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ENDORSED

2010 MAY 28 P 3 52

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN JOSE

12 CHRIS DULGARIAN, Derivatively on Behalf of)
13 AKEENA SOLAR, INC.,)

14 Plaintiff,)

15 vs.)

16 BARRY CINNAMON, GARY EFFREN,)
17 EDWARD ROFFMAN, JON WITKIN,)
18 GEORGE LAURO, and PRADEEP JOTWANI)

19 Defendants.)

20 - and -)
21 AKEENA SOLAR, INC., a Delaware)
22 Corporation,)

23 Nominal Defendant.)
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110 CV 173351

Case No.

(Derivative Action)

SHAREHOLDER DERIVATIVE
COMPLAINT

JURY TRIAL DEMANDED

FILED BY FAX

SHAREHOLDER DERIVATIVE COMPLAINT

1 **SUMMARY OF THE ACTION**

2 1. This is a shareholder derivative action brought on behalf of Akeena Solar, Inc.
3 (“Akeena” or the “Company”) against its founder, Chief Executive Officer and President, Barry
4 Cinnamon (“Cinnamon”), its Chief Financial Officer, Gary Effren (“Effren”), and its entire Board of
5 Directors (collectively, “defendants”) for breaches of fiduciary duty, waste of corporate assets, abuse
6 of control, gross mismanagement, unjust enrichment, insider trading/misappropriation of information,
7 and violation of California Corporations Code §§25402-25403.¹ Plaintiff alleges the following based
8 upon the investigation conducted by Plaintiff’s counsel, which included, among other things, a review
9 of Securities and Exchange Commission (“SEC”) filings, news reports, press releases, allegations
10 asserted against Akeena in a related federal securities class action, and other publicly available
11 documents regarding Akeena.

12 2. Akeena markets, sells and installs solar power systems for residential and small
13 commercial customers in the United States. The Company does not manufacture, but designs its
14 grid-tied solar power systems to be electrically connected to the utility grid so that excess energy
15 produced during the day can flow backwards through the utility’s electric meter.

16 3. Through his domination and control of the Akeena Board of Directors, Cinnamon,
17 who founded Akeena, has in the past and continues to this day to treat Akeena as his own private
18 fiefdom and none of the Board members or the CFO can or will stand up to him. Even though
19 Akeena was a publicly traded company and Cinnamon and the Board owed fiduciary duties to
20 shareholders to act in the best interests of the company at all times, Cinnamon treated Akeena as
21 his own personal company. Shortly after Cinnamon’s wife filed very acrimonious divorce
22 proceedings in 2005, demanding that he have Akeena appraised and relinquish her “fair share” in
23 2006, Cinnamon obtained a public stock listing for Akeena. In September 2007, he obtained a

24 _____
25 ¹ The Board of Directors is currently comprised of 4 directors: Cinnamon, Roffman, Jon Witkin
26 (“Witkin”) and Pradeep Jotwani (“Jotwani”). During the “pump and dump” scheme of 2007-2008,
27 the Board was comprised of: Cinnamon, Roffman, Witkin and George Lauro (“Lauro”), who abruptly
28 resigned on October 1, 2008 and was replaced by Jotwani after NASDAQ threatened delisting for not
having a sufficient number of independent directors.

1 more liquid NASDAQ listing. “Going public” accomplished two important goals for Cinnamon:
2 it allowed him to fund his divorce settlement with public capital (rather than his own) and it
3 allowed him to relinquish far less control of Akeena than California’s community property laws
4 would have required. Cinnamon had never before, during the Company’s existence as a publicly
5 traded company, sold a single share of his Akeena stock. And when he agreed on October 31,
6 2007 to sell some Akeena stock to fund his former spouse’s settlement, he agreed to sell a specific
7 dollar-amount of his stock – not a certain number of shares.

8 4. Thus, by causing Akeena to issue false and misleading statements in order to
9 double Akeena’s stock price before the January 31, 2008 deadline by which Cinnamon had to
10 fund his divorce settlement through stock sales, Cinnamon could – and indeed did – reduce the
11 number of shares he had to sell to fund his own divorce settlement by nearly 50%. In January,
12 2008, Cinnamon sold 400,000 shares of stock for proceeds of over **\$5.6 million** at Akeena’s all-
13 time high stock price.

14 5. In so doing, however, Cinnamon caused Akeena to commit violations of the
15 federal securities laws, exposing the Company to millions of dollars in potential criminal and civil
16 penalties, fines and judgments. Because these actions served no legitimate business interests of
17 Akeena, and only served to preserve Cinnamon’s ownership and control of Akeena, they
18 constitute a clear waste of Akeena’s corporate assets. The waste continues, as Cinnamon is
19 undoubtedly forcing Akeena to spend tens or hundreds of thousands of dollars funding his defense
20 to a securities fraud class action which is currently pending against Akeena in the Northern
21 District of California where the Company’s motion to dismiss was recently denied on May 20,
22 2010.

23 6. Indeed, as a further demonstration of Cinnamon’s unabashed domination and control
24 over Akeena, just prior to implementing this scheme, in order to prevent Akeena’s stock from being
25 delisted, Cinnamon created, for the first time in July 2007, audit, compensation and nominating
26 committees for the Akeena Board. The Board – which ***until that time consisted of just Cinnamon***
27 ***and Rothman*** – was expanded to add Witkin and Lauro. Although they were considered “outside”
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1 directors, Cinnamon made it clear that it was his company. Lauro only lasted as a director for 14
2 months -- on October 1, 2008, less than one week after the proxy renominating him was filed, Lauro
3 resigned effectively immediately from Akeena's Board. He gave no explanation, other than that he
4 "wishes to focus his efforts on his other portfolio companies." Lauro's resignation left Akeena with
5 only two independent directors on its Board, a violation of NASDAQ's listing requirement.

6 7. On October 9, 2008, NASDAQ threatened delisting, stating that "due to the
7 resignation of Mr. George Lauro from its Board of Directors on October 1, the Company no longer
8 complies with NASDAQ's audit committee composition requirements." See Akeena's 8-K filed 10-
9 7-08. NASDAQ indicated that Akeena's securities would be delisted unless it retained at least one
10 additional independent director. In order to prevent its stock from being delisted, Akeena added
11 Jotwani as a director 10 months later in August 2009. With the addition of Jotwani, Akeena's Board
12 now consists of four directors – including Cinnamon – and each of its newly formed committees,
13 audit, compensation and nominating, are comprised solely of the other three directors. The "Board"
14 only met seven times in all of FY 2008, and once in FY 2009 and its "Directors" receive no cash
15 compensation whatsoever for their "service" as directors of this purportedly publicly-owned
16 company. Instead, each receives a modicum of stock options and restricted shares of stock. Director
17 Lauro was obviously quite uninterested in continuing to serve under these circumstances and it is
18 dubious whether any of the remaining directors has any real interest in standing up to Cinnamon, who
19 now owns more than 21% of Akeena's stock.

20 8. As alleged in the securities fraud class action pending before Judge James Ware in the
21 Northern District of California, Case No. 9-CV-2147-JW, the false and misleading statements
22 defendants, directed by Cinnamon, caused Akeena to make were as follows:

- 23 a. **Increased credit line** – On December 26, 2007, Akeena announced that Comerica
24 increased Akeena's line of credit *by 70%, from \$7.5 million to \$25 million*, \$17.5
25 million of which would be available on a "non-formula" basis, and that the line of
26 credit no longer contained the assets restrictions the prior line of credit had, leading
27 many to conclude that Comerica was validating Akeena's financial strength. In
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1 actuality, as Akeena disclosed in an 8-K on January 16, 2008, the “increase” in the
2 line of credit with Comerica was not really an increase at all, but a mere cash
3 collateralization agreement whereby Comerica merely agreed to increase Akeena’s
4 “line of credit” to the extent Akeena agreed to maintain a cash deposit with
5 Comerica for the same amount.

6 b. **SunTech Licensing Contract:** Before the opening of trading on January 2, 2008,
7 Akeena announced that it had entered into a lucrative licensing and distribution
8 agreement with Suntech in which Akeena’s Andalay product would be distributed
9 in Europe, Japan and Australia. As part of the announcement, Cinnamon stated:
10 “Suntech [has] extensive international distribution channels that are among the
11 strongest in the industry . . . [Akeena is] experiencing very strong demand for
12 Andalay, and this licensing agreement with Suntech will allow us to meet our
13 customer’s need for Andalay outside of our direct channels in the U.S.”
14 Defendants concealed the actual terms of the Suntech licensing agreement.
15 Critically, the licensing agreement provided no enforcement mechanism and
16 provided Akeena with no legally enforceable rights to the royalty licensing
17 payments. On March 13, 2008, when asked about the Suntech licensing
18 agreement, Defendant Effren conceded that “it’s something that is going to be
19 relatively small in 2008; I’d say less than \$1 million.”

20 9. In denying Defendants’ (Akeena, Cinnamon and Effren) motion to dismiss in the
21 securities case, Judge Ware found that “Plaintiffs have adequately alleged [these statements
22 regarding the increased credit line and licensing contract with Suntech were] false or misleading.”
23 See Order Denying Defendants’ Motion to Dismiss, No. 09-CV-2147-JW, Doc. No. 44 (MTD
24 Order), at 5.

25 10. These statements had their intended effect – *nearly tripling Akeena’s stock price*
26 by January 7, 2008 and permitting Cinnamon to sell roughly half the shares he had contemplated
27 having to sell in October 2007 to fund his divorce settlement. Indeed, rather than being required
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1 to sell 700,000 shares of Akeena stock at the approximately \$7 per share the stock closed at on
2 December 24, 2007 – or 8% of Cinnamon’s stock – this scheme permitted Cinnamon to sell just
3 400,000 shares for proceeds of over \$5.6 million. Cinnamon’s stock sales were unusual in both
4 amount and timing as he had not previously sold a single share during Akeena’s entire history as a
5 publicly traded company.

6 11. Judge Ware, in denying Defendants’ motion to dismiss in the securities fraud class
7 action, found that plaintiffs’ allegations that Cinnamon sold 400,000 shares of stock for \$5.6
8 million in proceeds, taking advantage of Akeena’s inflated stock price after the announcement of
9 the credit line increase and Suntech license agreement, were sufficient to establish the “scienter”
10 required for securities fraud. MTD Order at 8. The Court also found that whether Cinnamon was
11 immunized for his insider selling by virtue of his 10b5-1 trading plan was a “factual question,”
12 and “an issue appropriately resolved on summary judgment.” *Id.*

13 12. Defendants’ self-dealing and breaches of fiduciary duties violated applicable law
14 and have unjustly enriched Cinnamon and others. By reason of the foregoing misrepresentations,
15 illegal insider trading, and breach of fiduciary duties, Defendants have exposed Akeena to
16 substantial potential criminal and civil fines, penalties and judgments. Akeena is now subject to a
17 shareholder class action lawsuit which alleges securities fraud relating to the illegal insider trading
18 and violations of the federal securities laws. The company has also suffered harm to its reputation
19 and credibility, which will undoubtedly negatively impact its ability to attract customers, negotiate
20 contracts and raise capital going forward.

21 13. Over *one year* has passed since Cinnamon’s insider trading occurred, and the
22 Akeena Board of Directors has undertaken *no* measures to recover Cinnamon’s ill-gotten gains
23 and have not put corporate governance provisions in place to prevent future occurrences.

24 14. As the Akeena Board either cannot or will not act to protect and recover the
25 Company’s assets, Plaintiff herein brings this shareholder derivative action on behalf of Akeena,
26 against the entire Akeena Board of Directors and its former CFO, to recover damages suffered by
27 Akeena as a result of defendants’ misconduct in breach of their fiduciary duties to oversee
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1 Akeena. Because the entire Akeena Board either personally participated in the transactions or
2 were controlled by and beholden to Cinnamon who engineered and benefited from the misconduct
3 to the detriment of the Company and its shareholders, the Board members cannot vigorously
4 investigate or prosecute an action to recover the valuable assets shamelessly plundered by
5 Akeena's faithless fiduciaries.

6 15. A true and correct copy of this Complaint was delivered to Akeena prior to its
7 being filed with this Court.

8 **JURISDICTION AND VENUE**

9 16. This Court has jurisdiction over all causes of action asserted herein pursuant to the
10 California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial
11 courts, as this derivative action is brought pursuant to §800 of the California Corporations Code to
12 remedy Defendants' violations of law.

13 17. This Court has jurisdiction over each of the defendants named herein who are residents
14 of California, including Akeena, which has its principal place of business in this state. Additionally,
15 this Court has specific jurisdiction over any named non-resident defendant because these defendants
16 maintain sufficient minimum contacts with California to render jurisdiction by this Court permissible
17 under traditional notions of fair play and substantial justice. Akeena is headquartered in California,
18 and because the allegations contained herein are brought derivatively on behalf of Akeena,
19 defendants' conduct was purposefully directed at California. Finally, exercising jurisdiction over any
20 non-resident defendant is reasonable under these circumstances.

21 18. Venue is proper in this Court because one or more of the Defendants either resides in
22 or maintains executive offices in this County, a substantial portion of the transactions and wrongs
23 complained of herein, including the Defendants' primary participation in the wrongful acts detailed
24 herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Akeena
25 occurred in this County, and Defendants have received substantial compensation in this County by
26 doing business here and engaging in numerous activities that had an effect in this County.

1 **PARTIES**

2 **Plaintiff and the Nominal Defendant**

3 19. Plaintiff Chris Dulgarian, at all times relevant hereto, has been and continues to be
4 an owner and holder of Akeena stock.

5 20. Nominal Defendant Akeena Solar is a public corporation organized and existing
6 under the laws of the state of Delaware with its principal executive offices located at 16005 Los
7 Gatos Blvd., Los Gatos, CA 95032. The Company was founded by Cinnamon in 2001. In
8 September 2007, Akeena began trading on the NASDAQ, after acquiring Fairview, an insolvent,
9 but SEC-registered company. Akeena markets, sells and installs solar power systems for
10 residential and small commercial customers in the United States. The Company does not
11 manufacture, but designs its grid-tied solar power systems to be electrically connected to the
12 utility grid so that excess energy produced during the day can flow backwards through the utility’s
13 electric meter.

14 **The Inside Defendants:**

15 21. Defendant Barry Cinnamon is Akeena’s founder, Chief Executive Officer and
16 President. He has served as CEO and a director of the company since he founded it in 2001.
17 Cinnamon was intimately knowledgeable about all aspects of Akeena’s business operations as he
18 received daily reports regarding sales, demand, product quality, customer service, customer financing,
19 and customer rebate payment timing issues. Cinnamon was also intimately involved in the
20 preparation of Akeena’s financial statements and guidance, including the amounts of backlog,
21 inventory, warranty accruals and what disclosures would be made, and the functioning of Akeena’s
22 internal financial, accounting and disclosure controls. Cinnamon was also intimately involved in and
23 fully knowledgeable concerning Akeena’s “line of credit” from Comerica, even making public
24 statements regarding the issue. He reviewed and approved Akeena’s SEC filings and its Sarbanes-
25 Oxley certificates. During the Class Period, Cinnamon sold 400,000 shares of his Akeena stock for
26 over \$5.6 million in insider trading proceeds. These sales were unusual in timing and amount and
27 inconsistent with Cinnamon’s historical Akeena stock sales. Despite his insider trading and corporate
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1 misconduct, he is well-compensated, earning nearly \$458,000 in salary and other compensation
2 annually.

3 22. Defendant Gary Effren served as Chief Financial Officer of Akeena from September
4 2007 until December 2009, when he became the Company's President. Akeena's September 24, 2007
5 release announcing Effren's appointment quoted Cinnamon as stating "***Gary will play a leadership***
6 ***role with the management team and investment community. His expertise in long-range budgeting***
7 ***and planning*** will assist the team in achieving our strategic and financial objectives." (Emphasis
8 added.) The release also stated that "Effren brings extensive public company finance experience to
9 Akeena Solar," that "[f]rom 1980 to 2006, Effren held various executive financial positions at Knight
10 Ridder, Inc., a Fortune 500 media company, including vice president of finance and chief financial
11 officer," and that "[d]uring his tenure at Knight Ridder, his overall responsibilities included corporate
12 accounting and financial reporting, strategic business development, tax, treasury, risk management,
13 and investor relations." Prior to joining Knight Ridder, Effren worked as an auditor at Peat Marwick
14 Mitchell. Effren is a CPA with 30 years of experience in accounting and finance. Effren was
15 thoroughly knowledgeable about all aspects of Akeena's business operations as he received daily
16 reports regarding sales, demand, product quality, and customer service and financing issues. Effren
17 was also intimately involved in the preparation of Akeena's financial statements and projections,
18 including the amounts of backlog, inventory, warranty accruals and what disclosures would be made,
19 and the functioning of Akeena's internal financial, accounting and disclosure controls. Effren also
20 knew of the terms of the purported line of credit "increase" announced on December 26, 2007. He
21 reviewed and approved Akeena's SEC filings with the SEC as well as its Sarbanes-Oxley certificates.

22 **Directors with Significant Financial Relationships with Akeena**

23 23. Defendant Ed Roffman has served as a director since August 2006 and continues to
24 be one of Akeena's four directors. Indeed, he and Cinnamon served as Akeena's ***only two***
25 directors from August 2006 until Witkin and Lauro joined the board in July 2007. Roffman is a
26 member of Akeena's Nominating and Corporate Governance Committee, Audit Committee and
27 Compensation Committee, along with Witkin and Jotwani. As a director, Roffman receives an
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1 annual grant of options to purchase 20,000 shares of common stock under the Company's stock
2 plan and an annual grant of restricted common stock under the Company's Stock Plan. Though
3 Akeena claims these grants had value, the Company's stock is currently trading below \$1 per
4 share – well below the \$16+ per share it traded at during the Class Period. As such, the value of
5 these stock options and restricted shares to Roffman, if any, is dubious at best. As a CPA with
6 over 30 years of experience in accounting and finance, and has also served as CFO of Red Mile
7 Entertainment, Inc. (1/05 – 4/06) and Fluent Entertainment, Inc. (2/03 – 12/04). Delaware law
8 provides that Roffman was subject to a higher duty of care to ensure that Akeena complied with
9 the letter and spirit of the federal securities laws, a duty he woefully fell down upon.

10 24. Defendant Jon Witkin has served as a director since July 2007. Witkin is also a co-
11 owner of Western States Glass, which he co-founded in 1991. Witkin is a member of Akeena's
12 Nominating and Corporate Governance Committee, Audit Committee and Compensation
13 Committee, along with Roffman and Jotwani. As a director, he receives an annual grant of
14 options to purchase 20,000 shares of common stock under the Company's stock plan and an
15 annual grant of restricted common stock under the Company's Stock Plan. Though Akeena claims
16 these grants had value, the Company's stock is currently trading below \$1 per share – well below
17 the \$16+ per share it traded at during the Class Period. As such, the value of these stock options
18 and restricted shares to Witkin, if any, is dubious at best.

19 25. Defendant Pradeep Jotwani has served as a director since August 2009. In the nine
20 months that Jotwani has been on the Board, and a member of the Audit Committee, overseeing
21 insider trading, he has not required that Cinnamon return his insider trading proceeds, and in fact,
22 has taken no action against Cinnamon. Although he is also on the Nominating Committee, he has
23 taken no action to increase the number of board members or board pay so that there is an incentive
24 for board members to do their job properly and ensure that Akeena's executives are complying
25 with their fiduciary obligations to the Company and its shareholders. He is currently an Operating
26 Executive at Vector Capital, a San Francisco based private equity firm, and from 1982 through
27 2007, Jotwani held various senior management positions with Hewlett-Packard. As an executive
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1 of a Silicon Valley venture capital firm, Jotwani would be conflicted from vigorously
2 investigating or determining to bring suit against Cinnamon because Akeena has scores of venture
3 capital backers from this community and it would constitute an act of career suicide. Indeed, it
4 would require him to sue Defendant Lauro, another member of the “country club.” Moreover, as
5 a finance executive, Jotwani too was subject to a higher duty of care to ensure that Akeena
6 complied with the letter and spirit of the federal securities laws, a duty he woefully neglected.
7 Jotwani is a member of Akeena’s Nominating and Corporate Governance Committee, Audit
8 Committee and Compensation Committee, along with Witkin and Roffman. As a director, he
9 receives an annual grant of options to purchase 20,000 shares of common stock under the
10 Company’s stock plan and an annual grant of restricted common stock under the Company’s
11 Stock Plan. Though Akeena claims these grants had value, the Company’s stock is currently
12 trading below \$1 per share – well below the \$16+ per share it traded at during the Class Period.
13 As such, the value of these stock options and restricted shares to Jotwani, if any, is minimal.

14 **Former Director Lauro**

15 26. Defendant George Lauro (“Lauro”) served as a director of Akeena from July 2007
16 until he resigned 14 months later on October 1, 2008, one week after the proxy re-nominating him
17 was filed. As a director, Lauro received an annual grant of options to purchase 20,000 shares of
18 common stock under the Company’s stock plan and an annual grant of restricted common stock
19 under the Company’s Stock Plan. Though Akeena claims these grants had value, the Company’s
20 stock is currently trading below \$1 per share – well below the \$16+ per share it traded at during
21 the Class Period. As such, the value of these stock options and restricted shares to Lauro, if any,
22 was minimal. Lauro has been a senior partner at Alteon Capital Partners since January 2007, a
23 Silicon Valley firm that provides direct venture investment and advisory services to private
24 companies in the semiconductors, MEMS, nanotech and photonics sectors. From May 2006 to
25 January 2007. Lauro was Managing Director at Techfarm Ventures, a Silicon Valley venture
26 capital firm.

1 **FACTUAL ALLEGATIONS**

2 **Background - Cinnamon and the Solar Rebate Program**

3 27. Defendant Cinnamon, Akeena’s founder, is a long-time advocate of solar energy
4 and a widely recognized solar energy expert. He started his career in solar energy in the late
5 1970s at the Massachusetts Institute of Technology (“MIT”). During the late 1970s and early
6 1980s, Cinnamon designed and installed active solar, passive solar and ground coupled heat pump
7 systems. Cinnamon, who earned his B.S. Degree in Mechanical Engineering from MIT and an
8 MBA degree in Marketing from Wharton School of the University of Pennsylvania, is a Certified
9 Solar Installer and a licensed California Solar Contractor.

10 28. In December 2005, Cinnamon was elected President of the California Solar Energy
11 Industries Association (“CSEIA”), the largest state solar organization in the country. From the
12 helm of the CSEIA, Cinnamon lobbied to get the California State Public Utilities Commission
13 (“PUC”) to approve a solar rebate program (the “California Solar Incentive”), a financial
14 necessity for solar installers like Akeena that had eluded the industry for years. Indeed, the
15 California State Legislature failed to pass solar initiatives in 2004 and 2005, efforts that foundered
16 in large part due to Cinnamon’s objection to a requirement that system installers receive union
17 wages. Others disputed whether the rebate program would lower the cost of providing solar
18 energy and would instead add to California’s exorbitant energy costs by requiring that a handout
19 be paid to solar companies.

20 29. The state-based rebate program and federal tax benefits were a financial necessity
21 for solar installers like Akeena due in large part to Cinnamon’s substantial efforts, on December
22 14, 2005, the PUC approved the largest solar initiative in U.S. history, a \$3.2 billion rebate
23 program to subsidize the installation of 1 million rooftop systems over the following decade.
24 Cinnamon told the *San Jose Mercury News* on December 14, 2005 that although solar systems
25 “cost about \$25,000 to install,” PUC would provide a rebate of about \$7,000 and “a federal tax
26 credit would lower the cost by another \$2,000.” Cinnamon said this rebate program “guarantees a
27 smooth curve of 10 years of growth in the solar industry.”

1 **Cinnamon’s Divorce Proceedings**

2 30. Unfortunately for Cinnamon, in December 2005, that same month, his wife sued him
3 for divorce. Valuation of Akeena and determination of the share of the company she would receive
4 became an-ever present issue, and Cinnamon was extremely concerned about losing a substantial
5 stake in the company he created. The divorce proceedings grew contentious over the next two years,
6 with Cinnamon’s wife accusing both him and Akeena of concealing documents and figures she and
7 her experts needed to value the ownership interest in Akeena that California community property laws
8 provided her.

9 **Akeena Acquires Venture Capital Funding and is Listed on the NASDAQ**

10 31. Both to capitalize on the PUC’s adoption of the California rebate program in January
11 2006, and to fund any property interest his former spouse claimed in Akeena, Cinnamon devised a
12 complicated plan to obtain a public stock listing for Akeena that would not entail the disclosures a
13 traditional initial public stock offering does. First, Cinnamon acquired the SEC-registered stock of an
14 insolvent Canadian hydropower company in 2006 through a reverse merger. He then listed that stock
15 on the “pink sheets” in late 2006 and finally, on September 24, 2007, moved the listing to the
16 NASDAQ National Market.

17 32. The Company’s registration statement filed with the SEC in December 2006 made
18 clear that Cinnamon, who at that time still maintained a 52% ownership interest in Akeena (after
19 issuing shares to venture capital financiers), would continue to run Akeena as his own private fiefdom
20 despite any public ownership. The registration statement disclosed that even though Cinnamon’s
21 *“interests...may differ from the interests of other stockholders,”* due to his substantial ownership
22 interest, *“Cinnamon will have the right and ability to control virtually all corporate actions....”*
23 (Emphasis added.)

24 33. By the fall of 2007, Cinnamon still owned all eight million shares of his Akeena stock,
25 but those shares only comprised 28.7% of the Company’s equity structure. To fund Akeena’s
26 operations (the Company has never made a profit), Cinnamon had been forced to obtain several
27 rounds of venture capital financing, issuing millions of shares and warrants in the process,
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1 significantly diluting his ownership. As 2007 drew to a close, Cinnamon’s wife was demanding her
2 share of Cinnamon’s shrinking equity interest in Akeena, threatening to further reduce Cinnamon’s
3 influence at the lucrative company he’d built.

4 34. Cinnamon knew the only way he could fund his wife’s financial demands with stock
5 sales proceeds – without dramatically further reducing his control of Akeena – was to increase the
6 Company’s stock price so he could buy her out with stock sales proceeds. But the primary stock
7 analysts that covered Akeena were demanding that Cinnamon demonstrate a clear “path to
8 profitability” before they would increase its stock ratings, including demonstrating a strong demand
9 for Akeena’s sleek new “Andalay” system released in the fall of 2007, increasing profit margins and
10 signing a significant licensing partner who could pay Akeena higher margin loyalty licensing fees,
11 which go straight to the bottom line and increase earnings, despite the fact that Akeena neither
12 manufactured nor had yet been able to patent the Andalay system. Committed to raising the
13 Company’s public stock price to satisfy his own financial predicament, Cinnamon was determined to
14 heed their demands.

15 **Defendants’ Active Concealment of Andalay’s Known Defects**

16 35. Defendants repeatedly touted Akeena’s “state-of-the-art” Andalay solar system, which
17 was manufactured for Akeena by its suppliers, as a significant cost leader and profit enhancer.
18 Defendants represented that Andalay had “built in features that cut installation time from half a day to
19 half an hour,” and promised that “sales of Andalay [would] contribute towards *gross margin*
20 *improvement in the range of 10% to 15%* as we benefit from our cost savings and charge a premium
21 price that is commensurate with Andalay’s customer benefits.”

22 36. But in actuality, the Andalay product was *riddled with design defects* that significantly
23 diminished its aesthetics. Defendants were aware of these defects, as they were forced to approve
24 *significant refunds and price discounts* on units installed in the field and refunds on returns. Indeed,
25 the fact that Andalay panels comprised 65%-70% of the Company’s sales during the Relevant Period
26 supports that fact that each Defendant knew this critical information. Furthermore, defendants failed
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1 to disclose that the level of customer financing required to complete planned sales was either limited
2 or non-existent.

3 **Misrepresentations Regarding Akeena's Sales Backlog**

4 37. On August 9, 2007, as part of its 2Q 2007 financial results, Cinnamon caused Akeena
5 to disclose that it had a backlog of \$13.6 million worth of orders and implied that Akeena would be
6 able to collect the money from residential customers within one or two months. These statements
7 about Akeena's backlog were material to the investment community because backlog information
8 should inform investors as to: (i) the company's historical, and then-present, sales demand; (ii) sales
9 contracts the company has a legally cognizable right to collect on; and (iii) sales revenues that have
10 already been "realized" that investors presume will be "recognized" by a date certain. As such, as
11 soon as Akeena began disclosing backlog data on August 9, 2007, the investment community was
12 fixated on it.

13 38. Asked to define how Akeena was calculating the astounding **\$13.6 million** backlog
14 during the Company's earnings conference later that day, which as one analyst noted equated to
15 "almost two quarters in terms of the run rate equivalent" of Akeena's 2Q 2007 sales, Cinnamon stated
16 Akeena was then "**targeting getting [the sales booked as backlog] done, soup to nuts, in the range of**
17 **one to two months,**" adding that "[i]t's not until we book it as GAAP revenue that it comes out of the
18 backlog and we disclose this as our revenue." Defendants confirmed again on November 13, 2007
19 that the Company had booked more than \$13.6 million in backlog by September 30, 2007, all of
20 which would presumably result in actual sales during the 4Q 2007, then well underway.

21 39. Akeena's reporting of the backlog numbers was particularly misleading because, in
22 reality, the administrators for the rebate program had **not yet certified the Andalay system**, such that
23 customer rebates were not being paid, forcing Akeena to fund the installations itself, or forgo sales
24 where it was unable to do so. And Akeena was very cash-strapped at this time, having only narrowly
25 averted a default on its limited access to a line of credit that required a significant ratio of assets to
26 lending. The paperwork required to even apply for the solar rebate was reportedly two inches thick
27 and with the rebates not being paid, Cinnamon and his sales representatives were having an
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1 increasingly difficult time selling the Andalay system. Meanwhile, the investment community knew
2 that successfully gaining market share by maximizing Andalay sales during its initial roll-out in the
3 fall of 2007 was imperative because without patent protection, and because Akeena was an installer
4 not a manufacturer, the Company had to achieve significant first-mover status to make up for its lack
5 of product control.

6 40. Defendants disclosed on March 13, 2008 that the backlog information issued to
7 investors at the start of the Relevant Period was a farce. Instead of having a \$13.6 million “backlog”
8 by the end of 3Q07 (September 30, 2007), which defendants led investors to believe would pay during
9 the 4Q 2007, by the end of the 4Q2007 (December 31, 2007), Akeena had completed only \$10.3
10 million in sales during the quarter, or *20% less* than the purported backlog.

11 **Misrepresentations regarding Akeena’s contract with Suntech**

12 41. In addition to announcing Akeena’s NASDAQ National Market listing on September
13 24, 2007, the Company also announced that it had entered into a purportedly valuable supply contract
14 with China’s Suntech Power Holdings Co. Ltd. (“Suntech”), the world’s third-largest maker of solar
15 power modules by market value, whereby Suntech would “[d]eliver 10 to 14 [megawatts (“MW”)] of
16 Akeena’s [n]ew Andalay Solar Panels” in 2008 alone. Based on defendants’ statements that the
17 supply contract would lock in a supply of often difficult-to-obtain solar panels, the supply contract
18 was perceived as adding value. However, defendants concealed that rather than obtaining a volume
19 discount, they had actually agreed to pay Suntech a *premium* far above market price for the panels,
20 and thus knew that this contract would actually *diminish profit margins* going forward.

21 42. Akeena agreed to the economically infeasible premium, in large part, to induce
22 Suntech to later enter into a licensing agreement, which would allow Akeena to persuade the market
23 that the Company was avoiding the capital intensive installation business on some sales, allowing it to
24 simply take royalty licensing fees for using its technology, purportedly diminishing some of Akeena’s
25 cash flow problems. Assuming – *without any basis* - that the Company could charge above-market
26 prices for the sleek, aesthetically pleasing Andalay system, offsetting the premium prices they were
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1 paying Suntech for the solar panels, defendants withheld from the market the economic lunacy of the
2 Suntech supply agreement.

3 **Cinnamon's divorce settlement agreement**

4 43. On October 31, 2008 Cinnamon and his wife attended a Judicially Supervised
5 Settlement conference and reached an agreement. Unbeknownst to the investment community, their
6 settlement agreement required Cinnamon to pay his former spouse \$1.875 million *by January 31,*
7 *2008*. If Cinnamon could not fully fund the settlement by January 31, 2008, their settlement
8 agreement required that he transfer *Akeena stock with a market value on January 31, 2008 of \$2.3+*
9 *million* to an account from which his wife's bankers could sell the stock into the market over a six-
10 month period. To the extent the sales proceeds did not cover the \$1.875 Cinnamon owed his wife
11 under their settlement agreement, Cinnamon had to make up the difference. Desiring to retain as
12 much control over Akeena as he could, Cinnamon did not want to be forced to turn over a significant
13 number of shares to his wife at the end of January 2008. Instead, he committed to doing whatever it
14 took to increase the Company's stock price, even in the short term, so that he could directly sell
15 enough Akeena stock to make the January 31, 2008 \$1.875 million payment, without substantially
16 diminishing his ownership interest in Akeena.

17 44. Making matters worse for Cinnamon, when the Company announced on November 1,
18 2007 that it had raised \$26.1 million through a private stock placement of 3,728,572 shares and
19 warrants to purchase 745,716 additional shares, Akeena's stock price fell from the \$8.40 per share it
20 closed at on October 31, 2007 (when Cinnamon entered into the settlement agreement), to \$7.25 per
21 share at the close of trading on November 1, 2007. The stock then plummeted another 13% in a single
22 trading session, closing at \$5.50 per share on November 13, 2007, when the Company announced its
23 dismal 3Q 2007 financial results, including that margins had dropped from 25% in the 3Q 2006 to
24 21%. The Company's stock price had declined a full \$3 per share, *more than one third*, in the two
25 weeks following Cinnamon's entry into the settlement agreement. As a result, Cinnamon would have
26 to sell a third more of his Akeena shares to obtain the same proceeds he would have received just two
27 weeks earlier. Knowing he had to fund the divorce settlement by January 31, 2008, *or give up an*
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1 *ever increasing number of shares to his wife to sell*, Cinnamon would undertake more aggressive
2 measures designed to respond directly to the demands being placed on him to raise Akeena’s stock
3 ratings.

4 **Misrepresentations regarding credit line increase**

5 45. On December 26, 2007, Akeena announced that Comerica Bank, its longtime lender,
6 had *increased Akeena’s existing credit line by 70%, from \$7.5 million to \$25 million*, \$17.5 million
7 of which would be available on a “non-formula” basis, and that the line of credit no longer contained
8 the assets restrictions the prior line of credit had, leading many to conclude that because Comerica
9 was also providing customer financing, Akeena’s finances were transparent to Comerica and
10 Comerica was validating Akeena’s financial strength.

11 46. In fact, defendants told investors that this credit line increase was made by Comerica in
12 *“recognition of the growing strength of the company’s balance sheet and financial condition.”* The
13 credit line increase was important as Akeena then had less than eight months cash available and
14 Comerica had already waived a violation of a financial covenant, averting a default.

15 47. On January 16, 2008, Akeena filed a Form 8-K with the SEC disclosing for the first
16 time that this was not a credit line “increase” at all but a mere cash collateralization agreement
17 whereby Akeena would be required to deposit *every* additional dollar “borrowed” back into the bank.
18 The disclosure of the details of this bizarre credit line led one analyst to comment on August 6, 2008,
19 “I don’t really understand *why you’d even have a line of credit* where for every dollar. . . you take,
20 you need to keep a dollar restricted?”

21 **Defendants’ Misleading Statements Regarding the Suntech Supply and License Contracts**

22 48. Before the opening of trading on January 2, 2008, Akeena announced that it had
23 entered into a lucrative licensing and distribution agreement with Suntech in which Akeena’s Andalay
24 product would be distributed in Europe, Japan and Australia. As part of the announcement,
25 Cinnamon stated: “Suntech [has] extensive international distribution channels that are among the
26 strongest in the industry . . . [Akeena is] experiencing very strong demand for Andalay, and this
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1 licensing agreement with Suntech will allow us to meet our customer’s need for Andalay outside of
2 our direct channels in the U.S.”

3 49. Defendants concealed the actual terms of the Suntech licensing agreement. Critically,
4 the licensing agreement provided no enforcement mechanism and provided Akeena with no legally
5 enforceable rights to the royalty licensing payments. On March 13, 2008, when asked about the
6 Suntech licensing agreement, Defendant Effren conceded that “it’s something that is going to be
7 relatively small in 2008; I’d say less than \$1 million.”

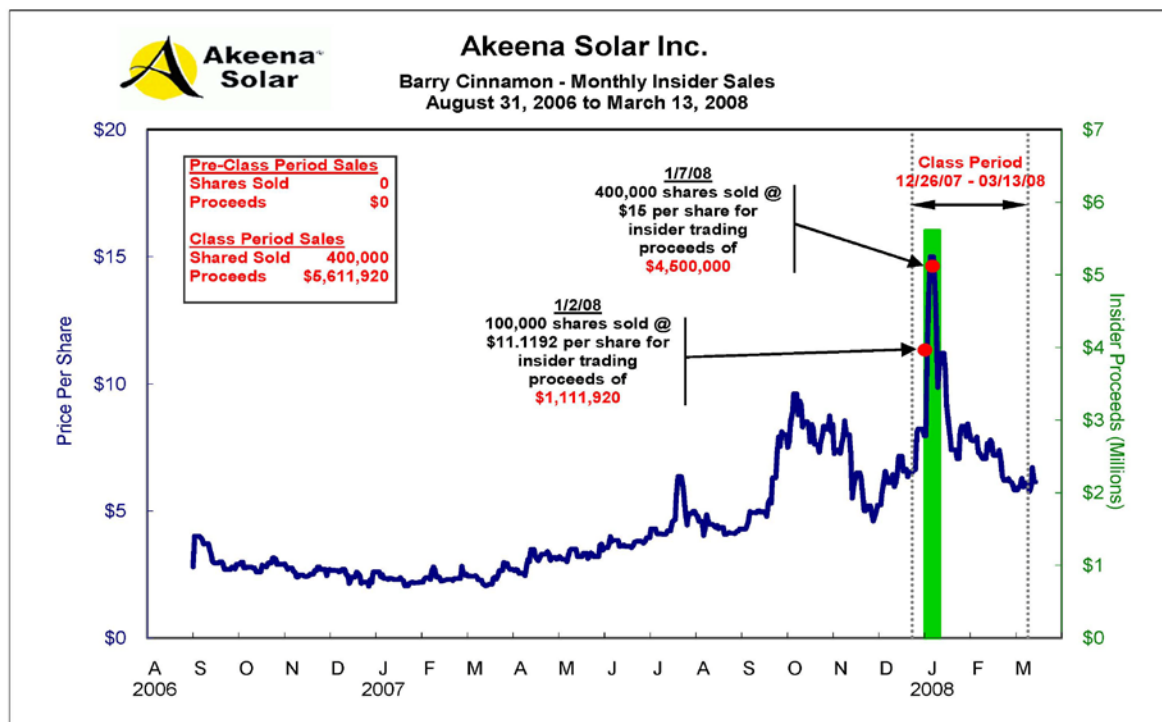
8 50. Defendants repeatedly “promise[ed] that ‘sales of Andalay [would] contribute towards
9 gross margin improvement in the range of 10% to 15% as we benefit from our cost savings and
10 charge a premium price that is commensurate with Andalay’s customer benefits,” based in large part
11 on the value of the Suntech supply and licensing agreements announced in September 2006 and
12 January 2008. Defendants did so despite their knowledge that the Suntech supply contract and
13 licensing agreement would add very little to the Company’s bottom line and would diminish rather
14 than augment the Company’s gross margins going forward, that the Suntech licensing agreement was
15 legally unenforceable, that Akeena was buying more product from Suntech under the supply contract
16 than it could marketably sell under the diminishing demand, leading to rapidly increased inventories,
17 and that the Suntech supply contract was priced well above market rate, making the Andalay system
18 more expensive than comparable products available in the market, significantly diminishing demand
19 for them in the market.

20 **Cinnamon’s Insider Selling**

21 51. Akeena’s stock price spiraled on very high trading volume between December 26,
22 2007 and January 7, 2008, buoyed by defendants’ false and misleading statements, rising from its
23 opening of \$6.84 per share on December 26, 2007 to \$16.80 per share in intraday trading on January
24 7, 2008 as the market assimilated the news. Knowing the market would respond positively to the
25 announcement of the credit line increase, purportedly lucrative Suntech licensing agreement, and
26 Andalay product, Cinnamon cashed in. Indeed, Cinnamon knowingly timed those disclosures in order
27 to limit the number of Akeena shares he would be required to sell to fund his divorce settlement. By
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1 virtue of this timing deception, rather than being required to sell *700,000 shares* of Akeena stock at
2 the approximately \$7 per share the stock closed at on December 24, 2007, this ruse permitted
3 Cinnamon to sell *just 400,000 shares* for proceeds of over \$5.6 million.

4 52. Cinnamon’s stock sales were unusual both in scope and volume as he had not
5 previously sold a single share during the entirety of Akeena’s history as a publicly traded company:



19 Cinnamon’s Rule 10b5-1 Trading Plan

20 53. Cinnamon is not immunized by the 10b5-1 trading plan he created. First, Cinnamon
21 misled investors by telling them he would sell some of his stock “during 2008,” instead of informing
22 them that under his divorce settlement order, all of it had to be sold by January 31, 2008. Second, the
23 10b5-1 Trading Plan does not immunize Cinnamon because he only adopted it after he had already
24 agreed to sell stock to fund his divorce settlement. Finally, it does not immunize him, because at the
25 time he created it, he was in possession of material nonpublic information.
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1 **Concealment that Akeena’s 4Q07 quarterly loss had increased more than 300%**

2 54. Defendants concealed that Akeena’s 4Q 2007 quarterly loss (for the period that had
3 already ended December 31, 2007) had increased more than **300%**, expanding from \$1.19 million in
4 4Q 2006 to \$4.47 million, or \$0.18 a share, and that the Company’s profit margin had decreased
5 again.
6

7 **Akeena’s Defective Internal Controls Precluded Accurate Financial Reporting**

8 55. On 1/9/08, RiskMetrics Group, a highly regarded, independent research company
9 “issued a damning report challenging Akeena’s financial reporting” that was highly material to
10 Akeena’s reputation in the investment community because the Company had already conceded it
11 “lacked meaningful internal controls, and thus the ability to accurately project or report its financial
12 results.” For a company that had been repeatedly heralding a “10-15% Gross Margin Improvement”
13 in response to the investment community’s demands that its “[m]anagement ... demonstrate a clearer
14 path to profitability,” these critical challenges to the veracity of its purported “profitability” were
15 detrimental. Specifically, the 1/9/08 RiskMetrics report disclosed that Akeena’s 345% inventory
16 growth to a new “historical high” that “exceed[ed] revenue growth expectations,” which RiskMetrics
17 warned was indicative “that demand was weaker than anticipated” and that excessive inventory could
18 “result in future quarter margin pressure.”
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21 56. The January 9, 2008 RiskMetrics report also disclosed that Akeena had likely been
22 under-accruing for warranty reserves which “may have benefited [reported] earnings in recent
23 quarter.” The disclosure of the RiskMetrics’ report caused the Company’s stock, which had traded as
24 high as \$16.80 per share in intraday trading on January 7, 2008, to fall precipitously to close below
25 \$10 per share on unusually high volume of trading – more than 13 times the average daily trading
26 volume during December 2007.
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1 57. The Company’s false financial reporting dramatically impacted its ability to accurately
2 forecast its own profit and profit margin targets, causing dramatic stock price “deflation” when the
3 Company’s true financial prospects were disclosed at the end of the Class Period. When the Company
4 announced on March 13, 2008 that the “loss for the Company’s 4Q 2007 quarter that ended
5 [12/31/07] – well in advance of Cinnamon’s [1/2/08 and 1/7/08] stock sales – had actually increased
6 to \$4.47 million, ... from \$1.19 million, ... a year earlier,” almost 4x, and its 4Q 2007 “[g]ross
7 margin” had fallen over 13% from 21% in the 3Q 2007 to 18.2% in the 4Q 2007, the Company’s
8 stock price fell another 8.4% on high trading volume. The Company’s FY 2008 financial report
9 specifically disclosed that its FY 2008 “increase in inventory was primarily the purchase of solar
10 panels” and that the “increase in accounts payable was primarily the timing of payments related to the
11 purchase of solar panels at the end of 2007.”
12

13 **Lauro quits; SEC threatens delisting**
14

15 58. On October 1, 2008, less than one week after the proxy renominating him was filed,
16 Lauro resigned effective immediately from Akeena’s board, which he had joined only 14 months
17 earlier. He gave no explanation, other than that he “wishes to focus his efforts on his other portfolio
18 companies.” Lauro’s resignation left Akeena with only two independent directors on its board, a
19 violation of NASDAQ’s listing requirement.
20

21 59. On October 9, 2008, NASDAQ threatened delisting, stating that “due to the
22 resignation of Mr. George Lauro from its Board of Directors on October 1, the Company *no longer*
23 *complies with NASDAQ’s audit committee composition requirements.*” See Akeena 8-K filed 10-7-
24 08. NASDAQ indicated that Akeena’s securities would be *delisted* unless it retained new independent
25 directors.
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1 **Damage to the Company**

2 60. As the truth about the misrepresentations and omissions leaked into the market,
3 including the illusory nature of the credit line “increase,” problems with the Company’s financial
4 reporting, the Company’s actual 4Q 2007 sales volume, and the fact that Cinnamon had sold \$5.6
5 million of shares at the highest prices the stock traded at on January 2nd and 7th 2008, the Company’s
6 stock price plummeted, closing at \$6.20 per share by February 22, 2008. The stock price fell even
7 lower on unusually high volume on March 13, 2008 when Akeena’s dismal 4Q 2007 and FY 2007
8 audited financial results were finally released, along with Effren’s revelation that the Company’s past
9 “backlog” reports were totally unreliable and the reduction of Akeena’s 2008 sales guidance, finally
10 conceding the Suntech supply and licensing agreements would have no meaningful financial impact
11 during 2008.
12

13
14 61. Defendants’ self-dealing and breaches of fiduciary duties violated applicable law
15 and have permitted Cinnamon and others to be unjustly enriched. By reason of the foregoing
16 misrepresentations, illegal insider trading, and breach of fiduciary duties, Defendants have caused
17 Akeena substantial damage. Akeena is now subject to a shareholder class action lawsuit which
18 alleges securities fraud relating to the illegal insider trading and violations of the federal
19 securities laws. The company has also suffered harm to its reputation and credibility which will
20 undoubtedly negatively impact its ability to attract customers, negotiate contracts and raise capital
21 going forward.

22 62. Over *one year* has passed since Cinnamon’s insider trading occurred, and
23 defendants have undertaken *no* measures to recover Cinnamon’s ill-gotten gains and have not put
24 corporate governance provisions in place to prevent future occurrences. As the Akeena Board
25 either cannot or will not act to protect and recover the Company’s assets, plaintiff herein brings
26 this shareholder derivative action on behalf of Akeena, against the entire Akeena Board of
27 Directors and its former CFO, to recover damages suffered by Akeena as a result of defendants’
28 misconduct in breach of their fiduciary duties to oversee Akeena. Because the entire Akeena

1 Board either personally participated in the transactions or were controlled by and beholden to
2 Cinnamon and others who engineered and benefited from the misconduct which enriched
3 Cinnamon to the detriment of the Company and its shareholders, the Board members cannot
4 vigorously investigate or prosecute an action to recover the valuable assets shamelessly plundered
5 by Akeena's faithless fiduciaries.

6 **THE DEFENDANTS' FIDUCIARY DUTIES**

7 63. By reason of their positions as officers, directors and/or fiduciaries of Akeena and
8 because of their ability to control the business and corporate affairs of Akeena, defendants owed
9 Akeena and its shareholders fiduciary obligations of fidelity, trust, loyalty and due care, and were and
10 are required to use their utmost ability to control and manage Akeena in a fair, just, honest and
11 equitable manner, and were and are required to act in furtherance of the best interests of Akeena and
12 to refrain from acting in furtherance of their personal interests at the expense or to the detriment of the
13 Company.

14 64. Each director and officer of the Company owes to Akeena the fiduciary duty to
15 exercise due care, loyalty and diligence in the administration of the affairs of the Company and in the
16 use and preservation of its property and assets, as well as the highest obligations of good faith and fair
17 dealing. In addition, as officers and/or directors of a publicly held company, the defendants had a duty
18 to refrain from extracting preferential deals or agreements with Akeena and from advancing
19 defendants' own personal, financial or economic interests over and/or at the expense of the Company.

20 65. Defendants, because of their positions of control and authority as directors or officers
21 of Akeena, were able to and did control the wrongful acts complained of herein, including the
22 negotiation and implementation of the improper stock repurchases and stock grants. Because of their
23 advisory, executive, managerial and directorial positions with Akeena, each of the defendants had
24 access to all non-public information about the Company's investment plans, strategy and activities as
25 well as the corporate opportunities and future business prospects of Akeena, including, without
26 limitation, the illegal and improper activities which the Defendants caused Akeena to engage in which
27 furthered defendants' "pump and dump scheme."

1 66. At all times material hereto, each of the defendants was the agent of each of the other
2 defendants and of Akeena, and was at all times acting within the course and scope of said agency.
3 Defendants were also agents of various ventures they caused the Company to invest in, and were at all
4 times acting within the scope of that agency as well.

5 67. To discharge their duties, the officers and directors of Akeena were required to
6 exercise reasonable and prudent supervision over the management, policies, practices and controls of
7 the financial and operational affairs of Akeena. By virtue of such duties, the officers and directors of
8 Akeena were required, among other things, to:

9 (a) manage, conduct, supervise and direct the business and internal affairs of
10 Akeena in accordance with applicable law, and the charter and bylaws of Akeena;

11 (b) neither violate nor knowingly permit any officer, director or employee of
12 Akeena to violate applicable laws, rules or regulations;

13 (c) maintain fidelity and loyalty to Akeena, forsaking all conflicting interests, be
14 they personal, professional or financial;

15 (d) remain informed as to the status of Akeena's operations, and upon receipt of
16 notice or information of imprudent or unsound practices, to make a reasonable inquiry in connection
17 therewith, and to take steps to correct such conditions or practices and make such disclosures as are
18 necessary to comply with applicable laws;

19 (e) establish and maintain an internal system of safeguards and procedures to
20 ensure that information about the business and internal affairs of Akeena and its investment strategy
21 and opportunities would not be misappropriated for the private use and benefit of the Defendants or
22 other officers of the Company;

23 (f) maintain and implement an adequate and functioning system of internal legal,
24 financial and management controls, such that the officers and directors of the Company would not be
25 allowed to violate their positions of trust, loyalty and fidelity and usurp confidential information about
26 the Company and/or its investment plans and strategies which were not disseminated to the public for
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1 their own personal and financial benefits, and to assure that the actions of Akeena's officers and
2 directors would be in accordance with all applicable laws; and

3 (g) exercise reasonable control and supervision over the officers and directors of
4 the Company so as to assure that these fiduciaries did not abuse their privileged positions of trust,
5 loyalty and fidelity and did not engage in investment activities which created conflicts of interest with
6 or operated to the detriment of Akeena.

7 68. Akeena has adopted a comprehensive set of Corporate Governance guidelines, which
8 purportedly reflect the Board of Directors commitment "to serve as a prudent fiduciary for
9 shareholders and to oversee the management of the Company's business." The Board of Directors of
10 Akeena "sets high standards for the Company's employees, officers and directors."

11 69. Akeena adopted a Code of Business Conduct and Ethics (the "Code") on July 18, 2007
12 that applies to all of Akeena's directors and employees, including its chief executive officer and chief
13 financial officer. According to the Code, "[f]ederal law and Company policy prohibits Covered
14 Persons, directly or indirectly through their families or others, from purchasing or selling Company
15 stock while in the possession of material, non-public information concerning the Company." The
16 Code defines "material, non-public information" as "any information that could reasonably be
17 expected to affect the price of a stock." The Code further states that "[v]iolations may result in severe
18 penalties including forced sales of parts of the business and significant fines against the Company.
19 There may also be sanctions against Covered Persons including substantial fines and prison
20 sentences." As described herein, Defendant Cinnamon has violated Akeena's Code via his improper
21 sales of \$5.6 million worth his Akeena stock holdings while in possession of material non-public
22 information concerning the true state of Akeena's financial and business condition.

23 70. Pursuant to the Compensation Committee Charter (adopted as of July 18, 2007 and
24 posted on Akeena's website), the members of the Compensation Committee are specifically required,
25 among other things, to:

26 (a) assist the Board of Directors (the "Board") in discharging its responsibilities
27 with respect to compensation and benefits of Akeena's executive officers and directors;

1 (b) produce an annual report on executive compensation for inclusion in
2 Akeena's proxy statement in accordance with the applicable rules and regulations, if required
3 thereby, and

4 (c) administer Akeena's stock option plans.

5 71. Pursuant to the Audit Committee Charter (last revised as of July 18, 2007 and
6 posted on Akeena's website), the members of the Audit Committee are specifically required to
7 assist the Board in fulfilling its oversight responsibilities related to:

8 (a) the accounting, reporting, and financial practices of Akeena and its
9 subsidiaries, including the integrity of Akeena's financial statements;

10 (b) the surveillance of administration, disclosure and financial controls;

11 (c) Akeena's compliance with legal and regulatory requirements;

12 (d) Akeena's monitoring and enforcement of its Code of Business Conduct and
13 Ethics;

14 (e) the qualifications and independence of any independent auditor of Akeena;
15 and

16 (f) the performance of Akeena's internal audit function and Akeena's
17 independent auditor(s).

18 72. Pursuant to the Audit Committee Charter, the members of the Audit Committee are
19 also required to prepare the report required by the rules of the SEC to be included in Akeena's
20 annual proxy statement.

21 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

22 73. Plaintiff brings this action derivatively in the right and for the benefit of Akeena to
23 redress injuries suffered and to be suffered by Akeena as a direct result of the breaches of fiduciary
24 duty, abuse of control, and other violations of state law alleged herein, as well as the aiding and
25 abetting thereof, by defendants. This is not a collusive action to confer jurisdiction on this Court
26 which it would not otherwise have.

1 74. Plaintiff will adequately and fairly represent the interests of Akeena and its
2 shareholders in enforcing and prosecuting its rights.

3 75. Plaintiff is an owner of Akeena stock and was an owner of Akeena stock during all
4 times relevant to defendants' illegal and wrongful course of conduct alleged herein.

5 76. As a result of the facts set forth throughout this Complaint, demand on the four
6 member board of Akeena directors – Cinnamon, Roffman, Witkin and Jotwani -- to institute this
7 action against themselves is not necessary because such a demand would be a futile and useless act,
8 particularly for the following reasons:

9 (a) Demand is clearly futile as to Defendant Cinnamon due to his own culpability,
10 as he is was the biggest beneficiary of the “pump and dump” scheme under which he sold \$5.6
11 million in Akeena stock at the stock's all-time high. Indeed, if he were inclined to admit
12 wrongdoing and return the proceeds, he could have done so over the past year, but he has declined to
13 do so. As Cinnamon faces a substantial likelihood of liability for his insider selling, he is interested
14 in a demand, and accordingly, demand is futile.

15 (b) Defendant Cinnamon, in his role as Chief Executive Officer and Director, and
16 as a substantial shareholder, effectively controls the composition of Akeena's Board and its Board
17 committees. The Board met only seven times in all of FY 2008, and *once* in FY2009. Furthermore,
18 its Directors receive no cash compensation whatsoever for their service. Instead, each receives a
19 modicum of stock options and restricted shares of stock. It is dubious whether any of the directors has
20 any real interest in standing up to Cinnamon, who now owns more than 21% of Akeena's stock, under
21 these circumstances. Indeed, none of the directors have shown any interest in standing up to him.

22 (c) In order to bring this suit, all of the directors of Akeena would be forced to sue
23 themselves and persons with whom they have extensive business and personal entanglements, which
24 they will not do, thereby excusing demand.

25 (d) The acts complained of constitute violations of applicable law and the fiduciary
26 duties owed by Akeena's officers and directors and these acts are incapable of ratification.

1 (e) Each of the directors of Akeena authorized the illegal conduct alleged herein.
2 Having acquiesced to the misconduct, and failing to take appropriate action against Cinnamon,
3 Akeena's directors could not fairly and fully prosecute such a suit even if such a suit was instituted by
4 them.

5 (f) The directors of Akeena cannot be relied upon to reach a truly independent
6 decision as to whether to commence the demanded actions against themselves or other directors and
7 officers responsible for the misconduct alleged in this Complaint, in that, *inter alia*, the Board of
8 Directors is totally dominated by Cinnamon who personally benefited from certain of the illicit
9 transactions complained of herein, including his insider trading, and to whose directives and views the
10 Board has consistently acceded and will continue to accede. This domination of the Board of
11 Directors by Cinnamon has impaired the Board's ability to validly exercise its business judgment and
12 rendered it incapable of reaching an independent decision as to whether to accept plaintiff's demands.

13 (g) Any suit by the directors of Akeena to remedy these wrongs would likely
14 expose the defendants to liability and having civil actions filed against one or more of them, and thus,
15 they are hopelessly conflicted in making any supposedly independent determination whether to sue
16 themselves. Indeed a securities fraud class action has already been filed against Akeena, Cinnamon
17 and Effren for securities fraud and insider trading.

18 (h) Roffman, Witkin and Jotwani are each interested in a demand because they
19 face a substantial likelihood of liability for their conduct on the Audit Committee and Compensation
20 Committee. Pursuant to the Company's Audit Committee Charter, Roffman, Witkin and Jotwani
21 were and are responsible for the reliability and integrity of the Company's financial reporting and
22 disclosure practices and oversight of internal controls. Defendants Roffman, Witkin and Jotwani
23 breached their fiduciary duties of due care, loyalty and good faith because the Audit Committee
24 allowed or permitted false and misleading statements to be disseminated in the Company's SEC
25 filings and other disclosures regarding, among other things, Akeena's backlog, Andalay product,
26 contract with Suntech, and increased credit line, and failed to ensure that adequate controls were in
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1 place to prevent the insider trading by Cinnamon that occurred, and failed to take action against him
2 after he engaged in insider trading. Therefore, demand upon Roffman, Witkin and Jotwani is futile.

3 (i) Akeena has been and will continue to be exposed to significant losses due to
4 the wrongdoing complained of herein, yet the defendants have not filed any lawsuits against
5 Cinnamon or others who were responsible for that wrongful conduct to attempt to recover for Akeena
6 any part of the damages Akeena suffered and will suffer thereby. Indeed, the directors have not even
7 requested that Cinnamon disgorge his ill-gotten and illegal insider trading proceeds, even after the
8 company, Cinnamon and Effren were sued in a federal shareholder class action alleging securities
9 fraud and insider trading.

10 (j) Akeena's current and past officers and directors are protected against personal
11 liability for their acts of mismanagement, waste and breach of fiduciary duty alleged in this Complaint
12 by directors' and officers' liability insurance which they caused the Company to purchase for their
13 protection with corporate funds, *i.e.*, monies belonging to the stockholders of Akeena. However, the
14 directors' and officers' liability insurance policies covering the defendants in this case contain
15 provisions which eliminate coverage for any action brought directly by Akeena against these
16 defendants, known as, *inter alia*, the "insured versus insured exclusion." As a result, if these directors
17 were to sue themselves or certain of the officers of Akeena, there would be no directors' and officers'
18 insurance protection and thus, this is a further reason why they will not bring such a suit. On the other
19 hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and
20 will provide a basis for the Company to effectuate a recovery.

21 (k) Roffman, Witkin and Jatwani are members of the Audit Committee, overseeing
22 insider trading, but although one year has passed since Cinnamon's improper insider trading, they
23 have still not demanded that he return his insider trading proceeds, and in fact, has taken no action
24 against Cinnamon.

25 (l) Although Roffman, Witkin and Jatwani are members of the Nominating
26 Committee, they have taken no action to increase the number of board members or board pay so that
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1 there is an incentive for board members to do their job properly and ensure that Akeena's executives
2 are complying with their fiduciary obligations to the Company and its shareholders.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **Against All Defendants**
6 **for Breach of Fiduciary Duty**

7 77. Plaintiff incorporates by reference and realleges each and every allegation, as though
8 fully set forth herein.

9 78. As alleged in detail herein, each of the Defendants owed Akeena fiduciary obligations.
10 By reason of their fiduciary relationships, Defendants owed Akeena the highest obligation of good
11 faith, fair dealing, loyalty, and due care. Defendants also had a duty to ensure that Akeena
12 disseminated accurate, truthful, and complete information to its shareholders.

13 79. Defendants violated their fiduciary duties of care, loyalty, and good faith by causing or
14 allowing the Company to disseminate to Akeena shareholders materially misleading and inaccurate
15 information regarding, among other things, Akeena's backlog, Andalay product, contract with
16 Suntech, and increased credit line, through SEC filings and other public statements and disclosures as
17 detailed herein. These actions could not have been a good faith exercise of prudent business judgment.

18 80. Cinnamon breached his fiduciary duties by engaging in insider trading, and the other
19 Defendants breached their fiduciary duties by failing to ensure that adequate controls were in place to
20 prevent the insider trading by Cinnamon that occurred, and failing to take action against him after he
21 engaged in insider trading.

22 81. The defendants, in their roles as executives, directors and control persons of Akeena,
23 participated in the acts of mismanagement of Akeena's assets alleged herein, and knowingly,
24 willfully, and/or intentionally disregarded adverse facts known to them, and did nothing to rectify
25 them. They thereby breached their fiduciary duties of due care, loyalty, accountability and good faith
26 to Akeena and its shareholders.

1 **FIFTH CAUSE OF ACTION**

2 **Claim Against Defendant Cinnamon**
3 **for Unjust Enrichment**

4 96. Plaintiff incorporates by reference and realleges each and every allegation contained
5 herein as though fully set forth herein.

6 97. As a result of the tortious conduct described above, defendant Cinnamon has been
7 unjustly enriched at the expense of Akeena. In particular, Cinnamon has been unjustly enriched by
8 the *\$5.6 million* in insider trading proceeds he received.

9 98. Cinnamon should be required to disgorge the improper benefits which he has unjustly
10 obtained at the expense of Akeena and its public shareholders. A constructive trust for the benefit of
11 Akeena should be imposed thereon.

12 **SIXTH CAUSE OF ACTION**

13 **Against Cinnamon for Breach of Fiduciary Duties for**
14 **Insider Selling and Misappropriation of Information**

15 99. Plaintiff incorporates by reference and re-alleges each and every allegation set
16 forth above, as though fully set forth herein.

17 100. At the time of the stock sales set forth herein, Cinnamon was in possession of
18 material, adverse, non-public information described above, and sold Akeena common stock on the
19 basis of such information.

20 101. The information described above was proprietary non-public information
21 concerning the Company's financial condition and future business prospects. It was a proprietary
22 asset belonging to the Company, which Cinnamon used for his own benefit when he sold Akeena
23 stock.

24 102. At the time of his stock sales, Cinnamon knew that the Company's stock price had
25 been artificially inflated and/or distorted by defendants' false and misleading statements.
26 Cinnamon' sales of Akeena common stock while in possession and control of this material
27 adverse, non-public information was a breach of his fiduciary duties of loyalty and good faith.
28

1 **EIGHTH CAUSE OF ACTION**

2 **Against All Defendants for Violation of California Corporations Code §25403**

3 112. Plaintiff incorporates by reference and re-alleges each and every allegation set
4 forth above, as though fully set forth herein.

5 113. Defendants, through their positions, possessed control and influence over
6 Cinnamon’s sale of common stock in violation of California law. Defendants are liable under
7 California Corporations Code §25403 to the same extent that Cinnamon is liable under California
8 Corporations Code §25402.

9 114. Defendants were aware of Cinnamon’s improper insider sales of Akeena common
10 stock, and Defendants used their control and influence to help Cinnamon and/or conceal his
11 insider trading.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment as follows:

14 A. Against all Defendants and in favor of the Company for the amount of damages
15 sustained by the Company as a result of Defendants' breaches of fiduciary duties;

16 B. Determining and awarding Akeena treble damages pursuant to California
17 Corporations Code §25502.5 for Cinnamon’s violations of California Corporations Code §25402;

18 C. Directing Akeena to take all necessary actions to reform and improve its corporate
19 governance and internal procedures to comply with applicable laws and to protect the Company
20 and its shareholders from a repeat of the damaging events described herein, including, but not
21 limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-
22 Laws or Articles of Incorporation and taking such other action as may be necessary to place
23 before shareholders for a vote a proposal to strengthen the Board's supervision of operations and
24 develop and implement procedures for greater shareholder input into the policies and guidelines of
25 the Board;

1 D. Awarding to Akeena restitution from defendants, and each of them, and ordering
2 disgorgement of all profits, benefits and other compensation obtained by the Defendants,
3 including Cinnamon's insider trading proceeds;

4 E. Awarding to Plaintiff the costs and disbursements of the action, including
5 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

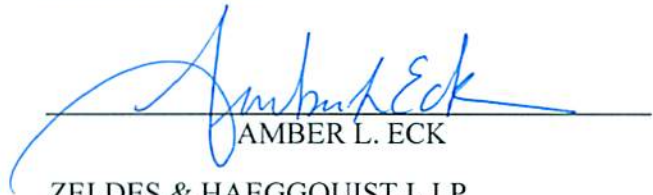
6 F. Granting such other and further relief as the Court deems just and proper.

7 **JURY DEMAND**

8 Plaintiff demands a trial by jury.

9 DATED: May 28, 2010

ZELDES & HAEGGQUIST, LLP
AMBER L. ECK

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11 
12 AMBER L. ECK

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16 Telephone: (619) 342-8000
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18 Attorneys for Plaintiff Chris Dulgarian,
19 Derivatively on Behalf of Nominal Defendant
20 Akeena Solar, Inc

VERIFICATION

I, AMBER E. ECK, hereby declare as follows:

1. I am a partner of the law firm of Zeldes & Haeggquist, LLP, counsel for Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because Plaintiff is absent from the County of San Diego where I maintain my office.

Executed this 28th day of May, 2010, at San Diego, California.


AMBER L. ECK

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