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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mark Smilovits, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. First Solar, Inc., Michael J. Ahearn, Robert J. Gillette, Mark R. Widmar, Jens Meyerhoff, James Zhu, Bruce Sohn and David Eaglesham, Defendants.	No. 2:12-cv-00555-DGC <u>CLASS ACTION</u> PLAINTIFFS' AND DEFENDANTS' CUSTODIAN MATRIX REGARDING PROPOSED ADDITIONAL CUSTODIANS

Smilovits v. First Solar, Inc., No. 2:12-cv-00555-DGC (D. Ariz.)
Additional Custodian Matrix

NAME	PLAINTIFFS' POSITION	DEFENDANTS' POSITION
Kurt Wood	Although ***defendants*** identified Wood in their discovery responses as a custodian whose files they had determined were relevant and needed to be searched in this litigation, defendants have not produced a single document from Wood's files. *See* Defs' Resp. to 1st RFP, dated December 20, 2013. Defendants represented to plaintiffs that Wood would be a custodian while at the same time concealing that his files had been destroyed. It was not until defendants completed their document production on August 25, 2014 and plaintiffs asked defendants why they had not produced a single Wood custodial document that defendants informed plaintiffs for the first time that they cannot find or no longer possess responsive documents from Wood's files. Had plaintiffs not inquired, it is not at all clear that defendants would have informed plaintiffs that Wood's files, which defendants represented would be searched in this case, were not in fact searched. (Plaintiffs also asked whether there were other individuals who should have been custodians but were not so identified because their documents were not preserved. Defendants have not responded to plaintiffs' inquiry.) **Backup Tapes Should Be Searched For Wood's Files.** If ever there was a case compelling the search of backup tapes, this is it. After previously representing that Wood was a custodian with relevant information and that his files would be searched, in early September 2014 defendants informed plaintiffs – only after plaintiffs inquired – that Wood's documents were not	Defendants have not refused to search for and produce documents from Kurt Wood's files. To the contrary, defendants produced thousands of emails sent or received by Mr. Wood, and over 600 documents authored by him. Instead, plaintiffs ask for something that was **not requested at the September 18 discovery hearing**—an Order requiring defendants **"to search backup tapes for Mr. Wood's and any other custodian's documents."** That request should be denied because it exceeds the scope of the Court's September 18 Minute Order. Even if plaintiffs' request to search backup tapes was properly before the Court, it should denied because plaintiffs have failed to meet the "good cause" requirement for production of ESI that is not "reasonably accessible" under Rule 26(b)(2)(B). **Backup Tapes Are Not Reasonably Accessible.** Contrary to plaintiffs' assertion, defendants do not bear the burden of establishing that backup tapes are not reasonably accessible under Rule 26(b)(2)(B). Over the course of more than a decade of grappling with this issue, a broad consensus has developed among the federal courts that "**backup tapes are presumptively inaccessible**." *Kleen Products LLC v. Packaging Corp.*, 2012 WL 4498465 at *18 (N.D. Ill. Sept. 28, 2012) (citing additional cases) (emphasis added). Plaintiffs do not dispute that point, and instead quibble about whether a further showing of cost burden is required at this juncture. Defendants have not made such a showing because, absent leave to file a motion to compel the production of backup tapes—which plaintiffs did not request and the Court did not authorize, the backup tape

	preserved upon departing First Solar in June 2011 even though First Solar's practice required it to take a snapshot of the hard drive of an executive at Wood's level upon that executive's departure. Immediately upon learning that Wood's files had been destroyed, plaintiffs inquired about the existence of Wood's documents on backup tapes or archive systems. Defendants never responded to plaintiffs' inquiries. Plaintiffs now know that defendants have access to Wood's files on backup tapes; however, defendants claim that plaintiffs have not shown the data to be "reasonably accessible" and that First Solar no longer has the hardware and software necessary to restore the backup tapes. Both argument should be rejected. First, as the party resisting the production of ESI, it is ***defendants'*** – not plaintiffs' – burden to show that the data is not reasonably accessible. *See* Rule 26(b)(2)(B) ("On motion to compel discovery or for a protective order, ***the party from whom discovery is sought*** must show that the information is not reasonably accessible because of undue burden or cost."). The case defendants cite acknowledges as much. *See Kleen Products LLC v. Packaging Corp.,* No. 10C5711, 2012 U.S. Dist. LEXIS 139632, at *53 (N.D. Ill. Sept. 28, 2012) (emphasis added) ("If ***Defendants establish*** that the requested backup tapes are 'inaccessible' within the meaning of Rule 26(b)(2)(B), the information must still be produced if Plaintiffs establish good cause considering the limitations in Rule 26(b)(2)(C)."). Defendants have utterly failed to establish inaccessibility. Rather, unlike defendants in *Kleen Products*, who submitted expert affidavits attesting to	issue is not properly before the Court. **Plaintiffs Have Not Met Their Burden of Showing "Good Cause."** To meet the "good cause" requirement for production of backup tapes, plaintiffs must satisfy Rule 26(b)(2)C), which, among other things, requires a showing that the discovery is not "unreasonably cumulative or duplicative." Plaintiffs come nowhere close to meeting that burden. Defendants have already produced over 4,000 emails sent or received by Mr. Wood, and another 635 documents authored by Mr. Wood. Defendants also produced 1,840 files from the share drive of the FP&A department that Mr. Wood headed. Defendants have produced a large volume of Mr. Wood's email and other ESI from other sources, including the FP&A share drive and email boxes of 3 custodians who reported to Mr. Wood (Georgette Gillen, John Amonett, and Jeff Van Dyke), and from Mr. Wood's supervisor, Jens Meyerhoff. Plaintiffs do not dispute this. Rather, they point to an internal investigation concerning CPW during one quarter of the almost four-year long class period—Q3 2009—and assert that there are unspecified "gaps" in defendants' production concerning the investigation. They provide no support for this assertion or for their claim that defendants have improperly withheld internal audit documents in connection with the investigation. Defendants have produced 268 documents compiled by internal audit as part of its CPW investigation. Defendants have separately produced over 2,100 documents maintained by the 6 internal auditors who

	the cost and burden of restoring backup tapes, defendants offer only their say-so. *Id.* That is not enough. In any event, the court in *Kleen Products* ultimately held that plaintiffs' request for backup tapes was "premature" because no discovery cutoff had been set and denied access to backup tapes without prejudice to seeking them later. *Id.* Here, however, the discovery cutoff is February 27, 2015. Second, the fact that First Solar purportedly got rid of the software and hardware necessary to access Wood's files on backup tapes – despite this lawsuit and Wood's central role in the alleged fraud – does not render the data inaccessible. Such a result would reward defendants for jettisoning relevant documents. Defendants should be compelled to obtain the necessary software and hardware and search the backup tapes for Wood's and any other custodians' relevant documents. **There is "Good Cause" to Search Backup Tapes.** Even if defendants had met their burden to establish that Wood's files are "inaccessible" on backup tapes – and they have not – there is good cause to require the search of backup tapes here. Defendants themselves acknowledge that Wood is a custodian with relevant information and it was their own actions that rendered his information only available on backup tapes. Indeed, the Advisory Committee notes to Rule 26 consider "the failure to produce relevant information that seems likely to have existed but is no longer available on more easily accessed sources" in determining good cause. This factor directly supports a finding of good cause – defendants agree that Wood's files are relevant but they failed to produce them because they purportedly can no	worked on the investigation. Defendants have also produced over 1,300 CPW-related documents maintained on the FP&A share drive, and over 4,100 documents maintained by the two FP&A employees—Ms. Gillen and Mr. Amonett—tasked with calculating CPW. The only responsive documents identified during review that were not produced are documents created by outside counsel at McDermott Will & Emery as part of their work product investigation. Plaintiffs also assert that backup tapes should be restored and searched because Mr. Wood "was responsible for quantifying" the financial impact of various manufacturing defects, including LPM. That assertion misstates Mr. Wood's role. FP&A employees other than Mr. Wood acted as the financial interface between the team handling the LPM remediation and the controller's office. Mr. Wood was involved only as their supervisor. Plaintiffs also ignore that defendants have already produced over 13,000 documents relating to the financial impact of these issues from the files of the controller (James Zhu) and assistant controller (Bryan Schumaker). Finally, plaintiffs claim to "now know" that Mr. Wood's files are on the backup tapes. That is pure speculation, and turns the Rule 26(b)(2)(C) inquiry on its head. The only way anyone could know if the backup tapes contain recoverable files from Mr. Wood, much less files from the 5-year-old CPW investigation, is to incur the burden and expense to restore and search the tapes. **Defendants' Response to Extraneous Issues Raised by Plaintiffs.** Plaintiffs continue to misrepresent the

longer be gleaned from "more easily accessed sources." Further, the Advisory Committee notes also consider "the likelihood of finding relevant, responsive information that cannot be obtained from other, more easily accessed sources." Here, Wood's custodial files ***only*** reside on backup tapes, further establishing good cause. The fact that defendants have produced some documents related to Wood from the files of others does not change the analysis. Because Wood's custodial documents were not searched, Wood's production is necessarily deficient. And defendants' suggestion that Wood's files are "unreasonably cumulative or duplicative" misses the mark because defendants themselves identified him as a unique custodian whose files should be searched.

Wood's Documents Are Marginally Relevant. There can be no dispute that Wood's documents are marginally relevant. Defendants conceded as much when they identified him as a custodian with relevant information and represented to plaintiffs that his files would be searched. Wood was the VP of the Financial Planning & Analysis ("FP&A") group and reported directly to defendant Meyerhoff, the CFO of First Solar.

Wood's actions were the root cause of the internal investigation into First Solar's manipulation of its cost-per-watt ("CPW") metric. As Georgette Gillen, an employee in the FP&A group, testified, Wood directed Gillen and others in FP&A to get to a predetermined figure – to just "make it happen." Gillen Tr. at 100. According to Gillen, Wood threatened FP&A personnel with negative annual performance rankings and no bonuses if the CPW number did not come down to the

CPW issue. Ms. Gillen complained to internal audit in October 2009 that Mr. Wood had directed the FP&A group to understate CPW by 1¢ in one quarter. Those allegations were investigated by internal audit, which considered each of Ms. Gillen's unsubstantiated allegations before concluding that "the CPW calculations are supported with company accounting records," and that "one-time Management adjustments included in the CPW calculation appear reasonable." [FSLR00351653.] The allegations and the internal audit conclusions were shared with the Company's outside auditors, which signed off on the CPW reported by First Solar for the third quarter of 2009 (and every other quarter during the class period). The investigation thus ended with no finding of wrongdoing, no change in reported CPW, and no employment action against Mr. Wood or Ms. Gillen.

Plaintiffs likewise have no basis for suggesting that defendants improperly "destroyed" documents. As plaintiffs acknowledge, Mr. Wood left First Solar long before this action was filed. Mr. Wood was not subject to a litigation hold at the time he left; plaintiffs do not claim otherwise. Consistent with First Solar's ordinary practice, his email account was deleted 30 days after his last day of employment and his hard drive was recycled. At the time of Mr. Wood's departure, First Solar had a tape-based disaster backup system for its email server. First Solar has since switched to a different system and no longer has the hardware or software necessary to restore the backup tapes. In addition, although First Solar had an informal practice of saving an image of a departing executive's hard drive, there are no records

	level desired by Wood. *Id.* at 104-105. As part of Wood's CPW manipulation scheme, Wood had "cleaned up" versions of critical CPW documentation sent to Internal Audit to hide the manipulation. *Id.* at 112-113. Gillen made a complaint to First Solar's internal audit department and an investigation into Wood's directive and the CPW calculation ensued. After Wood left First Solar, he specifically directed that his replacement "'absolutely could not be'" Gillen, despite her stellar performance reviews. Gillen Tr. at 124. In other words, Wood discriminated against Gillen because of his speculation that she had blown the whistle on him. Defendants' attempt to downplay the CPW fraud and their reliance on First Solar's internal investigation – which was effectively a whitewash where the focus of the investigation was to scour the whistleblower's personnel file for dirt on the whistleblower rather than get to the bottom of the complaint – only supports the need to search Wood's files. For example, defendants state that external audit was involved in the CPW investigation, yet they have produced only a handful of CPW investigation-related materials that were sent to or received from external auditors. Moreover, defendants cite their internal investigation to bolster their argument that there was no fraud at the same time they withhold documents produced in connection with the investigation as privileged. Defendants cannot use these documents as a sword and a shield – CPW investigation-related materials are not privileged and should be produced from Wood's and others' files.	showing whether that was done for Mr. Wood, and First Solar has been unable to locate an image of Mr. Wood's hard drive on the server used for that purpose (which was not subject to a backup program). Contrary to plaintiffs' unsupported claim, all of this information was discussed at length during a 90 minute meet and confer call on September 16—two days before the telephonic discovery hearing with the Court—including that no custodians were excluded from the list in defendants' Dec. 20 RFP responses because their documents were not preserved.

	Further, there are large gaps in defendants' production concerning First Solar's internal investigation into Wood's CPW manipulation. The addition of Wood as a custodian will undoubtedly fill many of these gaps. Moreover, CPW was an important metric of the Company's strength and the subject of one of the alleged frauds at issue in this case. Wood, who headed the FP&A division that calculated the CPW figure, was ultimately responsible for this important figure and is, thus, uniquely positioned to possess relevant information. Given his leadership role in the FP&A group, Wood was also highly involved with the Low Power Module ("LPM") defect, the heat degradation defect, and warranty issues – issues that go to the heart of plaintiffs' allegations. In particular, Wood and the division he ran was responsible for quantifying the effects of various defects on First Solar's financials, which goes to the materiality and loss causation elements of plaintiffs' claims. Although defendants have searched a number of Wood's subordinates, Wood, who reported directly to defendant Meyerhoff, should also be searched. There is no reason to have a gap in custodians between Wood's subordinates and defendant Meyerhoff; rather, Wood is an essential link in the chain between lower-level FP&A personnel and the named defendants. Finally, defendants' unsubstantiated numbers of already-produced e-mails related to certain topics are meaningless without knowing the total universe of	

	responsive documents. Plaintiffs have provided substantial evidence that Wood's files will contain additional responsive documents irrespective of what defendants have produced from other sources to date.	
Nathan "Kii" Miller	**Timeliness.** Plaintiffs' request to add Kii Miller as a custodian is timely. Defendants have long been on notice that plaintiffs believe Miller has relevant information. Miller was Confidential Witness No. 1 in the complaint and was subsequently identified in plaintiffs' Rule 26 Initial Disclosures and interrogatory responses. Although defendants were well aware of plaintiffs' position that Miller has relevant information, they omitted Miller as a custodian while at the same time assuring plaintiffs repeatedly that the scope of their searches was broad enough to capture all responsive information. Having made these representations, defendants cannot now complain that plaintiffs waited too long to insist upon a search of Miller's custodial documents after a review of defendants' production has revealed that Miller's information was not adequately captured. As the Court knows, defendants repeatedly violated the document production deadlines and did not complete their production until August 25, 2014. Far from untimely, plaintiffs requested the addition of Miller within days of defendants' completion of their back-loaded document production. Defendants rely on the Court's second Case Management Order ("CMO 2") (entered November 25, 2013, Dkt. No. 177) to argue that because all documents that were the subject of the initial CMO were due by	**Untimeliness.** Kii Miller is Confidential Witness 1 in the First Amended Complaint, filed on August 17, 2012. Allegations attributed to Mr. Miller appear in 13 paragraphs of the FAC, running 17 pages. Mr. Miller is also listed on plaintiffs' initial disclosures, served on December 13, 2013. Plaintiffs do not dispute these facts. Plaintiffs nonetheless waited over 8 months—until the end of August 2014—to ask defendants to search Mr. Miller's files. That request is untimely on multiple grounds. First, CMO No. 2 provides that "the parties shall complete document production by April 25, 2014." [Dkt. No. 177.] The Court's May 16, 2014 Order granting defendants' uncontested application to modify the discovery schedule states that the "document production deadline shall be continued" to June 24, 2014. [Dkt. No. 197.] The Order did not grant either side permission to propound new document discovery after June 24. Indeed, plaintiffs' counsel have previously represented that an "interim date" to complete document discovery was necessary because it was not "responsible to start embarking on large deposition practice until you receive the documents." Nov. 22, 2013 Tr. at 32-33 [Dkt. No. 177]. Plaintiffs' August 29 request for production of documents from 14 new custodians, including Mr. Miller, is therefore untimely. Both sides' later service of third party document subpoenas is not inconsistent with the fact

	April 25, 2014, any request for additional custodians or document requests after that date is untimely is equal parts unfounded and nonsensical. First, by defendants' reasoning, plaintiffs would have had a March 25, 2014 deadline to propound all document requests. Such a deadline is inconsistent with the discussion at the November 22, 2013 scheduling conference, which focused only on plaintiffs' ***first*** document requests, as well as the full context of CMO 2, which similarly keyed its deadlines off of plaintiffs' ***first*** document requests. *See* 11/22/2013 Hrg. Tr. at 36 (defense counsel stating they required seven months to produce documents based on "the [first set of] document requests from the plaintiffs"). Second, a March 25, 2014 deadline to propound document requests and propose additional custodians defies common sense; by that date, defendants had produced a paltry ***1.6%*** of the documents produced to date. By defendants' logic, plaintiffs should have requested additional custodians and propounded additional document requests while defendants had not yet produced ***98.4%*** of the responsive documents. Had plaintiffs done so, defendants certainly would have objected on the basis that plaintiffs' request was premature because defendants were in the process of producing more documents. Fact discovery does not end until February 27, 2015. Nothing in the Federal Rules or any of the Court's prior orders precludes plaintiffs from seeking responsive documents from other sources or propounding additional document requests at this time. Defendants' assertion that CMO 2 "did not grant	that the Court's May 16 Order continued the deadline for the "**parties"** to "complete document production" to June 24, 2014. Second, plaintiffs assert that their August 29 request is timely because defendants purportedly "assured" them "that the scope of their searches was broad enough to capture all responsive information." Defendants did no such thing. Defendants' December 20 RFP responses stated that their search would include 28 named custodians "whose files are **most likely** to contain discoverable documents." The time to ask that Mr. Miller be added was promptly upon receiving defendants' December 20 list or—at the very latest—in late April 2014 when plaintiffs requested that the files of two new custodians—Ondria Lamorte and John Sokol—be added. Third, plaintiffs also state that they requested Mr. Miller's documents "within days of defendants' completion" of their production on August 25. According to plaintiffs, "until then, it was impossible for plaintiffs to know what they were missing." That is not true. Plaintiffs knew on December 20—eight months before—that Mr. Miller was not one of the 28 named custodians. Moreover, plaintiffs agreed at the September 18 discovery hearing that they were "**not asserting**" that they didn't realize that Mr. Miller's (and the other new custodians) files were "missing" until they received defendants' productions in late August. (Tr. 37:7-38:1.) **No Marginal Relevancy.** Plaintiffs have not shown that a search of Mr. Miller's files is likely to generate any marginally relevant documents that have not already

	either side permission to propound new document discovery" is beside the point – discovery ends in five months, no such permission is required. Indeed, a limitation on document requests and custodians makes no sense where, as here, there are nearly five months remaining in fact discovery. It also makes no sense because plaintiffs' follow up requests for additional custodians and document requests – including requests to third parties that plaintiffs learned of through discovery – necessarily awaited the completion of defendants' document production; until then, it was impossible for plaintiffs to know what they were missing. Indeed, defendants' argument is disingenuous; they, too, have propounded document requests to third parties as recently as September 18, 2014 – long after their artificial deadline for document requests. Defendants never previously took the position that there was a deadline for plaintiffs to seek documents from additional sources. To the contrary, defendants stated in their responses to plaintiffs' first and second set of document requests that defendants' unilaterally-selected sources were without prejudice to plaintiffs' ability to request different or additional sources. *See, e.g.*, defendants' response to plaintiffs' first document requests (stating that defendants' unilaterally selected sources were "[w]ithout prejudice to Lead Plaintiffs' ability to seek additional documents from other locations later. . ."); defendants' 2/14/2014 e-mail regarding plaintiffs' second document requests (stating that the search of defendants' unilaterally-selected custodians was "without prejudice to plaintiffs' ability to seek additional documents from other custodians	been produced. Plaintiffs state that Mr. Miller was "involved and informed" regarding the LPM and heat degradation issues. Defendants have produced over 125,000 documents regarding LPM, including documents from a network share drive where First Solar stored customer communications. That total includes over 64,000 documents maintained by Timo Moeller, the global director of warranty affairs, who dealt directly with First Solar's largest German customers on the LPM issue. In addition, defendants have produced over 60,000 documents from Adrianne Kimber, Michael Koralewski, Alex Panchula, Samantha Sloan, Jim Sorensen, and Lou Trippel—the employees who worked most closely with the heat degradation issue. Plaintiffs do not dispute these facts. There is no reason to believe that adding Mr. Miller's files to the voluminous collection of documents that have already been produced on these issues will add anything of marginal relevance to the mix. Plaintiffs' citation to an isolated email that Mr. Miller sent to Mr. Zhu in August 2009 [FSLR01092722] does not change that calculus. Plaintiffs point to this document to support an argument that there are unproduced documents that may be marginally relevant to establishing Mr. Zhu's scienter. But the document they rely on has already been produced from Mr. Zhu's files. Nor is there any reason to expect that there are any similar documents that have not been produced. To the contrary, defendants' production contains 15,173 documents from Mr. Zhu's files, including 236 emails

	later"). For these reasons, defendants' claim that plaintiffs had 400 documents "referring to Mr. Miller" by May 2014 is red herring – plaintiffs had no reason to know in May 2014 that Miller's production would be deficient until they had defendants' full production and saw what was missing from other custodians defendants chose and represented would provide a complete document production. Further, as the Court also knows, plaintiffs' confidence in the completeness of defendants' searches and productions in this case has been eroded by defendants' lackluster document retention protocol, particularly as it relates to e-mails, and their inability to locate specific documents (identified by date, sender, and recipient) requested by plaintiffs. Plaintiffs concern is particularly acute given that we had taken defendants at their word, yet even defendants seem to have been caught off-guard by First Solar's document retention issues.[1] **No Prejudice.** Defendants have a "trained" analytics	exchanged with Mr. Miller. Finally, Defendants have already produced over 2,300 documents sent or received by, or referring to Mr. Miller. **Defendants' Response to Extraneous Issues Raised by Plaintiffs.** Finally, plaintiffs assert that defendants' use of a "trained" predictive coding system "obviates" the burden of adding additional custodians. Plaintiffs disregard the need to retrain the predictive coding software whenever new documents are added to the database. That retraining includes the creation of new baseline and validation sets of 4,000-5,000 documents in total. All of these documents are then reviewed by senior attorneys for responsiveness. The algorithms in the software are also updated to incorporate the results of that review. As defendants pointed out at the September 18 discovery hearing, the output from the predictive coding software is only the beginning of the process. Documents identified by the system need to be reviewed

[1] The foregoing timeliness arguments apply equally to ***all*** of the proposed additional custodians, except Wood, who defendants themselves identified long ago as a custodian whose files should be searched. For the sake of brevity, it will not be repeated in the individual sections for the proposed additional custodians. Curiously, defendants object to plaintiffs' effort to reduce the burden on the Court in reviewing timeliness arguments that apply equally to all proposed additional custodians. Their objection should be rejected.

Defendants object to plaintiffs' insertion of this and other footnotes in the margins outside the column dedicated to plaintiffs' position. The use and placement of such footnotes is contrary to the format specified in the Court's September 18 Minute Order. Defendants note their objection here to make it clear that the footnotes represent plaintiffs' position only and are not joined by defendants.

	system, which obviates much of any burden associated with searching and producing documents from additional custodians. Any burden is further ameliorated by the automated de-duplication process, which reduces the number of documents needed to be reviewed. In other words, if the addition of Miller or any other custodian yields a document that is duplicative of a document defendants have already produced, that document will not need to be reviewed again. While the addition of additional custodians will obviously require additional work by defendants, it certainly is not ***more*** burdensome to search the additional custodians' files now than it would have been at some earlier time. Because neither the Federal Rules nor the Court imposed a deadline to seek additional custodians, the only remaining question as to timeliness is whether defendants are prejudiced by plaintiffs' request to add custodians now versus if we had asked them to add these custodians at some earlier time. The answer is no. Thus, plaintiffs' request for the addition of Miller is timely for the additional reason that defendants have failed to articulate any prejudice attendant in adding him or any other relevant custodian.[2] **Marginal Relevance.** Miller, as the Director of Sales for North America reporting to Randolph Wu (who also is not a custodian in this case) possesses information relevant to this action. In his role as Director of Sales, Miller had a high degree	by attorneys for responsiveness and privilege before they can be produced. That human review represents the largest part of the burden and expense of the production process. The team of 100+ contract attorneys who conducted that review have been released, meaning that defendants will incur the expense of hiring and training a new team to review any additional custodian's documents. Plaintiffs also assert that the use of "de-duping" software "ameliorate[s]" the burden of adding new custodians. The de-duping process is not a panacea. It does not screen out non-identical copies of documents that have already been produced, such as interim iterations of an email chain that was ultimately forwarded to another custodian. Finally, and contrary to plaintiffs' assertion, defendants did not "repeatedly" violate the document production deadlines or have a "lackluster" document retention protocol. Defendants made a rolling production of over 270,000 documents by the June 24 deadline, spanning over 2.3 million pages. Defendants issued a litigation hold notice at the end of February 2012. In their December 20, 2013 RFP responses, defendants stated that they would "search for documents" maintained by 28 custodians. Defendants thereafter added 8 more custodians, bringing the total to 36. Defendants collected the contents of local hard drives and e-mailboxes from 34 of these custodians, and collected email from a 35th. Mr. Wood was the only custodian

[2] This lack prejudice reasoning applies equally to all of the proposed additional custodians and will not be repeated throughout.

	of customer interaction. As a result, Miller was highly involved and informed of the various defects that are the subject of this case, including the LPM and heat degradation defects. Miller was frequently the first contact that was made between customers affected by the various module defects and First Solar. In one striking instance, Miller informed defendant Zhu that First Solar sold defective modules to SunEdison and that the best course would be to take them back "without disclosing to SunEd the LPM or the CP issue." (FSLR01092722.) Miller, instead, recommended that First Solar tell SunEdison that the modules were being taken back due to SunEdison's "lack of financial performance…" *Id.* This document and others like it are highly probative of defendants' scienter. Because of Miller's customer-facing role, Miller's documents will ***not*** likely be captured through the search of other First Solar custodians. Thus, Miller's files should be searched and relevant documents produced. Moreover, defendants failed to search a ***single*** custodian from the Sales group. Miller's boss, Randolph Wu, who is not a custodian, nor are any other individuals in Miller's reporting structure. *See* FLSR01473480 at -532. Thus, Miller is highly likely to have relevant documents that will not be produced from other custodians. Miller was a confidential witness that contributed to allegations in the complaint. In particular, Miller provided information regarding when First Solar first knew of the existence of the LPM defect – a central issue in this case. Complaint, ¶50. One of his customers – a substantial German customer – was one	for whom defendants were unable to collect local hard drive content and/or an e-mailbox. As discussed above, he left First Solar long before this action was filed.

	of the first to complain about LPM. Miller referred to the heat degradation defect as the "three thousand pound boulder" compared to the LPM excursion and that First Solar executives knew of the heat degradation defect as early as 2009. *Id.* Miller stated that beyond 5 years, First Solar was only guessing as to module performance and degradation – a fact that goes to the heart of the propriety of defendants' warranty accounting. *Id.* To that end, Miller stated that there was concern about the adequacy of First Solar's warranty reserves once the heat degradation defect developed. *Id.* Ultimately, Miller felt uncomfortable representing the quality of First Solar modules to his customers. *Id.* In light of Miller's vast involvement in the alleged fraud, his files should be searched and produced. Finally, defendants' citation to unsubstantiated numbers of already-produced e-mails is a red herring. Plaintiffs have provided substantial evidence that Miller's files will contain additional responsive documents irrespective of what defendants have produced from other sources to date.	
Carol Campbell	**Timeliness.** Plaintiffs' request to add Carol Campbell as a custodian is timely. Defendants assured plaintiffs repeatedly that the scope of their searches was broad enough to capture all responsive information. Upon receiving defendants' belated production, however, it became apparent that Campbell – who did not appear on plaintiffs' or defendants' Rule 26 initial disclosures – possesses relevant information not covered by other custodians. Having represented to plaintiffs that their searches were comprehensive, defendants cannot now complain that plaintiffs waited too long to insist upon a	**Untimeliness.** Plaintiffs' request to add Carol Campbell as a custodian is untimely. Defendants produced 1,750 documents referring to Ms. Campbell by April 28, 2014, including two of the three documents [FSLR00351649; FSLR01027990] that plaintiffs cite in support of their belated request to add her as a custodian. By June 23, 2014, defendants had produced a total of 4,071 documents regarding Ms. Campbell. Plaintiffs do not dispute these facts. There is no justification for plaintiffs' delay until August

	search of Campbell's custodial documents after a review of defendants' production has revealed that Campbell is a relevant custodian whose documents are not wholly duplicative of current custodians. This is especially true here, where plaintiffs requested the addition of Campbell within days of defendants' completion of their back-loaded document production. As the Court knows, plaintiffs' confidence in the completeness of defendants' searches and productions in this case has been eroded by defendants' lackluster document retention protocol, particularly as it relates to e-mails, and defendants' inability to locate specific documents (identified by date, sender, and recipient) requested by plaintiffs. Plaintiffs concern is particularly acute given that we had taken defendants at their word, yet even defendants seem to have been caught off-guard by First Solar's document retention issues. Moreover, defendants never once took the position that there was a deadline for plaintiffs to seek documents from additional sources. To the contrary, defendants stated in their responses to plaintiffs' first and second sets of document requests that defendants' unilaterally-selected sources were without prejudice to plaintiffs' ability to request different or additional sources. Defendants' belated attempt to impose a deadline for additional custodians is inappropriate particularly where, as here, there are nearly five months remaining in fact discovery. Finally, defendants have a "trained" analytics system, which obviates much of any burden associated with searching and producing documents from additional	29, 2014 in requesting the inclusion of Ms. Campbell as a custodian, in light of (i) this Court's Order setting June 24, 2014 as the document production deadline; (ii) the fact that plaintiffs had almost 2,000 documents referring to Ms. Campbell two months before that deadline; and (iii) the fact that plaintiffs knew long before then that Ms. Campbell was not on the list of custodians whose files would be searched. **No Marginal Relevancy.** Adding Ms. Campbell as a custodian is unlikely to generate any marginally relevant documents. Plaintiffs claim that Ms. Campbell's files will fill in gaps regarding the CPW investigation and the termination of CEO Robert Gillette. Plaintiffs misstate Ms. Campbell's role in asserting that she was "at the center" of the CPW investigation. The documents plaintiffs cite in support of Ms. Campbell's inclusion show that she had a marginal role that involved one discrete task: reviewing Ms. Gillen's personnel file and making it available for further review by internal audit. Plaintiffs have made no showing that Ms. Campbell was involved in any other aspect of the CPW investigation. As noted in their discussion of Mr. Wood, defendants have already produced thousands of documents regarding the CPW investigation. These include all responsive documents from internal auditor Scott Erickson, who was identified in defendants' RFP responses as a general custodian whose files would be searched for documents responsive to **all** requests. As to Ms. Campbell's role in the termination of Mr. Gillette, as plaintiffs acknowledge, Mr. Gillette was

	custodians. Thus, plaintiffs' request for the addition of Campbell is timely.[3] *See also* footnotes 1 & 2, *supra*. **Marginal Relevance.** Campbell was the Executive Vice President of Human Resources and reported directly to the CEO of First Solar, which included defendants Gillette and Ahearn. To date, defendants have not produced documents from the files of ***any*** Human Resources custodians. The production of Campbell's custodial files will fill gaps in the production relating to the (1) 2009/2010 internal investigation into First Solar's manipulation of its CPW metric and (2) Board of Director's ouster of defendant Gillette as CEO in October 2011. For example, according to an internal e-mail dated November 1, 2009 (FSLR02269056), which defendants did not produce until August 25, 2014 – two months ***after*** the Court-ordered deadline for production – Campbell reviewed the personnel files of Gillen and potentially others in connection with the cost-per-watt investigation. Of the four persons included on this e-mail, only one – Scott Erickson – is a custodian. Erickson, however, worked in Internal Audit, not HR. Certainly, Erickson is not a substitute for Campbell. Campbell's involvement in the investigation is further illustrated by Exhibit 12 (dated December 29, 2009) to the August 7, 2014 deposition of Georgette Gillen: "Brian Castro Vidot, Senior Auditor, pulled a sample of	terminated by the board of directors. Ms. Campbell had no involvement in the decision to terminate Mr. Gillette. Plaintiffs' citation to an email [FSLR01027990] discussing Mr. Gillette's severance benefits in no way contradicts that fact. Finally, plaintiffs suggest that there are gaps in defendants' production because it purportedly includes only 67 emails between Ms. Campbell and Mr. Gillette and/or Mr. Ahearn. Rather than establishing an imagined "gap," the small number of emails from Ms. Campbell exchanged between Messrs. Gillette and/or Ahearn show that she was only peripherally involved in the issues in this case and is not likely to possess any marginally relevant documents that have not already been produced. **Defendants' Response to Extraneous Issues Raised by Plaintiffs.** As set forth above, defendants diligently and timely complied with their discovery obligations, Plaintiffs misrepresent the CPW issue, and searching for and producing documents from additional custodians this late in the game will be burdensome and expensive.

[3] The foregoing timeliness arguments apply equally to proposed custodians Brown, Fuss, Hansen, and Wessels. These arguments will not be repeated in the individuals sections pertaining to Brown, Fuss, Hansen, and Wessels.

	additional HR files (as a followup to an HR audit he had been conducting) and included the individual of interest [Georgette Gillen] in his selection. He discovered that the individual of interest had an incomplete file. Scott Erickson emailed Carol Campbell and asked if she had pulled this individual's file (Carol had been aware that [Internal Audit] would be requesting this information) and she indicated that she had pulled the file that morning and that it included nothing of interest. Scott Erickson informed Fadel Shukry of this and the decision was made to not perform any additional procedures for this step." (FSLR00351649 at 653.) Despite Campbell's involvement in the CPW investigation as early as November 1, 2009, only ***four*** e-mails written by Campbell during the months of November and December 2009 have been produced. Further, despite the fact Campbell reported directly to defendants Gillette and Ahearn, only 67 e-mails between Campbell and Gillette and/or Ahearn have been produced. Plaintiffs believe Campbell's documents will provide key information regarding the CPW investigation. Clearly, Campbell was at the center of the CPW investigation; defendants' *ipse dixit* assertion that the few documents plaintiffs have in their possession indicate Campbell had "one discreet task" – making Gillen's personnel file available – proves the point. Plaintiffs have shown that, given her role as head of HR, Campbell was highly involved in the CPW investigation and possesses documents not yet produced to plaintiffs. Furthermore, as the EVP of HR, Campbell was closely	

	involved in the process whenever a high-level employee left the company. Nevertheless, defendants have produced only ***one*** e-mail from Campbell concerning Gillette's ouster. *See* FSLR01027990. The paucity of documents to or from Campbell concerning the major personnel issue of ousting the sitting CEO indicates a significant gap in the production, and Campbell's documents are likely to provide key information concerning the circumstances surrounding Gillette's ouster from First Solar – an issue that goes to the heart of plaintiffs' claims. Further, defendants' assertion that Campbell "had no involvement" in the ouster of defendant Gillette not only strains credulity, it is simply incorrect. The single document defendants have produced from Campbell concerning Gillette's ouster establishes that Campbell had discussions with Gillette and his attorney concerning his severance payout and release of claims. *See* FSLR01027990. That, of course, is unsurprising. As the EVP of HR, Campbell without question would have been involved in the termination of Gillette, including any severance, separation, confidentiality, or other agreements or documents.	
James Brown	**Timeliness.** *See* Carol Campbell and footnotes 1 & 2, *supra*. **Marginal Relevance.** James Brown was Senior Vice President of Project Finance and Executive Vice President of Global Business Development during the relevant time period. In these roles, Brown reported directly to defendant Meyerhoff, the CFO.	**Untimeliness.** Plaintiffs' request to add James Brown as a custodian is untimely. Defendants produced 2,130 documents referring Mr. Brown by April 28, 2014. By June 23, 2014, defendants had produced 7,254 documents regarding Mr. Brown. Plaintiffs now point to three documents to show Mr. Brown's marginal relevance. These documents were produced on March 31, 2014 [FSLR00133243], April 28, 2014 [FSLR01028562], and June 5, 2014 [FSLR01239539].

	Brown was highly involved in addressing and remediating the LPM and heat degradation defects. Having been primarily responsible for the development and financing of EPC sites, Brown is uniquely positioned to possess information concerning defective modules as it relates to First Solar's large solar installations. EPC was a significant component of a segment accounting for 25.2% of First Solar's 2010 total net sales. As a high-level executive, Brown attended board meetings (FSLR01028562) and provided top-level updates on risks concerning market demand and customer concentration to the named defendants (FSLR01239539). Based on a number of documents produced to date, Brown appears to have been one of the few who preferred full disclosure of problems related to the LPM defect to customers but who was routinely stymied in that effort. Thus, Brown's documents will reveal additional probative evidence concerning defendants' attempts to cover up the various defects at issue here. Defendants do not dispute that the existing custodians had little, if any, involvement on the EPC side. Rather, defendants cite to the number of documents they have purportedly produced related to the "LPM excursion and the heat degradation" defect. Even assuming their numbers are accurate – and plaintiffs have no way to verify whether that is the case – these documents are no substitute for Brown's role in EPC and the effects First Solar's various defects had on EPC sites. Brown also negotiated with customers who made complaints and threatened litigation against First Solar	Plaintiffs did not request the inclusion of Mr. Brown as a custodian until August 29, 2014. Plaintiffs do not dispute these facts. There is no justification for plaintiffs' delay until August 29, 2014 in requesting the inclusion of Mr. Brown as a custodian, in light of (i) this Court's Order setting June 24, 2014 as the document production deadline; (ii) the fact that plaintiffs had over 2,000 documents referring to Mr. Brown two months before that deadline; and (iii) the fact that plaintiffs knew long before then that Mr. Brown was not on the list of custodians whose files would be searched. **No Marginal Relevancy.** Adding Mr. Brown as a custodian is unlikely to generate any marginally relevant documents that have not already been produced. The 3 documents that plaintiffs cite in support of their request to add Mr. Brown show his involvement in the issues in the case only during the tail end of the class period. *See* FSLR01028562 (Feb. 21, 2012 board agenda); FSLR00133243 (Feb. 10, 2012 draft settlement agreement); FSLR01239539 (Nov. 15, 2011 Enterprise Risk Management Update). Defendants have already produced tens of thousands of responsive documents from the First Solar employees who were directly involved with the LPM excursion and the heat degradation issues over the course of the class period. These include senior employees in the warranty and customer service groups: Tom Kuster—4,561 documents, Shellie Molina—1,671 documents, Timo Moeller—64,808 documents, Tony Siebers—4,672 documents, Samantha Sloan—11,570 documents, John

	for defective modules related to the LPM and heat degradation defects. As a senior executive overseeing large solar sites, Brown proposed settlements to disgruntled customers. (FSLR00133243.) Defendants acknowledge Brown's role in negotiating with customers and, curiously, they point out that they have produced no fewer than 17 versions of a particular settlement agreement. First, this fact proves that defendants' document figures are artificially inflated. Second, that plaintiffs have received multiple iterations of a single settlement agreement hardly proves that defendants have produced all responsive documents from Brown's files. Brown left First Solar abruptly in April 2013 amid much media speculation.	Sokol—4,177 documents; and senior employees charged with investigating and remediating the LPM excursion and the heat degradation issue: Dan Beitzel—6,853 documents, David Eaglesham—23,942 documents, Adrianne Kimber—10,464 documents, Michael Koralewski—23,819 documents, Alex Panchula—20,043 documents, Jim Sorensen—4,875 documents, Lou Trippel—3,488 documents. Defendants have also produced 2,290 documents from the president of the components business group, TK Kallenbach who had final authority and responsibility over LPM remediation. Plaintiffs argue that adding Mr. Brown as a custodian may yield marginally relevant documents in light of his role in the EPC division. In discussing the size of the EPC division in 2010, plaintiffs ignore that the manufacturing excursion occurred from June 2008 through June 2009. In these years, the EPC group was too small to merit reporting as a separate segment in First Solar's 10-K. In 2008, EPC accounted for 4% of First Solar's net sales, and in 2009 it was 5.5%. [FSLR 10-K for 2009.] Plaintiffs do not dispute this, or point to any documents showing that Mr. Brown is likely to have materials that have not already been produced regarding the effects of purported "defects" on EPC sites. Mr. Brown's limited involvement in negotiating customer settlements during the last quarter of the class period does not establish that adding him as a custodian will yield marginally relevant documents not already produced. Defendants have already produced over 20,000 files from the share drive that contains customer communications and settlements. Indeed, 17 versions of the February 2012 draft settlement agreement that

		plaintiffs cite in support of this point [FSLR00133243] have already been produced. Likewise, 33 versions of the Nov. 2011 Enterprise Risk Management presentation cited by plaintiffs [FSLR01239539] have been produced from 11 different custodians, further confirming that a search of Mr. Brown's documents is unlikely to yield any marginally relevant documents that have not already been produced. Remarkably, plaintiffs now complain that the production of non-identical drafts shows that defendants' production is "artificially inflated." To the contrary, plaintiffs' own RFPs define a document to include "preliminary drafts, revisions or copies of any document if the copy is in any way different from the original…."
Klaus-Peter Fuss	**Timeliness.** *See* Carol Campbell and footnotes 1 & 2, *supra*. **Marginal Relevance.** Klaus-Peter Fuss held the position of Manager Technical Service in First Solar's Mainz, Germany outpost. Fuss reported to Stephan Hansen, who reported to the CEO, defendants Gillette and Ahearn. Document discovery reveals that Fuss was intimately involved in the LPM process, especially as it related to First Solar's German operations and customers and likely has information that is not contained in the files of the current custodians due to the fact that defendants have searched only one custodian based in Germany (despite the fact that Germany was First Solar's largest market, accounting for 65% of First Solar's 2009 net	**Untimeliness.** Plaintiffs' request to add Klaus-Peter Fuss as a custodian is untimely. Defendants produced 11,590 documents referring to Mr. Fuss by April 28, 2014. By June 23, 2014, Defendants had produced 29,030 documents regarding Mr. Fuss. Plaintiffs now point to one document to show Mr. Fuss's marginal relevance. [FSLR01033925.] This document was produced on April 28, 2014. Plaintiffs did not request the inclusion of Mr. Fuss as a custodian until August 29, 2014. Plaintiffs do not dispute these facts. There is no justification for plaintiffs' delay until August 29, 2014 in requesting the inclusion of Mr. Fuss as a custodian, in light of (i) this Court's Order setting June 24, 2014 as the document production deadline; (ii) the fact that plaintiffs had over 2,000 documents referring to Mr. Fuss two months before that deadline; and (iii) the

	sales, and the location of its European operations). An internal document dated June 6, 2010 indicates Fuss was the head of an LPM "Operational Sub Team" that focused on LPM demand planning, order processing, and shipment logistics (FSLR01033925 at 4010-4011). The same document, under the heading "LPM – Who is involved," lists Fuss and 24 other persons, only three of whom are current custodians (FSLR01033925 at 4007). Moreover, according to this document, one of the "areas of concern" was there was "no clear 'report out' structure" with "much confusion around status." Thus, it appears many persons responsible for the LPM process are not currently named as custodians and that information contained in Fuss' custodial documents (and conveyed to him by his direct and indirect reports) is not likely contained in the other custodians' documents.	fact that plaintiffs knew long before then that Mr. Fuss was not on the list of custodians whose files would be searched. **No Marginal Relevancy.** Adding Mr. Fuss as a custodian is unlikely to generate any marginally relevant documents. Mr. Fuss was one of several First Solar employees tasked with investigating and remediating the LPM excursion. Defendants have produced over 125,000 documents relating to the LPM excursion, including over 20,000 files from the share drive that contains customer and settlement communications regarding the LPM excursion. The sole document plaintiffs cite in support of Mr. Fuss's marginal relevance [FSLR01033925 at 4007] lists Mr. Fuss as one of 23 members of an LPM task force. Responsive documents maintained by 4 of these task force members have already been produced, including Michael Koralewski (23,819 documents) and Bruce Sohn (7,348 documents). The fact that defendants searched only one custodian based in Germany is insufficient to show that a search of Mr. Fuss's files will yield any additional marginally relevant documents. Defendants have already produced over 64,000 documents from Timo Moeller, who was based in First Solar's office in Mainz, along with Mr. Fuss. Those documents include 9,057 emails written by or addressed to Mr. Fuss. Indeed, more documents have been produced from Mr. Moeller than from any other custodian.
Frank De Rosa	**Timeliness.** Plaintiffs' request to add Frank De Rosa as a custodian is timely. Defendants have long been on	**Untimeliness.** Plaintiffs' request to add Frank De Rosa as a custodian is untimely. Mr. De Rosa is listed on

	notice that plaintiffs believe De Rosa has relevant information, as he was identified in plaintiffs' Rule 26 Initial Disclosures. Although defendants were well aware of plaintiffs' position that De Rosa has relevant information, they omitted De Rosa from their searches while at the same time assuring plaintiffs repeatedly that the scope of their searches was broad enough to capture all responsive information. Having made these representations, defendants cannot now complain that plaintiffs waited too long to insist upon a search of De Rosa's custodial documents after a review of defendants' production has revealed that De Rosa's information was not comprehensively captured.[4] *See also* footnotes 1 & 2, *supra*. **Marginal Relevance.** De Rosa was the Senior Vice President of Project Development at First Solar and reported directly to defendants Meyerhoff and Widmar, the CFOs during the class period. De Rosa communicated directly with companies regarding bids by First Solar to construct solar power or Engineering Procurement and Construction plants ("EPC") (FSLR01131124), the terms under which EPC plants would be constructed, and the expected power output and performance of the plants. EPC was a significant component of a segment accounting for 25.2% of First Solar's 2010 total net sales. To date, defendants have produced just 32 emails written by De Rosa. Nor are any of De Rosa's direct reports included	plaintiffs' December 13, 2013 initial disclosures. Although Mr. De Rosa was not identified in defendants' December 20 RFP response as one of the custodians whose files would be searched, plaintiffs waited over eight months—until the end of August 2014—to ask defendants to search his files. In addition, defendants had produced 802 documents referring to Mr. De Rosa by April 28, 2014. By June 23, 2014, defendants had produced 2,567 documents regarding Mr. De Rosa. In light of all these facts, which plaintiffs do not dispute, there is thus no justification for plaintiffs' delay in requesting the inclusion of Mr. De Rosa as a custodian. **No Marginal Relevancy.** Adding Mr. De Rosa as a custodian is unlikely to generate any marginally relevant documents. Plaintiffs assert that Mr. De Rosa had "unique involvement in relevant issues," by virtue of his role in First Solar's EPC division. As noted, EPC did not become a significant part of First Solar's business until after the LPM manufacturing excursion, which took place between June 2008 and June 2009. In 2008, EPC accounted for 4% of First Solar's net sales; in 2009 it was 5.5%. [FSLR 10-K for 2009.] Accordingly, any responsive EPC documents maintained by Mr. De Rosa are unlikely to add anything to the 125,000 documents regarding the LPM excursion that have already been produced. Plaintiffs do not dispute this point, or cite to any documents showing that Mr. De Rosa is likely to

[4] The foregoing timeliness arguments apply equally to proposed custodians De Rosa, Duval, Lamon, Loures, and DeJong. These arguments will not be repeated in the individuals sections pertaining to De Rosa, Duval, Lamon, Loures, and DeJong.

	as custodians in this case. De Rosa's custodial documents will likely contain information regarding, *inter alia*, the impact that LPM and other defects had on First Solar's ability to successfully obtain lucrative EPC contracts, the impact that LPM, heat degradation, and other defects had on the prices and terms on which EPC plants were contracted, concerns held by customers over First Solar's modules in light of LPM and other defects, and the negative impact the various defects had on First Solar's and/or their customers' ability to seek or obtain financing for the construction of the power plants. Plaintiffs understand very few of the current custodians were actually involved in sales of First Solar modules, and few if any of the current custodians focused as much as De Rosa on the EPC-side of First Solar's business, which accounted for a substantial amount of First Solar's revenue. On emails that have been produced to which De Rosa is a recipient, the content of the communications include the heat degradation defect and performance of modules in desert climates (FSLR01272056). Because of De Rosa's unique involvement in relevant issues, defendants' *ipse dixit* assertion that De Rosa was "only peripherally involved" should be rejected. Moreover, defendants' acknowledgement that they have produced multiple copies of the same document only highlights that their document figures cited throughout are artificially inflated.	have materials that have not already been produced regarding the effects of purported "defects" on EPC sites. Plaintiffs suggest that there are gaps in the production because defendants have produced only 32 emails written by Mr. De Rosa. Plaintiffs have it backwards—there are relatively few emails from Mr. De Rosa in the production because he was only peripherally involved in the issues underlying this litigation. The two documents plaintiffs cite illustrate the point: FSLR1272056 is a March 17, 2011 email sent by Samantha Sloan (a custodian) to 16 other First Solar employees (including 5 custodians). 27 copies of this document appear in defendants' production. FSLR01131124 is an email dated February 29, 2012—after the end of the class period—sent by Mr. De Rosa to 12 First Solar employees, including 3 custodians. 18 copies of this document have already been produced.
Stephan	**Timeliness.** *See* Carol Campbell and footnotes 1 & 2,	**Untimeliness.** Plaintiffs' request to add Stephan Hansen as a custodian is untimely. Defendants

Hansen	*supra*. **Marginal Relevance.** Stephan Hansen was the Managing Director of First Solar GmbH, located in Germany, and also served as Vice President of Sales for the Europe, Middle East, and Africa ("EMEA") region from 2004 to 2012 at First Solar. Hansen reported directly to Gillette and Ahearn. There is currently only one custodian who was based in Germany, which was First Solar's largest market, accounting for 65% of First Solar's 2009 net sales. As part of his responsibilities, Hansen reported on European customer/market reaction to LPM issues (FSLR00234044; FSLR01458150) and was also involved with discussing the terms and details of LPM claims settlements with European customers (FSLR01109913). In First Solar's limited production on Hansen to date, it is clear that Hansen was vocal about the LPM issues to the executive leadership. For example, shortly after First Solar first disclosed the existence of the LPM defect in July 2010, in an e-mail to Gillette, Hansen notes that the "Customers have meetings and calls too with banks and investors that listen in to our earnings call and have more Q's than A's right now. We leave them with NOTHING since Thursday…I feel the follow-up and attention is simply unprofessional and NOT the way we gain back trust with customers. Sorry, but this stinks and the response does too." (FSLR02253998). In another e-mail to Gillette a few months later, Hansen writes: "With regards to LPM, I believe I have pushed as hard as I could and faced	produced over 5,000 documents referring to Mr. Hansen by April 28, 2014. By June 23, 2014, defendants had produced over 11,000 documents regarding Mr. Hansen. Of the 5 documents plaintiffs cite to show Mr. Hansen's marginal relevance, 3 were produced by the first week in June [FSLR00234044 (produced April 7, 2014); FSLR01109913 (produced May 6, 2014); FSLR01458150 (produced June 5, 2014)]. Plaintiffs do not dispute these facts. There is no justification for plaintiffs' delay until August 29, 2014 in requesting the inclusion of Mr. Hansen as a custodian, in light of (i) this Court's Order setting June 24, 2014 as the document production deadline; (ii) the fact that plaintiffs had over 5,000 documents referring to Mr. Hansen two months before that deadline; and (iii) the fact that plaintiffs knew long before then that Mr. Hansen was not on the list of custodians whose files would be searched. **No Marginal Relevancy.** Adding Mr. Hansen as a custodian is unlikely to generate any marginally relevant documents. Plaintiffs point to Mr. Hansen's involvement remediating LPM sites, but there is no reason to believe that any marginally relevant LPM documents involving Mr. Hansen are not already included in 125,000 LPM-related documents that defendants produced. For example, the document that plaintiffs cite to show that Mr. Hansen "was involved with discussing the terms and details of LPM claims settlements with European customers"—FSLR01109913—was distributed to 7 custodians. Versions of this email have already been produced 28 times. Versions of other Hansen emails cited by

	resistance mainly from Bruce, who was honestly trying to cover the extent of the problem up and in the context of this delayed a solution…What we are doing now is what I proposed more than a year ago (more proactive resolution and more upfront communication)" (FSLR02008834). Hansen's own forthright reaction demonstrates his unique position in that he was at the forefront of customer responses to all of First Solar's issues and was not afraid to communicate his concerns to the executive leadership of First Solar. Production of his documents would likely provide probative insight into all of the issues customers in EMEA faced during the relevant period. Finally, with only the production of 22 e-mails from Hansen to Gillette and 13 e-mails from Gillette to Hansen, 1 email from Ahearn to Hansen, and 5 e-mails from Hansen to Ahearn, there are significant gaps in the production. In light of the suspiciously-low number of documents produced from the universe of documents collected from defendants Gillette and Ahearn despite their knowledge of the LPM defect by as early as 2009 (according to defendants' representations, only ***3%*** and ***2%*** of collected documents, respectively), a search of Hansen's files is likely to yield additional relevant, non-cumulative documents.	plaintiffs have already been produced 6 times [FSLR02008834] and 39 times [FSLR02253998]. Indeed, over 9,000 LPM documents specifically refer to Mr. Hansen, including 640 LPM-related documents stored on the network share drive, over 4,000 emails and attachments produced from Timo Moeller's files, over 1,800 emails and attachments from David Eaglesham's files, and over 900 emails and attachments from Michael Koralewski's files. Plaintiffs also assert that Mr. Hansen's files are likely to contain marginally relevant documents because defendants searched the files of only one custodian based in Germany. As already noted, defendants' production included over 64,000 documents from Timo Moeller. Those documents include 783 emails written or addressed to Mr. Hansen. Indeed, more documents have been produced from Mr. Moeller than from any other custodian. Finally, plaintiffs claim that there is a "significant gap in the production" based on low numbers of emails between Mr. Hansen and Mr. Gillette and between Mr. Hansen and Mr. Ahearn. There is no such gap. Far from being "suspiciously low," as plaintiffs claim, the small number of emails reflects the fact that few LPM-related communications rose to the CEO level. For example, defendants collected 10,398 emails written by Mr. Gillette. Of these, only 327 were responsive to plaintiffs' requests on any topic, including 22 addressed to Mr. Hansen. Similarly, only 120 of 5,739 emails written by Mr. Ahearn were responsive to plaintiffs' requests, including 13 addressed to Mr. Hansen.

		Plaintiffs do not dispute these facts.
Maja Wessels	**Timeliness.** *See* Carol Campbell and footnotes 1 & 2, *supra*. **Marginal Relevance.** Maja Wessels served Executive Vice President of Global Public Affairs at First Solar since May 2009 after first joining the company as Vice President of Government Affairs for the Europe, Middle East, and Africa ("EMEA") region in May 2008. Wessels directly reported to both defendants Gillette and Ahearn while they were CEOs of First Solar. In an e-mail to Gillette, Wessels warned him that "most of our communications activity/challenges are in Europe these days…There is a lot going on, including: white spots, the Low Power Module Plan (and bracing for the onslaught)." As part of her duties, Wessels met with senior government officials, industry experts, customers, and conducted media interviews and in so doing, communicated the company's position on heat degradation and LPM defects. (FSLR01503628). Documents containing discussions about what and how to communicate publicly will shed light on defendants' false statements here at issue. Wessels also monitored communications with customers, including concerns on LPM and heat degradation, (FSLR01030674); analyst reactions to First Solar news (FSLR01348784; FSLR02119017); and the performance of First Solar's stock in reaction to news (FSLR01348784), and conveyed any updates to the executive leadership of First Solar. This included presentations given at Board of Director Meetings	**Untimeliness.** Plaintiffs' request to add Maja Wessels as a custodian is untimely. Defendants produced 1,541 documents referring to Ms. Wessels by April 28, 2014. By June 23, 2014, defendants had produced 4,134 documents regarding Ms. Wessels. Of the 6 documents plaintiffs now cite to show Ms. Wessels's marginal relevance, 3 were produced by the first week of June [PWC075865 (produced March 15, 2014); FSLR01030674 (produced April 28, 2014); FSLR01348784 (produced June 5, 2014)]. Plaintiffs do not dispute these facts. There is no justification for plaintiffs' delay until August 29, 2014 in requesting the inclusion of Ms. Wessels as a custodian, in light of (i) this Court's Order setting June 24, 2014 as the document production deadline; (ii) the fact that plaintiffs had over 1,500 documents referring to Ms. Wessels two months before that deadline; and (iii) the fact that plaintiffs knew long before then that Ms. Wessels was not on the list of custodians whose files would be searched. **No Marginal Relevancy.** Plaintiffs' cursory explanations do not show that Ms. Wessels's documents will be marginally relevant and non-duplicative of what has already been produced. To the extent that Ms. Wessels was involved in public statements regarding First Solar, this material is readily available in press releases and from those public sources, of which plaintiffs assembled thousands of pages for their motion on class certification.

	(PWC0075865). With only 13 e-mails produced from Wessels to Gillette and 31 e-mails from Wessels to Ahearn, there are likely a significant number of relevant documents authored or received by Wessels that defendants have not produced. Wessels' documents are directly relevant to when and how First Solar communicated the LPM and heat degradation defects to customers and the public at large. From the limited production to date, it is apparent that Wessels played a significant role in determining the timing of relevant news releases. (FSLR02216539.)	Plaintiffs state that Ms. Wessels "monitored communications with customers" but do not state how this is different from the thousands of documents already produced from customer-facing custodians, such as Timo Moeller, from whom 64,000 documents have been produced. Plaintiffs state that Ms. Wessels monitored "analyst reaction to First Solar news" and "the performance of First Solar's stock in reaction to news," but plaintiffs ignore more than 30,000 documents produced from Larry Polizzotto and David Brady, who both served as Vice Presidents of Investor Relations and who held primary responsibility for these tasks. There is no reason to expect that adding Ms. Wessels as a custodian will yield any new documents regarding these matters. For example, defendants have already produced 4 copies of FSLR01348784, 11 copies of FSLR02119017, and 3 copies of FSLR02216539, all of which are cited by plaintiffs to show a gap in the production. Ms. Wessels's responsibility was government affairs, not investor relations, finance, or technology. She had, at most, sporadic and peripheral involvement with the issues in this case. Rather than suggesting that something of marginal relevance is missing, the small number of emails from Ms. Wessels to Mr. Gillette and Mr. Ahearn produced from other custodians confirms that she is unlikely to have any additional responsive documents, much less any that are marginally relevant.
Douglas Duval	**Timeliness.** *See* De Rosa and footnotes 1 & 2, *supra*. **Marginal Relevance.** Douglas Duval was Vice President of Global Supply Chain and reported directly	**Untimeliness.** Plaintiffs' request to add Douglas Duval as a custodian is untimely. On December 13, 2013, plaintiffs served their initial disclosures, which include Mr. Duval. Although defendants' December 20 RFP

	to defendant Sohn. None of Duval's direct reports are custodians in this case and there is currently only one custodian who worked in the supply line division. Duval was involved in high-level communications regarding the impact that LPM, heat degradation, and cord plate replacement modules had on First Solar's supply of modules for general business. For instance, in a February 2012 e-mail chain with defendant Eaglesham, Duval discussed the cord plate defect and the subsequent need to produce 300,000 replacement modules for modules originally produced in the 2008-09 time frame. In addition, Duval received regular updates regarding the LPM defect, including statistics on modules retrieved and tested for LPM (FSLR01112787), and also received emails discussing the heat degradation issue and panel shipments to hot climates (FSLR01185224). Defendants have produced only 13 e-mails from Duval to Sohn, his direct report, during the class period. In addition, defendants produced only 28 e-mails from Sohn to Duval during the class period. Thus, a production of Duval's documents will likely yield a significant number of documents concerning module supply issues that defendants have not yet produced.	response did not include Mr. Duval as one of the custodians whose files would be searched, plaintiffs waited over eight months—until the end of August 2014—to ask defendants to search Mr. Duval's files. In addition, defendants produced 629 documents referring to Mr. Duval by April 28, 2014. By June 23, 2014, defendants had produced 3,750 documents regarding Mr. Duval, including the two documents now cited by plaintiffs. [FSLR01112787 (produced May 6, 2014); FSLR01185224 (produced May 19, 2014).] In light of all these facts, which plaintiffs do not dispute, there is no justification for plaintiffs' delay in requesting the inclusion of Mr. Duval as a custodian. **No Marginal Relevancy.** Adding Mr. Duval as a custodian is unlikely to generate any marginally relevant documents. Plaintiffs assert that the production is incomplete because it included only one custodian from the "supply line division." That custodian is Shellie Molina, the Vice President for Global Supply Chain. Plaintiffs do not dispute that defendants produced 1,671 documents from Ms. Molina's files. Plaintiffs state that Mr. Duval was involved in "high-level communications" and received "regular updates" regarding the impact of LPM and heat degradation. "High-level" involvement or receipt of "updates" does not establish that Mr. Duval has marginally relevant documents that have not already been produced, especially where defendants have already identified and produced tens of thousands of documents from the employees directly responsible for investigating and remediating the LPM excursion and heat degradation

		issue, including Mr. Kuster, Ms. Molina, Mr. Moeller, Mr. Siebers, Ms. Sloan, Mr. Sokol, Mr. Beitzel, Mr. Eaglesham, Ms. Kimber, Mr. Koralewski, Mr. Panchula, Mr. Sorensen, Mr. Trippel, and Mr. Kallenbach. Plaintiffs also contend that Mr. Duval has documents regarding a "cord plate" issue. To the contrary, even if Mr. Duval has cord plate documents, they would not be marginally relevant to the issues in this case. The words "cord plate" nowhere appear in plaintiffs' 134 page complaint or RFPs. Finally, plaintiffs suggest that there are gaps in defendants' production because, out of 5,000 emails produced from other custodians addressed to Mr. Sohn, only 13 came from Mr. Duval. If anything, the small number of responsive emails written by Mr. Duval to other custodians shows that he was not involved in the issues in this case, and confirms that he is unlikely to have any additional responsive documents not already produced, much less any that are marginally relevant.
Jim Lamon	**Timeliness.** *See* De Rosa and footnotes 1 & 2, *supra*. **Marginal Relevance.** Jim Lamon was the Senior Vice President of First Solar's EPC Division and reported directly to defendant Sohn, President of Operations. Lamon appears on e-mails discussing the heat degradation defect and performance of modules in desert climates (FSLR01272056). Lamon also attended meetings on heat degradation strategies in 2011 and received e-mails regarding the same addressed to	**Untimeliness.** Plaintiffs' request to add Jim Lamon as a custodian is untimely. On December 13, 2013, plaintiffs served their initial disclosures, which include Mr. Lamon. Although defendants' December 20 RFP response did not include Mr. Lamon as one of the custodians whose files would be searched, plaintiffs waited over eight months—until the end of August 2014—to ask defendants to search Mr. Lamon's files. In addition, defendants produced 761 documents referring to Mr. Lamon by April 28, 2014. By June 23, 2014, defendants had produced 5,713 documents

	defendants and others (FSLR01086511). Lamon reported directly to defendant Sohn and yet defendants produced only 34 e-mails from Lamon to Sohn and only 23 e-mails from Sohn to Lamon. One of Lamon's direct reports, Tom Kuster, is named as a custodian (FSLR01364469), but only 37 e-mails from Lamon to Kuster – and 21 e-mails from Kuster to Lamon – were produced. Importantly, Lamon held a high-level position and attended board meetings (FSLR01028562) and provided top-level updates on risks concerning FSLR's EPC division (FSLR01239539). Therefore, although defendants have searched Kuster's documents, Lamon's documents will yield information not contained in Kuster's files due to Lamon's position and access to defendants. Defendants reliance on documents produced by other custodians bearing no relationship to Lamon or his division should be rejected. Plaintiffs have shown that Lamon, who worked in First Solar's EPC division, likely has non-cumulative, responsive documents. To the extent there are duplicates, as defendants suggest, those can be identified in an automated fashion, ameliorating all review burden.	regarding Mr. Lamon, including all 5 of the documents plaintiffs now cite to show his marginal relevance. [FSLR01028562 (produced April 28, 2014); FSLR01086511 (produced May 6, 2014); FSLR01272056, FSLR01239539, and FSLR01364469 (all produced June 5, 2014).] Plaintiffs did not request the inclusion of Mr. Lamon as a custodian until August 29, 2014. In light of all these facts, which plaintiffs do not dispute, there is no justification for plaintiffs' delay in requesting the inclusion of Mr. Lamon as a custodian. **No Marginal Relevancy.** Plaintiffs argue that adding Mr. Lamon as a custodian may yield marginally relevant documents in light of his role in the EPC division. In discussing the size of the EPC division in 2010, plaintiffs ignore that the manufacturing excursion occurred from June 2008 through June 2009. In these years, the EPC group was too small to merit reporting as a separate segment in First Solar's 10-K. In 2008, EPC accounted for 4% of First Solar's net sales, and in 2009 it was 5.5%. [FSLR 10-K for 2009.] Plaintiffs do not dispute this point, or cite to any documents showing that Mr. Lamon is likely to have marginally relevant documents arising from his work in the EPC division that have not already been produced. Plaintiffs primarily focus on Mr. Lamon's involvement with heat degradation issues. As discussed in connection with Mr. Miller, defendants have produced over 60,000 documents from Ms. Kimber, Mr. Koralewski, Mr. Panchula, Ms. Sloan, Mr. Sorensen, and Mr. Trippel—the employees who worked most closely with the heat degradation issue. There is no reason to believe that producing Mr. Lamon's

		documents will add anything of marginal relevance to the voluminous documents produced to date from these custodians. The documents plaintiffs cite in support of Mr. Lamon's inclusion support that point. FSLR01272056 was sent to 6 produced custodians; versions of this email have been produced 27 times. FSLR01086511 was sent to 9 custodians as well as the entire executive staff; versions of this email have been produced 28 times. The presentation cited at FSLR01239539 has been produced 33 times. Rather than showing his relevance, these documents show that Mr. Lamon was occasionally copied on documents being sent between the employees who were actively involved in the heat degradation issue—the custodians whose files have already been produced. Finally, as with Mr. Duval, plaintiffs' observation that only 34 of the 5,000 responsive emails sent to Mr. Sohn were from Mr. Lamon shows that Mr. Lamon had only limited involvement in the issues related to this case and that his files will not yield marginally relevant documents that have not already been produced.
Marco Loures	**Timeliness.** *See* De Rosa and footnotes 1 & 2, *supra*. **Marginal Relevance.** Marco Loures was the Vice President of Internal Audit and reported directly to defendants Meyerhoff and Widmar, the CFOs during the relevant time period. Loures appears on e-mails with other members of the Internal Audit department. Based on his high-level	**Untimeliness.** Plaintiffs' request to add Marco Loures as a custodian is untimely. Mr. Loures is listed on plaintiffs' initial disclosures, served on December 13, 2013. Although defendants' December 20 RFP response did not include Mr. Loures as one of the custodians whose files would be searched, plaintiffs waited over eight months—until the end of August 2014—to ask defendants to search Mr. Loures's files.

	position as VP of the Internal Audit department, Loures' documents likely contain a significant amount of information relevant to plaintiff's allegations, including information related to the CPW investigation. Loures also worked closely with whistleblower complaints received through the internal hotline (FSLR02211948). Loures appears on e-mails discussing LPM, heat degradation, and open circuit defects (FSLR01062442). Further, as part of his duties, he reviewed materials presented to the Board's Audit Committee regarding LPM (FSLR01275378). Loures reported directly to defendant Widmar with weekly updates regarding internal audit issues. (FSLR02213054). However, defendants have produced only 10 e-mails from Loures to Widmar and only 2 emails authored by Loures to First Solar's former CFO, defendant Meyerhoff. The fact that Loures reported to three different CFOs – defendants Widmar, Meyerhoff and Zhu (the interim CFO) – indicates Loures' documents will yield information not contained in others' files due to Loures' superior position and access to defendants.	In addition, defendants produced 774 documents referring to Mr. Loures by April 28, 2014. By June 23, 2014, defendants had produced 2,128 documents regarding Mr. Loures, including 2 of the 4 documents plaintiffs now cite to establish Mr. Loures's marginal relevance. [FSLR01062442 (produced April 28, 2014); FSLR01275378 (produced June 5, 2014).] Plaintiffs did not request the inclusion of Mr. Loures as a custodian until August 29, 2014. In light of all these facts, which plaintiffs do not dispute, there is no justification for plaintiffs' delay in requesting the inclusion of Mr. Loures as a custodian. **No Marginal Relevancy.** Plaintiffs argue that Mr. Loures's documents likely contain information "related to the CPW investigation." Mr. Loures joined First Solar's Internal Audit department in June 2010, well after the close of the CPW investigation in December 2009. In any event, as noted in connection with Mr. Wood, all responsive internal audit documents regarding the CPW investigation have already been produced. In addition, defendants have separately produced over 2,100 documents maintained by the 6 internal auditors who worked on the investigation. Plaintiffs also state that Mr. Loures "appears on e-mails discussing LPM, heat degradation, and open circuit defects." Appearing on emails does not establish marginal relevance. Indeed, the sole email cited for this point—FSLR01062442—has been produced 17 times from custodians in the internal audit, finance, and warranty groups. Finally, plaintiffs' assertion that Mr. Loures provided

		regular updates to the CFO regarding "internal audit issues" does not establish the marginal relevance of these reports, particularly given the dearth of evidence suggesting that Mr. Loures had any involvement in the manufacturing issues involved in this case.
Tymen DeJong	**Timeliness.** *See* De Rosa and footnotes 1 & 2, *supra*. **Marginal Relevance.** Tymen DeJong reported directly to Bruce Sohn, President of Operations, until Sohn's departure on April 30, 2011. After Sohn's departure, First Solar's reporting lines changed and DeJong began reporting directly to the CEO at the time, defendant Gillette. As Senior Vice President of Global Operations, DeJong was charged with monitoring the monthly metrics of First Solar plants and reporting the status of, and any issues with, a particular plant directly to Sohn and Gillette. For example, DeJong made frequent trips to First Solar's manufacturing facility in Kulim, Malaysia, where he met and addressed issues raised by plant managers (FSLR01671775). As part of this role, DeJong identified plant manufacturing issues, determining the root causes, and assisted with solving these problems, and in turn, communicated this process and any unresolved matters to either defendants Sohn or Gillette (FSLR01168754). DeJong was also central to assisting with evaluating and justifying the estimated number of modules affected by LPM – an issue that is at the heart of plaintiffs' case.	**Untimeliness.** Plaintiffs' request to add Tymen DeJong as a custodian is untimely. Mr. DeJong is listed on plaintiffs' initial disclosures, served on December 13, 2013. Although defendants' December 20 RFP response did not include Mr. DeJong as one of the custodians whose files would be searched, plaintiffs did not request the inclusion of Mr. DeJong as a custodian until August 29, 2014. In addition, defendants produced 1,429 documents referring to Mr. DeJong by April 28, 2014. By June 23, 2014, defendants had produced 6,370 documents regarding Mr. DeJong, including all 7 documents plaintiffs now cite to show Mr. DeJong's marginal relevance. [FSLR00291677 (produced April 14, 2014); FSLR00979003 (produced April 28, 2014); FSLR01082632 (produced May 6, 2014); FSLR01168754 (produced May 19, 2014); FSLR01671775, FSLR01644691, FSLR01627292 (all produced June 21, 2014).] In light of all these facts, which plaintiffs do not dispute, there is no justification for plaintiffs' delay in requesting the inclusion of Mr. DeJong as a custodian. **No Marginal Relevancy.** Plaintiffs cite Mr. DeJong's role in addressing issues raised by plant managers—something irrelevant to the current case—and troubleshooting manufacturing issues. Defendants have

	(FSLR00291677.) DeJong also approved the appropriate calculation of de-rate lines (FSLR01082632); supplied CPW values for bonus plans (FSLR00979003); assisted with forecasting de-rate goals (FSLR01644691); and monitored the global STBi trend (FSLR01627292). Despite DeJong's clear importance and direct reporting line to Gillette, First Solar has only produced 5 e-mails from DeJong to Gillette and three e-mails from Gillette to DeJong. Only 28 e-mails from DeJong to Sohn have been produced, along with 17 e-mails from Gillette to DeJong. The low number of e-mails to DeJong's key partners at First Solar indicates a gap in production.	already produced a total of over 44,000 documents from the Chief Technology Officer (Mr. Eaglesham), and the Vice President for Quality and Reliability (Mr. Koralewski). Plaintiffs also claim that Mr. DeJong was involved in "evaluating and justifying the estimated number of modules affected by LPM." Defendants have already produced over 35,000 documents from the custodians who worked most directly with these issues—Mr. Koralewski, Mr. Beitzel, Mr. Sokol, and Mr. Kallenbach, and have produced over 125,000 documents relating to the LPM issue in general. There is no reason to expect that Mr. DeJong's files contain any marginally relevant documents on these subjects that have not already been produced. The documents plaintiffs cite in support of Mr. DeJong's inclusion support that point. The report attached to FSLR00291677 has been produced 8 times from the files of its authors—Mr. Eaglesham and Mr. Koralewski. FSLR00979003, an email chain touching on CPW, has been produced 14 times. The email chain in FSLR01082632 has been produced 15 times. The email chain in FSLR01644691 has been produced 8 times. Finally, plaintiffs suggest that there are gaps in defendants' production because, out of 5,000 emails produced from other custodians addressed to Mr. Sohn, only 28 were sent by Mr. DeJong; and out of 2,051 emails produced by other custodians addressed to Mr. Gillette, only 5 were sent by Mr. DeJong. Rather than establishing an imagined "gap" in the production, the small number of emails from Mr. DeJong to senior management shows that he was only peripherally

		involved in the issues in this case and is not likely to possess any marginally relevant documents that have not already been produced.

DATED: October 20, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on October 20 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 20, 2014.

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- (No manual recipients)