems and infrastructure to support our growth. In addition, as a public company, we will incur significant additional legal, accounting and other expenses that we did not incur as a private company. We do not know whether our revenue will grow rapidly enough to absorb these costs. Our ability to achieve profitability depends on a number of factors, including:

- growing our customer base and originating new solar service agreements on economic terms;
- maintaining or lowering our cost of capital;
- reducing operating costs by optimizing our operations and maintenance processes;
- maximizing the benefits of our dealer network;
- finding additional tax equity investors and other sources of institutional capital; and
- the continued availability of various governmental incentives for the solar industry.

Even if we do achieve profitability, we may be unable to sustain or increase our profitability in the future.

45. Describing certain expenses, the Registration Statement stated, in relevant part:

General and Administrative Expense. General and administrative expenses represent costs for our employees, such as salaries, bonuses, benefits and all other

employee-related costs, including stock-based compensation, professional fees related to legal, accounting, human resources, finance, training, information technology and software services, marketing and communications, travel and rent and other office-related expenses. General and administrative expenses also include depreciation on assets not classified as solar energy systems, including furniture, fixtures, computer equipment and leasehold improvements and accretion expense on AROs. We capitalize a portion of general and administrative expense, such as payroll-related costs, that is related to employees who are directly involved in the design, construction, installation and testing of the solar energy systems but not directly associated with a particular asset. We also capitalize a portion of general and administrative expense, such as payroll-related costs, that is related to employees who are directly associated with and devote time to internal computer software projects, to the extent of the time spent directly on the application and development stage of such software project.

Interest Expense, Net. Interest expense, net represents interest, net of capitalized interest, on our borrowings under our various debt and credit facilities and amortization of deferred financing costs. These items are discussed in Note 7, *Long-Term Debt*, to our accounting predecessor's consolidated annual financial statements and Note 7, *Long-Term Debt*, to our accounting predecessor's unaudited condensed consolidated financial statements. Interest income represents interest income from the notes receivable under our loan program. These notes receivable are discussed in Note 6, *Notes Receivable*, to our accounting predecessor's consolidated annual financial statements and Note 6, *Notes Receivable*, to our accounting predecessor's unaudited condensed consolidated financial statements. In addition, interest income represents income on short term investments with financial institutions.

46. The Registration Statement was materially false and misleading and omitted to state: (1) that the Company had incurred greater depreciation expenses and general and administrative expenses; (2) that the Company had incurred greater realized and unrealized net losses on interest rate swaps; (3) that, as a result, the Company was likely to report a net loss after the IPO; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

The Subsequent Disclosures

47. On August 19, 2019, Sunnova reported a net loss of \$49.8 million for the three months ended June 30, 2019, compared with \$9.2 million in the prior year period, citing greater depreciation expenses, higher period-over-period general and administrative expenses, and

higher realized and unrealized net losses on interest rate swaps. The press release stated, in relevant part:

Our total number of customers was 67,600 as of June 30, 2019, an increase of 13,900 compared to June 30, 2018.

Revenue increased to \$34.6 million, or by \$5.6 million, in the three months ended June 30, 2019 compared to the three months ended June 30, 2018, primarily as a result of an increased number of systems in service. . . .

Total operating expense, net increased to \$37.3 million, or by \$10.8 million, in the three months ended June 30, 2019 compared to the three months ended June 30, 2018 as a result of greater associated depreciation expense and higher period-over-period general and administrative expenses. Adjusted Operating Expense was \$21.0 million, an increase of \$5.3 million over the same period primarily because of an increase in the number of systems served as well as certain expenses associated with our initial public offering.

* * *

We incurred a net loss of \$49.8 million for the three months ended June 30, 2019 compared to a net loss of \$9.2 million for the three months ended June 30, 2018. We incurred a net loss of \$85.3 million for the six months ended June 30, 2019 compared to a net loss of \$22.7 million for the six months ended June 30, 2018. *These larger net losses were primarily driven by the factors described above for the changes in total operating expense, net in addition to higher realized and unrealized net losses on interest rate swaps for the three and six months ended June 30, 2019* compared to the three and six months ended June 30, 2018 of \$23.6 million and \$43.7 million, respectively, loss on extinguishment of debt and unrealized loss on fair value option instruments of \$11.2 million and other interest expense of \$2.2 million and \$8.2 million, respectively

48. On this news, the Company's share price fell \$0.85 per share, over 7%, to close at \$10.36 per share on August 20, 2019, thereby injuring investors.

49. By the commencement of this action, Sunnova stock was trading as low as \$9.15 per share, nearly 24% decline from the \$12 per share IPO price.

FIRST CLAIM
Violation of Section 11 of the Securities Act
(Against All Defendants)

50. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein, except any allegation of fraud, recklessness or intentional misconduct.

51. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of the Class, against the Defendants.

52. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

53. Sunnova is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

54. As issuer of the shares, Sunnova is strictly liable to Plaintiff and the Class for the misstatements and omissions.

55. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement was true and without omissions of any material facts and were not misleading.

56. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated Section 11 of the Securities Act.

57. Plaintiff acquired Sunnova shares pursuant and/or traceable to the Registration Statement for the IPO.

58. Plaintiff and the Class have sustained damages. The value of Sunnova Class A common stock has declined substantially subsequent to and due to the Defendants' violations.

SECOND CLAIM
Violation of Section 12(a)(2) of the Securities Act
(Against All Defendants)

59. Plaintiff repeats and re-alleges each and every allegation contained above, except any allegation of fraud, recklessness or intentional misconduct.

60. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, on behalf of the Class, against all Defendants.

61. Defendants were sellers, offerors, and/or solicitors of purchasers of Class A common stock offered by Sunnova pursuant to the IPO. Defendants issued, caused to be issued, and/or signed the Registration Statement in connection with the Offering. The Registration

Statement was used to induce investors, such as Plaintiff and other members of the Class, to purchase Sunnova securities.

62. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

63. Defendants' actions of solicitation included participating in the preparation of the false and/or misleading Registration Statement.

64. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

65. Plaintiff and other Class members did not know, nor could they have known, of the untruths and/or omissions contained in the Registration Statement.

66. By virtue of the conduct alleged herein, the Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

THIRD CLAIM
Violation of Section 15 of the Securities Act
(Against the Individual Defendants)

67. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein, except any allegation of fraud, recklessness or intentional misconduct.

68. This count is asserted against the Individual Defendants and is based upon Section 15 of the Securities Act.

69. The Individual Defendants, by virtue of their offices, directorship, and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Sunnova within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power and influence and exercised the same to cause Sunnova to engage in the acts described herein.

70. The Individual Defendants' positions made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

