

Peter S. Partee, Sr.
Robert A. Rich
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, New York 10166-0136
(212) 309-1000

Hearing Date: July 20, 2017 at 10:00a.m. (ET)

Attorneys for Avkem International, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
SUNEDISON, INC., <i>et al.</i> ,	:	Case No. 16-10992 (SMB)
Debtors. ¹	:	Jointly Administered

**OBJECTION OF AVKEM INTERNATIONAL, LLC TO CONFIRMATION
OF THE DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enfle Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

TABLE OF CONTENTS

BACKGROUND 1

 A. The Chapter 11 Cases..... 1

 B. Avkem’s Constructive Trust Claim 1

ARGUMENT..... 2

 A. The Plan is Not Confirmable Under 11 U.S.C. § 1122(a)
 Because Avkem’s Constructive Trust Claim is Improperly
 Classified with Claims That are Not Substantially Similar..... 2

 B. The Plan Is Not Confirmable Because It Fails To Comply With The “Best
 Interests Of Creditors” Requirement Of 11 U.S.C. § 1129(a)(7). 5

CONCLUSION..... 6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re 499 W. Warren St. Assocs., Ltd. P’ship</i> , 151 B.R. 307 (Bankr. N.D.N.Y. 1992).....	3
<i>In re Adelpia Commc’n Corp.</i> , 361 B.R. 337 (S.D.N.Y. 2007).....	6
<i>Am. Master Lease LLC v. Idanta Partners, Ltd.</i> , 225 Cal. App. 4th 1451, 171 Cal. Rptr. 3d 548 (2014).....	3
<i>Bank of America v. 203 N. LaSalle Street P’ship.</i> , 526 U.S. 434 (1999).....	5, 6
<i>Butner v. United States</i> , 440 U.S. 48 (1979).....	3
<i>In re Chateaugay Corp.</i> , 155 B.R. 625 (Bankr. S.D.N.Y. 1993).....	2
<i>Sanyo Elec., Inc. v. Howard’s Appliance Corp. (In re Howard’s Appliance Corp.)</i> , 874 F.2d 88 (2d Cir. 1989).....	4, 5
<i>In re U.S. Truck Co., Inc.</i> , 42 B.R. 790 (Bankr. E.D. Mich. 1984), <i>aff’d</i> , 800 F.2d 581 (6th Cir. 1986).....	3
<i>In re Unicom Computer Corp.</i> , 13 F.3d 321 (9th Cir. 1994).....	3
<i>United States v. Whiting Pools, Inc.</i> , 462 U.S. 198 (1983).....	5
Statutes	
11 U.S.C. § 541.....	4
11 U.S.C. § 1122(a).....	2
11 U.S.C. § 1129(a)(7).....	5
Cal. Civ. Code 2223.....	4
Cal. Civ. Code 2224.....	4

Avkem International, LLC (“Avkem”), by and through its undersigned counsel, hereby objects to confirmation of the *First Amended Joint Plan of Reorganization of SunEdison, Inc. and Its Debtor Affiliates* [ECF No. 3314] (the “Plan”), and states as follows:

BACKGROUND

A. The Chapter 11 Cases

1. On April 21, 2016 (the “Petition Date”), MEMC Pasadena, Inc. (“MEMC”) and certain of its affiliates (collectively, with MEMC, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) commencing the above-captioned chapter 11 cases (the “Chapter 11 Cases”).

2. On June 12, 2017, the Debtors filed the Plan. A hearing on confirmation of the Plan currently is scheduled for July 20, 2017.

B. Avkem’s Constructive Trust Claim

3. Avkem is a supplier of processing chemicals for the foundry industry and product consumables, including refractory insulation and other molten metal tools. As part of MEMC’s business, it sold to Avkem sodium aluminum tetrafluoride (SAF) granules, which are used as an industrial solvent. For several years prior to the Petition Date, Avkem was purchasing product from MEMC for use in Avkem’s business operations.

4. On or about January 7, 2016, Avkem made an overpayment to MEMC in the amount of \$174,636.00 (the “Overpayment”).

5. On September 22, 2016, Avkem filed a proof of claim against MEMC on the basis of the Overpayment. On June 14, 2017, Avkem filed an adversary proceeding against MEMC in this Court, Adv. Pro. No. 17-01069 (the “Adversary Proceeding”), seeking the return of the Overpayment as held in a constructive trust for the benefit of Avkem. Copies of Avkem’s

proof of claim and its complaint in the Adversary proceeding are attached as **Exhibits A** and **B**, respectively. MEMC has not yet answered Avkem's complaint in the Adversary Proceeding.

6. The facts giving rise to a constructive trust are set forth in Avkem's complaint in the Adversary Proceeding, which is incorporated by reference herein. In short, MEMC has been unjustly enriched in the amount of the Overpayment, in exchange for which Avkem never has received any product from MEMC. During the period prior to the Petition Date when the Debtors were experiencing financial difficulty, MEMC consistently and intentionally and/or negligently overstated and otherwise misrepresented the amounts owed by Avkem, resulting in Avkem's inability to discover the Overpayment and account for the same.

7. The Debtors recently served Avkem with a ballot for voting its claim in the amount of the Overpayment (the "Avkem Claim") as a Class 4B Claim (General Unsecured Claim). Under the Plan, General Unsecured Claims are impaired and will receive a share of a Liquidation Trust to be created pursuant to the Plan. The Debtors project that holders of Allowed General Unsecured Claims ultimately will receive a 2.8% recovery on their claims. *See* Disclosure Statement [ECF No. 3314] at p. 8.

ARGUMENT

A. The Plan is Not Confirmable Under 11 U.S.C. § 1122(a) Because Avkem's Constructive Trust Claim is Improperly Classified with Claims That are Not Substantially Similar.

8. Section 1122(a) of the Bankruptcy Code provides that claims or interests may be classified together with other claims or interests "only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). The Bankruptcy Code therefore prohibits the classification of dissimilar claims together. *See In re Chateaugay Corp.*, 155 B.R. 625, 630 (Bankr. S.D.N.Y. 1993); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 151 B.R. 307, 312 (Bankr. N.D.N.Y. 1992).

9. Although the Bankruptcy Code does not define “substantially similar,” it is accepted to mean “similar in legal character or effect as a claim against the debtor’s assets or as an interest in the debtor.” 7 Collier on Bankruptcy ¶ 1122.03[3] (16th ed. 2015); *see In re U.S. Truck Co., Inc.*, 42 B.R. 790, 796 (Bankr. E.D. Mich. 1984) (unsecured trade claims and workers’ compensation benefits found to be materially dissimilar based on differences in “salient legal characteristics” of claims warranting separate classification under § 1122(a), including contingent and open-ended aspects of workers’ compensation benefits claims), *aff’d*, 800 F.2d 581 (6th Cir. 1986).

10. Avkem’s claim is dissimilar in legal character from general unsecured claims in Class 4 because Avkem’s remedies include recovery of property held by MEMC in a constructive trust for Avkem.

11. In bankruptcy proceedings, the nature and determination of rights in property are governed by state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). A constructive trust is “an involuntary equitable trust created by operation of [state] law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner.” *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451, 1485, 171 Cal. Rptr. 3d 548, 575 (2014), as modified (May 27, 2014). Most, if not all, states provide for the constructive trust remedy where a defendant has been unjustly enriched by its own wrongdoing. Some states, such as California,² recognize a constructive trust in situations involving “simple negligence” or mistake on the part of a debtor who wrongfully detains another’s property. *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994) (citing cases); Cal. Civ. Code 2224 (“One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other

² Because the Debtors’ operational headquarters is in California, Avkem believes that the trust funds may have been placed in a California bank account, and that California law will apply.

wrongful act, is, unless he or she has some other or better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have it.”); Cal. Civ. Code 2223 (“One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner”).

12. Avkem asserts that as a result of MEMC’s intentional and/or negligent misrepresentations and unjust enrichment, the Overpayment is held by MEMC in a constructive trust for Avkem. The significance of Avkem prevailing on its constructive trust claim is that the Overpayment is not “property of the estate” under section 541 of the Bankruptcy Code.

13. Under section 541(a) of the Bankruptcy Code, the commencement of a bankruptcy case creates an estate, which includes, subject to certain exceptions, “all legal or equitable interests of the debtor in property as of the commencement of the case,” regardless of where the property is located or who holds it. 11 U.S.C. § 541(a)(1). However, “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” § 541(d). Thus, “the bankruptcy estate does not include property of others in which the debtor has some minor interest such as a lien or bare legal title.” *Sanyo Elec., Inc. v. Howard's Appliance Corp. (In re Howard's Appliance Corp.)*, 874 F.2d 88, 93 (2d Cir. 1989) (quotation and citations omitted).

14. “Where the debtor’s conduct gives rise to the imposition of a constructive trust, so that the debtor holds only bare legal title to the property, subject to a duty to reconvey it to the rightful owner, the estate will generally hold the property subject to the same restrictions.” *Howard's Appliance*, 874 F.2d at 93 (quotation and citations omitted). Indeed, the Supreme

Court has declared that, while the outer boundaries of the bankruptcy estate may be uncertain, “Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition.” *Id.* (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205, n.10 (1983)). “A constructive trust, therefore, confers on the true owner of the property an equitable interest in the property superior to the trustee’s,” because “but for the debtor’s misconduct, the trust beneficiary would have perfected his security interest in the rest of the trust and thus would have prevailed over the debtor as well as the debtor-in-possession.” *Id.* (quotation and citations omitted).

15. Because Avkem has a claim to the Overpayment superior to MEMC and general unsecured creditors, Avkem’s claim is dissimilar from other claims in Class 4. The Avkem Claim should be separately classified and afforded treatment which allows it to receive a return of its property should Avkem prevail on its constructive trust claim.

B. The Plan Is Not Confirmable Because It Fails To Comply With The “Best Interests Of Creditors” Requirement Of 11 U.S.C. § 1129(a)(7).

16. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each class of claims or interests, each holder of a claim or interest must receive or retain property of a value not less than what such holder would receive or retain if the debtor were to be liquidated under chapter 7 of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(7). This provision is often referred to as the “best interests” test, i.e., a test of whether a plan is in the “best interests” of impaired creditors.

17. Section 1129(a)(7) must be met for each individual dissenting creditor, notwithstanding whether that creditor’s class accepted the plan. *See Bank of America v. 203 N. LaSalle Street P’ship.*, 526 U.S. 434, 442 n. 13 (1999) (stating that the “‘best interests’ test applies to individual creditors holding impaired claims even if the class as a whole votes to

accept the plan”). Under the best interests test, the court must find that each non-accepting creditor will receive or retain value that is not less than the amount that he would receive if the debtor were liquidated. *Id.* at 440. It is the Debtors’ burden to show that the Plan complies with the best interests of creditors test. *See In re Adelpia Commc’n Corp.*, 361 B.R. 337, 364 (S.D.N.Y. 2007).

18. The Debtors are unable to satisfy their burden in this case with respect to Avkem. Avkem has submitted its ballot rejecting the Plan. As set forth above, if MEMC were liquidated, Avkem would have a claim to the Overpayment superior to the claims of MEMC or its creditors, because those funds are held in trust for Avkem. Under the Plan, however, Avkem’s constructive trust claim against MEMC would be discharged, and in exchange for such claim Avkem would receive a share in a liquidation trust on a pro rata basis with general unsecured creditors, for which the Debtors’ project that Avkem would recover a mere 2.8% of any allowed claim for the Overpayment. *See* Disclosure Statement [ECF 3314] at p. 8. Accordingly, the Plan has not satisfied the best interest of creditors test with respect to Avkem.

CONCLUSION

WHEREFORE, Avkem respectfully requests that the Court (a) deny confirmation of the Plan, and (b) grant such other and further relief in favor of Avkem as the Court may deem just or proper.

Dated: New York, New York
July 12, 2017

HUNTON & WILLIAMS LLP

/s/ Robert A. Rich

Peter S. Partee, Sr.

Robert A. Rich

200 Park Avenue

New York, New York 10166-0136

(212) 309-1000

Attorneys for Avkem International, LLC

EXHIBIT A

Fill in this information to identify the case (Select only one Debtor per claim form):

Debtor: MEMC Pasadena, Inc. - 16-10997

**Official Form 410
 Proof of Claim**

4/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?**
 Avkem International, LLC
 Name of the current creditor (the person or entity to be paid for this claim)
 Other names the creditor used with the debtor Basic Resources, Inc., Avkem Solutions

2. **Has this claim been acquired from someone else?**
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Contact phone <u>212 309 1000</u> Contact email <u>RNorton@hunton.com</u>	Contact phone <u>212 309 1000</u> Contact email <u>RNorton@hunton.com</u>

4. **Does this claim amend one already filed?**
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 174,636.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
overpayment to Debtor for product purchased (see attached)

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No
 A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

Yes. Check one:

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	Amount entitled to priority \$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)? No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).
 If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: David Youngblood
David Youngblood (Sep 22, 2016)

Email: rnorton@hunton.com

Name of the person who is completing and signing this claim:

Name David Youngblood
First name Middle name Last name

Title CEO

Company Avkem International, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 116 Hayfield Road
Number Street
Knoxville, Tennessee 37922
City State ZIP Code

Contact phone (865) 690-8727 ext. 711 Email dyoungblood@avkemsolutions.com

Attach Supporting Documentation (limited to a single PDF attachment that is less than 5 megabytes in size and under 100 pages):

I have supporting documentation.
(attach below)

I do not have supporting documentation.



PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.

IMPORTANT NOTE REGARDING REDACTING YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTATION When you submit a proof of claim and any supporting documentation you must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. The responsibility for redacting personal data identifiers (as defined in Federal Rule of Bankruptcy Procedure 9037) rests solely with the party submitting the documentation and their counsel. Prime Clerk and the Clerk of the Court will not review any document for redaction or compliance with this Rule and you hereby release and agree to hold harmless Prime Clerk and the Clerk of the Court from the disclosure of any personal data identifiers included in your submission. In the event Prime Clerk or the Clerk of the Court discover that personal identifier data or information concerning a minor individual has been included in a pleading, Prime Clerk and the Clerk of the Court are authorized, in their sole discretion, to redact all such information from the text of the filing and make an entry indicating the correction.

Official Form 410

Instructions for Proof of Claim

United States Bankruptcy Court

12/15

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157 and 3571.

How to fill out this form

- **Fill in all of the information about the claim as of the date the case was filed.**
- **Fill in the caption at the top of the form.**
- **If the claim has been acquired from someone else, then state the identity of the last party** who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- **Attach any supporting documents to this form.**
Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)
Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called “Bankruptcy Rule”) 3001(c) and (d).
- **Do not attach original documents because attachments may be destroyed after scanning.**
- **If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.**

- **A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual’s tax identification number, or financial account number, and only the year of any person’s date of birth.** See Bankruptcy Rule 9037.
- **For a minor child, fill in only the child’s initials and the full name and address of the child’s parent or guardian.** For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. See Bankruptcy Rule 9037.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, either enclose a stamped self-addressed envelope and a copy of this form. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent’s website at <http://cases.primeclerk.com/sunedison>

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate.
11 U.S.C. § 503.

Claim: A creditor’s right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy.
11 U.S.C. §101 (5). A claim may be secured or unsecured.

Claim Pursuant to 11 U.S.C. §503(b)(9): A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

Debtor: A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. § 101 (13).

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Secured claim under 11 U.S.C. §506(a): A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Please send completed Proof(s) of Claim to:

SunEdison, Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form

Fill in this information to identify the case (Select only one Debtor per claim form)

Debtor: MEMC Pasadena, Inc.

Case Number: 16-10997

Modified Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense, other than a claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9). Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?
Avkem International, LLC
 Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor Basic Resources, Inc., Avkem Solutions

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent (if different)
Richard P. Norton Hunton & Williams LLP Name <u>200 Park Avenue, 52nd Floor</u> Number Street <u>New York, New York 10166</u> City State ZIP Code Contact phone <u>(212) 309-1000</u> Contact email <u>RNorton@hunton.com</u>	Avkem International c/o Hunton & Williams LLP Attn: Richard P. Norton Name <u>200 Park Avenue, 52nd Floor</u> Number Street <u>New York, New York 10166</u> City State ZIP Code Contact phone <u>(212) 309-1000</u> Contact email <u>RNorton@hunton.com</u>

4. Does this claim amend one already filed:
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD /YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
 No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ No less than \$174,636.00 plus fees costs, interest. Does this amount include interest or other charges?

No

Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Claimant purchased certain product (SAF Granules) from Debtor MEMC Pasadena, Inc. (f/k/a MEMC Electronics Materials, Inc.). Claimant made an overpayment to this Debtor POST-PETITION of the amount stated above but files this claim in an abundance of caution. Nothing herein is to be deemed a waiver of Claimant's right to assert that the overpayment was made post-petition and should be treated accordingly under the Bankruptcy Code and any other applicable law.

9. Is all or part of the claim secured?

No

Yes. The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %

Fixed

Variable

10. Is this claim based on a lease?

No

Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?

No

Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	Amount entitled to priority \$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?**

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3:

The person completing this proof of claim must sign and date it. FRB 9011A(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules to specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received towards the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date September 22, 2016 (mm/dd/yyyy)



 Signature

Print the name of the person who is completing and signing this claim:

Name David Youngblood
 First name Middle name Last Name

Title CEO

Company Avkem International, LLC
 Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 116 Hayfield Road
 Number Street

Knoxville, Tennessee 37922
 City State ZIP Code

Contact phone (865) 690-8727 ext. 711 Email: dyoungblood@avkemsolutions.com

This proof of claim is filed with full reservation of rights, including the right to assert additional, supplementary and/or amended proofs of claim and requests for payment of post-petition overpayments to the Debtor. This proof of claim is not intended, nor should it be construed, as the Claimant's consent to jurisdiction in the Bankruptcy Court, or as a waiver of the Claimant's right to a trial by jury in any action or proceeding.

Electronic Proof of Claim

Adobe Sign Document History

09/22/2016

United States Bankruptcy Court, Southern District of New York
Date: 09/22/2016

Official Form 410
Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment on a pre-petition claim. Do not use this form to make a claim for payment on a post-petition claim. Make sure to request approval if 11 U.S.C. § 502.

PART I Identify the Debtor

1. What is the debtor's name?
2. What is the debtor's address?
3. Where should notices to the creditor be sent?
4. Do you know of any other assets of the debtor?

Created:	09/22/2016
By:	Prime Clerk (epoc@primeclerk.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA8ZxJckLsSaY8maw3wak89_-v8sNiDkCm

"Electronic Proof of Claim" History

- Widget created by Prime Clerk (epoc@primeclerk.com)
09/22/2016 - 3:11:02 PM EDT
- Widget filled in by David Youngblood (rnorton@hunton.com)
09/22/2016 - 3:24:32 PM EDT- IP address: 38.88.182.26
- David Youngblood (rnorton@hunton.com) uploaded the following supporting documents:
 - Attachment
09/22/2016 - 3:24:34 PM EDT
- (User email address provided through API User-Agent: Mozilla/5.0 (Windows NT 6.1; WOW64; Trident/7.0; rv:11.0) like Gecko)
09/22/2016 - 3:24:34 PM EDT- IP address: 38.88.182.26
- Signed document emailed to Prime Clerk (epoc@primeclerk.com) and David Youngblood (rnorton@hunton.com)
09/22/2016 - 3:24:34 PM EDT

EXHIBIT B

Peter S. Partee, Sr.
Robert A. Rich
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, New York 10166-0136
(212) 309-1000
Attorneys for Avkem International, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

	:	
In re:	:	Chapter 11
	:	
SUNEDISON, INC., <i>et al.</i> ,	:	Case No. 16-10992 (SMB)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	
AVKEM INTERNATIONAL, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Adv. Pro. No. 17- _____ (SMB)
MEMC PASADENA, INC.	:	
	:	
Defendant.	:	
	:	
	:	

COMPLAINT

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

Avkem International, LLC (“Avkem”), by and through its undersigned counsel, as and for its complaint against MEMC Pasadena, Inc. (“MEMC”), respectfully alleges as follows:

PARTIES

1. Avkem is a Delaware limited liability company with its principal place of business at 116 Hayfield Rd, Knoxville, Tennessee 37922.

2. MEMC is a Delaware corporation with its principal place of business at 3000 N South St, Pasadena, Texas 77503, and a debtor in the Bankruptcy Case (defined below).

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has subject matter jurisdiction over this Complaint pursuant to 28 U.S.C. § 1334.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This adversary proceeding relates to the chapter 11 case of MEMC, jointly administered under the case styled *In re SunEdison, Inc., et al.*, Case No. 16-10992 (SMB) (the “Bankruptcy Case”).

7. In accordance with Rule 7008 of the Federal Rules of Bankruptcy Procedure, Avkem consents to the entry of final orders or judgment by the Bankruptcy Court.

FACTS

A. The Bankruptcy Case

8. On April 21, 2016, MEMC and certain of its affiliates (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) commencing the Bankruptcy Case.

9. MEMC is a subsidiary of SunEdison, Inc. ("SunEdison"), a renewable-energy development company.

10. MEMC continues to manage its property as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Avkem's Relationship with MEMC

11. Avkem is a supplier of processing chemicals for the foundry industry and product consumables, including refractory insulation and other molten metal tools. Avkem produces a wide variety of castables, board products, and coatings for non-ferrous metals and steel, including larger items such as troughing, launder lines, holding areas, and transfer ladles. In addition, Avkem manufactures smaller parts such as floats, spouts, control pins, baffles, spacers, dam boards, degassers, and many other products.

12. As part of MEMC's business, it sold to Avkem, both prior to and after the Petition Date, sodium aluminum tetrafluoride (SAF) granules, which are used as an industrial solvent.

13. For several years prior to the Petition Date, Avkem was purchasing product from MEMC for use in Avkem's business operations. Payments on invoices issued by MEMC were timely made by Avkem via ACH transfer to MEMC's account held at Wells Fargo Bank.

C. MEMC's Misrepresentations Regarding Payment of the Trust Amount

14. On or about January 7, 2016, Avkem made an inadvertent payment to MEMC via ACH transfer to MEMC in the amount of \$174,636.00 (the "Trust Amount").

15. Avkem intended to make this payment to a different vendor unaffiliated with MEMC or the Debtors.

16. At the time of the inadvertent payment, Avkem had paid all amounts then due to MEMC. Accordingly, following this inadvertent payment, Avkem's account with MEMC carried a credit balance in the amount of the Trust Amount.

17. Despite the existence of a credit balance on Avkem's account, MEMC continued to issue invoices that failed to reflect payment of the Trust Amount, which invoices Avkem relied upon and timely paid.

18. Specifically, following the January 7, 2016 transfer of the Trust Amount, Avkem transferred additional funds to MEMC on account of invoices issued by MEMC as follows: (i) \$103,147.20 on January 7, 2016; (ii) \$66,239.63 on February 2, 2016; (iii) \$40,112.80 on February 11, 2016; and (iv) \$85,669.48 on March 10, 2016; (v) \$232,940.76 on April 25, 2016; and (vi) \$62,747.88 on May 9, 2016 (the "Subsequent Payments").

19. During this period in early 2016, MEMC and its affiliated Debtors were experiencing financial difficulty. According to Patrick Cook, Vice-President of Capital Markets and Corporate Finance of SunEdison, the Debtors had relied heavily on funds raised in the capital markets, and the inability to raise funds through the capital markets in the period prior to the Petition Date contributed to a decline in the Debtors' liquidity, and ultimately the filing of the Bankruptcy Case on April 21, 2016.

20. During this same period in early 2016, MEMC's treatment of the Avkem account changed from the parties' historical dealings.

21. MEMC applied unusual pressure on Avkem to pay invoices MEMC alleged were overdue, including on account of invoices that, in fact, already had been fully paid by Avkem.

22. On January 8, 2016, one day after Avkem delivered the Trust Amount to MEMC, a representative of MEMC, Charles Spivey, emailed a request to Avkem for payment on invoices that MEMC alleged were overdue. Specifically, Mr. Spivey demanded payment of \$188,630.26 alleged to be overdue on account of dozens of invoices previously issued by MEMC to Avkem during October and November 2015 (the "2015 Invoices").

23. Contrary to Mr. Spivey's email, Avkem previously had paid all of the 2015 Invoices in or about December 2015, and Avkem responded to Mr. Spivey's email accordingly.

24. On April 13, 2016, MEMC, through Mr. Spivey, again emailed Avkem to demand payment on invoices. Specifically, Mr. Spivey demanded that Avkem pay to MEMC \$74,208.68 for allegedly overdue invoices posted during the period January 29, 2016 through February 12, 2016.

25. On April 20, 2016, Charles Spivey emailed a request to Avkem that he be copied on all payments going forward as MEMC wound down its business.

26. Following Mr. Spivey's email on April 20, 2016, Avkem made two payments to MEMC, on April 25, 2016 and May 9, 2016, and notified MEMC of the payments in accordance with Mr. Spivey's email.

27. However, in reconciling payments and outstanding invoices from MEMC, Avkem discovered MEMC's failure to properly account for all of the previous payments made by Avkem, including the payment of the Trust Amount.

28. On or about May 16, 2016, Leslie Van Fleet, a representative of Avkem, spoke by telephone with Linda Leal, a representative of MEMC, who acknowledged MEMC's error and represented that MEMC would return the Trust Amount to Avkem.

29. As of the date hereof, MEMC has received payments from Avkem in excess of amounts invoiced, in the amount of the Trust Amount.

30. MEMC never provided Avkem with any product related to the Trust Amount.

31. MEMC has enjoyed substantial benefit by retaining the Trust Amount.

32. MEMC has not returned any portion of the Trust Amount despite Avkem making numerous demands for return of the same.

FIRST CLAIM FOR RELIEF
Constructive Trust

33. Avkem incorporates the allegations contained in paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Following Avkem's transfer of the Trust Amount to MEMC on or around January 7, 2016, MEMC knew or should have known that it had received excess payments from Avkem in the amount of the Trust Amount.

35. While MEMC knew or should have known that it had received payments from Avkem in excess of the amount owed by Avkem to MEMC, MEMC intentionally and/or negligently misrepresented to Avkem that amounts were due from Avkem to MEMC.

36. Avkem would not have made the Subsequent Payments to MEMC absent MEMC's misrepresentations, including MEMC's improper issuance of invoices and improper demands for payment.

37. Avkem has been damaged in the amount of the Trust Amount, and MEMC has been unjustly enriched by having retained the Trust Amount at the expense of Avkem.

38. Avkem has made multiple requests to MEMC for return of the Trust Amount, and MEMC has improperly refused to return the Trust Amount to Avkem.

39. Applicable state law and equity dictate that MEMC holds the Trust Amount in trust for Avkem, and will continue to hold the Trust Amount in trust for Avkem until returned to Avkem.

40. The Trust Amount is not property of MEMC's estate pursuant to section 541(d) of the Bankruptcy Code.

41. Accordingly, Avkem is entitled to the return of the Trust Amount from MEMC.

WHEREFORE, Avkem hereby requests that the Court enter an order granting judgment in favor of Avkem as follows:

- 1) Declaring that the Trust Amount is Avkem's property, and not property of MEMC's estate;
- 2) Ordering MEMC to return the Trust Amount to Avkem, including pre- and post-judgment interest thereon; and
- 3) Granting such other and further relief in favor of Avkem that the Court deems just or proper.

Dated: New York, New York
June 14, 2017

HUNTON & WILLIAMS LLP

/s/ Robert A. Rich

Peter S. Partee, Sr.

Robert A. Rich

200 Park Avenue

New York, New York 10166-0136

(212) 309-1000

Attorneys for Avkem International, LLC