SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TERRAFORM POWER PARENT, LLC and TERRAFORM POWER, LLC, *Plaintiffs*, v. ORRICK, HERRINGTON & SUTCLIFFE LLP and CLEARY GOTTLIEB STEEN & HAMILTON LLP, *Defendants*.	Index No. Date Index No. Purchased **SUMMONS** Plaintiff designates New York County as the place of trial Venue is proper pursuant to CPLR § 503

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 13, 2021

KASOWITZ BENSON TORRES LLP

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SUPREME COURT OF THE STATE OF NEW YORK
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TERRAFORM POWER PARENT, LLC and TERRAFORM POWER, LLC, *Plaintiffs*, v. ORRICK, HERRINGTON & SUTCLIFFE LLP and CLEARY GOTTLIEB STEEN & HAMILTON LLP, *Defendants*.	**COMPLAINT**

Plaintiffs TerraForm Power Parent, LLC ("TerraForm Parent") and TerraForm Power, LLC ("TerraForm LLC") (together, "TerraForm"), for their Complaint against Defendants Orrick, Herrington & Sutcliffe LLP ("Orrick") and Cleary Gottlieb Steen & Hamilton LLP ("Cleary"), allege as follows:

PRELIMINARY STATEMENT

1. This $300 million-plus legal malpractice action arises from the egregiously negligent failure of both Orrick and Cleary to protect the interests of their client, TerraForm, in a major M&A deal. Orrick and Cleary — both of which tout themselves as extraordinarily skilled and knowledgeable lawyers representing clients in sophisticated M&A transactions — botched the fundamental tasks they were retained to perform — to ensure that the written contract accurately memorialized the deal TerraForm agreed to and to ensure that TerraForm, before signing the contract, clearly understood and accepted its terms and their legal implications.

2. The deal involved the purchase in 2014 by TerraForm and its parent SunEdison, Inc. ("SunEdison") of the assets of First Wind Holdings, LLC ("First Wind"), a developer and operator of solar and wind farms and other renewable energy projects, from the owners of First

Wind (the "Sellers"). Orrick was engaged as lead counsel to jointly represent TerraForm and SunEdison in connection with negotiating and drafting the terms of the governing contract, a Purchase and Sale Agreement dated November 17, 2014 (the "PSA"). Cleary was retained to advise TerraForm's Corporate Governance and Conflicts Committee (the "Conflicts Committee") about any potential conflicts of interest between TerraForm and SunEdison arising from the deal, so that the Conflicts Committee could vet them before TerraForm entered into the deal.

3. Under the deal, TerraForm, which owns and operates renewable energy facilities, acquired First Wind's existing facilities for cash. SunEdison, which developed such facilities, acquired First Wind's unbuilt development projects for cash, a note, and deferred payments in the form of an earnout of up to $510 million for those projects that ultimately became operational. TerraForm made clear to Orrick and Cleary that it would have no responsibility for the deferred earnout payments, which would be the exclusive responsibility of SunEdison, the party responsible for completing the development of the projects.

4. At the center of Orrick and Cleary's malpractice is a one-word error in Section 2.04(g) of the PSA, which erroneously provided that *both* "Buyers," and not just SunEdison, were responsible for an "Accelerated Earnout Payment" upon the occurrence of certain "Acceleration Events." These events ranged from hair-trigger events like SunEdison's relocation of a First Wind executive's office to SunEdison's bankruptcy, and were all outside TerraForm's control.

5. The use of the collective term "Buyers" in Section 2.04(g) was flat wrong. As Orrick and Cleary knew, TerraForm never agreed to make any earnout payments under any

circumstance, and TerraForm would not and did not agree to take on any SunEdison liabilities, deferred, contingent, or otherwise.

6. The Sellers ultimately sued TerraForm to enforce the Accelerated Earnout Payment obligation. After more than four years of litigation, they obtained a $327 million judgment against TerraForm on the ground that TerraForm could not show that the term "Buyers" in Section 2.04(g) was a mutual mistake shared by the Sellers. Faced with an uncertain outcome on appeal, and to stanch the accrual of 9% interest on such a massive judgment, TerraForm entered into a reasonable settlement of the Sellers' claims.

7. Orrick and Cleary's malpractice could not be clearer. In fact, during the drafting of the PSA, Orrick and Cleary themselves had each caught the drafting error in Section 2.04(g), but neither of them made sure it was corrected in the final execution copy or alerted TerraForm or its Conflicts Committee about it. And, a year after the signing of the PSA, when the Sellers demanded that TerraForm make good on the earnout obligation, both Orrick and Cleary admitted that the word "Buyers" was erroneous. In fact, after the Sellers sued TerraForm for the Accelerated Earnout Payment, Orrick's John Cook, the lead lawyer representing both TerraForm and SunEdison in the deal, testified under oath at his deposition and in an affidavit he submitted in the litigation that the word "Buyers" in Section 2.04(g) was a mistake.

8. Indeed, Orrick and Cleary cannot now credibly claim otherwise. Every relevant contemporaneous document describing the transaction, including presentations to TerraForm's Board of Directors reviewed by Orrick and Cleary, reflects that only SunEdison, and not TerraForm, was responsible for earnout payments. But, to the extent Orrick and Cleary try to claim that the erroneous Section 2.04(g) was in fact, correct, that would not exculpate Orrick or Cleary from their negligence. As drafted, Section 2.04(g) created a $510 million liability

hinging on contingencies entirely outside TerraForm's control, but within SunEdison's. Indeed, it posed precisely the kind of potential conflict of interest as to which Orrick was not permitted to favor one of its clients, SunEdison, over the other, TerraForm, and for which Cleary was retained to assist and advise the Conflicts Committee in vetting. The malpractice of both law firms in failing to ensure that TerraForm, its Board, and its Conflicts Committee understood the implications to TerraForm of that provision — in fact, neither law firm so much as mentioned those implications to their clients — would have been at least as egregious as their malpractice in not ensuring that the PSA was correct.

9. But for Orrick and Cleary's malpractice in failing to fix the drafting error in Section 2.04(g) and permitting TerraForm to sign the flawed agreement, TerraForm would never have been sued, would never have had to expend substantial legal fees to defend itself, would never have been found liable for an Accelerated Earnout Payment, and would never have suffered over $300 million in damages. Orrick and Cleary nonetheless have refused to compensate their former client for the damages their malpractice caused. Because it is past time for them to do so, TerraForm has brought this action.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Orrick pursuant to C.P.L.R. § 302(a)(1) because TerraForm's cause of action against Orrick arises from Orrick's transaction of business within the State of New York. This Court has jurisdiction over Cleary pursuant to C.P.L.R. § 301, because Cleary is a New York limited liability partnership with its principal place of business in New York.

11. Venue in New York County is proper pursuant to C.P.L.R. § 503(a) because at least one party resides in New York County, and because a substantial part of the events or omissions giving rise to the claims in this action occurred in New York County.

PARTIES AND NON-PARTIES

12. TerraForm Parent is a Delaware limited liability company and the successor in interest to TerraForm Power, Inc. ("TerraForm Power"). TerraForm Parent has a majority interest in TerraForm LLC.

13. TerraForm LLC is a Delaware limited liability company which owns and operates renewable energy facilities across North America and Western Europe. Together with TerraForm Power, TerraForm LLC purchased the operating assets of First Wind, a solar and wind energy developer, in November 2014.

14. Orrick is an international law firm organized as a limited liability partnership, with offices in New York and San Francisco.

15. Cleary is an international law firm organized as a New York limited liability partnership, with its principal place of business in New York.

16. Non-party SunEdison was a publicly traded Delaware corporation which was in the business of developing renewable energy projects. In April 2016, SunEdison filed for Chapter 11 bankruptcy protection. It subsequently emerged as a privately held company in December 2017. Prior to its bankruptcy, SunEdison was the majority controlling shareholder of TerraForm Power.

17. Non-party First Wind was a Delaware limited liability company which developed, constructed, and operated wind and solar energy projects in the United States.

18. Non-parties D.E. Shaw Composite Holdings, LLC and Madison Dearborn Capital Partners (collectively with First Wind, the "Sellers") are investment management firms which collectively held a majority interest in First Wind, and later sold First Wind to TerraForm and SunEdison (collectively, the "Buyers") in November 2014.

FACTUAL BACKGROUND

I. The 2014 First Wind Transaction

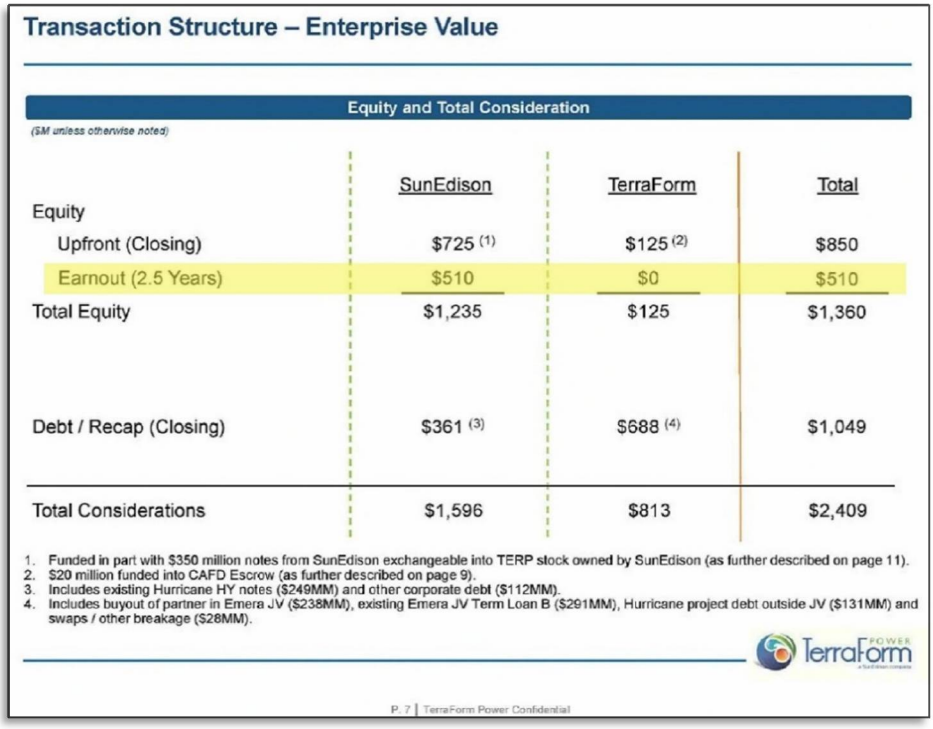
19. On November 17, 2014, following a fast-moving, compressed six-week period between October and November 2014, SunEdison and TerraForm entered into the PSA, through which they agreed to acquire the assets of First Wind from the Sellers (the "First Wind Transaction"). The PSA is a 150-page contract with more than 600 pages of exhibits and schedules.

20. Under the PSA, TerraForm acquired only First Wind's operating wind and solar renewable energy facilities, for an enterprise value of $862 million. SunEdison acquired the rest of First Wind — including a portfolio of wind and solar projects in various stages of development — for $696 million in cash, a $336 million exchangeable note, and up to $510 million in deferred "earnout" payments. The Sellers assigned an earnout value to each of the projects in First Wind's portfolio — totaling $510 million — and SunEdison agreed to make earnout payments to the Sellers upon those projects being successfully developed into operational, revenue-producing facilities.

21. SunEdison would be solely responsible for all aspects of the development projects, including the associated earnout payment obligations. While commonly used in SunEdison's business, the earnout payment mechanism was antithetical to TerraForm's business model. As what was commonly known in the renewable energy industry as a "yieldco,"

TerraForm operated energy facilities, collected revenue, and paid its shareholders a "yield" in the form of dividends, and was not in the business of developing energy facilities or acquiring earnout projects still in development.

22. All of the relevant contemporaneous materials describing the First Wind Transaction consistently and accurately reflected the agreement that TerraForm would pay cash for and acquire only First Wind's operational assets, and that SunEdison would, through deferred earnouts, pay for and acquire its development projects. Thus, all of the presentations to the SunEdison and TerraForm Boards of Directors and TerraForm's Conflicts Committee reflected that TerraForm had *zero* responsibility for the earnout. TerraForm's Board of Directors, in the meeting at which it approved TerraForm's entering into the First Wind Transaction, was given a presentation which — in a slide reproduced below — stated that TerraForm's earnout obligation was "$0." TerraForm's management provided both Orrick and Cleary, as counsel to TerraForm, with drafts of these materials before the presentation to the Board.



Transaction Structure – Enterprise Value

Equity and Total Consideration

($M unless otherwise noted)

	SunEdison	TerraForm	Total
Equity			
Upfront (Closing)	$725 (1)	$125 (2)	$850
Earnout (2.5 Years)	$510	$0	$510
Total Equity	$1,235	$125	$1,360
Debt / Recap (Closing)	$361 (3)	$688 (4)	$1,049
Total Considerations	$1,596	$813	$2,409

1. Funded in part with $350 million notes from SunEdison exchangeable into TERP stock owned by SunEdison (as further described on page 11).
2. $20 million funded into CAFD Escrow (as further described on page 9).
3. Includes existing Hurricane HY notes ($249MM) and other corporate debt ($112MM).
4. Includes buyout of partner in Emera JV ($238MM), existing Emera JV Term Loan B ($291MM), Hurricane project debt outside JV ($131MM) and swaps / other breakage ($28MM).

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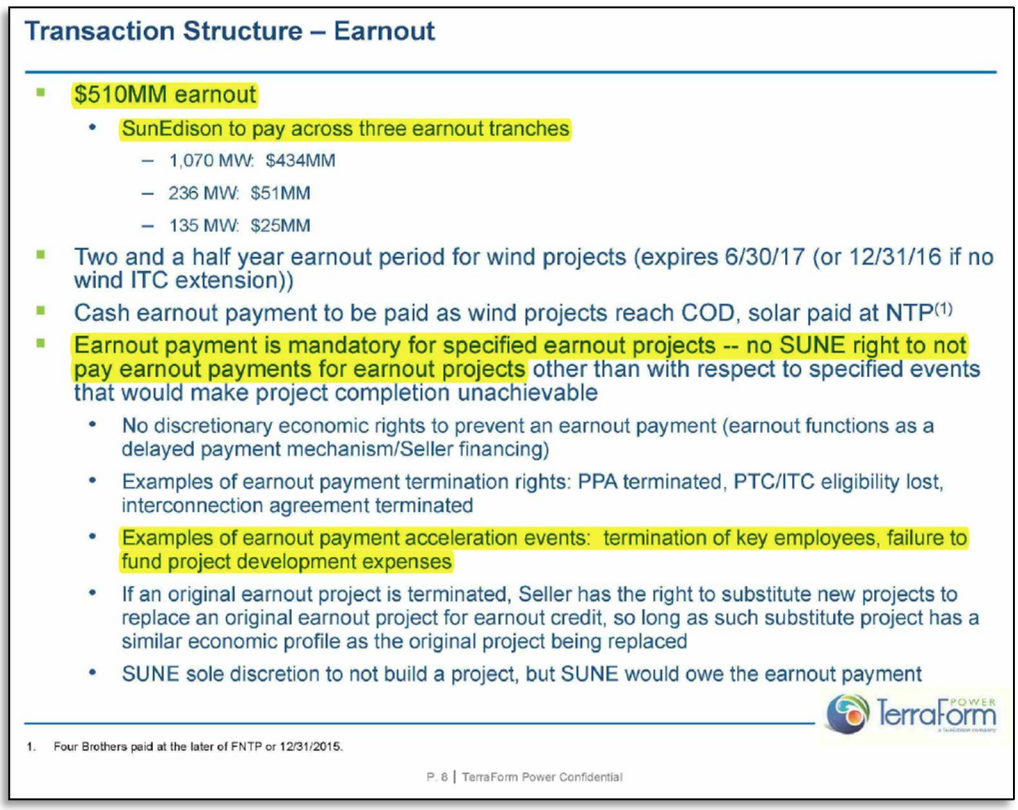
23. The next slide of the Board presentation addressed in detail the earnout obligations to which SunEdison — and not TerraForm — had agreed. Among other things, the slide listed specific examples of acceleration events that would trigger an Accelerated Earnout Payment under the PSA. Nothing in the slide indicated that TerraForm would be responsible for paying any portion or type of earnout payment, including under an acceleration scenario. To the contrary, the slide, reproduced below, reflected that the earnout payments, accelerated or otherwise, were solely a SunEdison obligation.



Transaction Structure – Earnout

- $510MM earnout
  - SunEdison to pay across three earnout tranches
    - 1,070 MW: $434MM
    - 236 MW: $51MM
    - 135 MW: $25MM
- Two and a half year earnout period for wind projects (expires 6/30/17 (or 12/31/16 if no wind ITC extension))
- Cash earnout payment to be paid as wind projects reach COD, solar paid at NTP(1)
- Earnout payment is mandatory for specified earnout projects -- no SUNE right to not pay earnout payments for earnout projects other than with respect to specified events that would make project completion unachievable
  - No discretionary economic rights to prevent an earnout payment (earnout functions as a delayed payment mechanism/Seller financing)
  - Examples of earnout payment termination rights: PPA terminated, PTC/ITC eligibility lost, interconnection agreement terminated
  - Examples of earnout payment acceleration events: termination of key employees, failure to fund project development expenses
  - If an original earnout project is terminated, Seller has the right to substitute new projects to replace an original earnout project for earnout credit, so long as such substitute project has a similar economic profile as the original project being replaced
  - SUNE sole discretion to not build a project, but SUNE would owe the earnout payment

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1. Four Brothers paid at the later of FNTP or 12/31/2015.

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24. Moreover, all of the Acceleration Events that would trigger an Accelerated Earnout Payment were related to SunEdison and were entirely within SunEdison's control. For example, if SunEdison relocated the office of First Wind's CEO, who now worked for SunEdison, more than 35 miles from its original location, that would constitute "good reason"

for his departure from the company, and trigger an Acceleration Event forcing an Accelerated Earnout Payment of up to $510 million.

25. TerraForm never agreed to assume a payment obligation contingent upon the occurrence of Acceleration Events over which it had no control, which were not related to TerraForm's business or assets in any respect, and which could result in a huge payment obligation. To agree to assume a liability of this magnitude — without any consideration or any other cogent economic or other basis — was self-evidently a nonsensical and economically absurd proposition for TerraForm.

26. Orrick and Cleary nonetheless allowed TerraForm to sign a contract, the PSA, providing exactly the opposite of TerraForm's understanding of the deal. Section 2.04(g) provided that: "In the event that an Acceleration Event shall occur, ***Buyers*** shall immediately deliver or cause to be delivered the aggregate Accelerated Earnout Payment to the Paying Agent on behalf of the Sellers for each Earnout Project for which no Earnout Project Payment has been made." The defined term, "Buyers" — the fatal one-word error that Orrick and Cleary failed to correct — obligated TerraForm, in addition to SunEdison, even though TerraForm had never agreed to assume this obligation.

II. Orrick's Negligence

27. In September 2014, TerraForm and SunEdison jointly retained Orrick as lead deal counsel to represent their interests in connection with the First Wind Transaction, including in connection with drafting the PSA. Orrick had pitched its services to TerraForm and SunEdison touting that it was the "most qualified law firm in the U.S." for the deal and that it was "well versed doing company M&A in the energy industry."

28. John Cook, head of Orrick's corporate practice group in the San Francisco office, and Christopher Moore, an Orrick energy partner in New York, led the Orrick team. Cook and his then-associate, Daniel Lopez, were principally responsible for negotiating and drafting the terms of the PSA.

29. Particularly given, among other things, the quick pace at which the deal came together, TerraForm reasonably relied extensively on Orrick's guidance, advice, and resources, which included an army of lawyers at its disposal to review and vet the numerous edits being made to material terms of draft PSAs, to accurately memorialize the terms of the transaction in the PSA, and to ensure that the final version of the PSA did not contain any errors.

30. Although SunEdison was TerraForm's majority controlling shareholder, SunEdison and TerraForm were each independent public companies with different businesses. Accordingly, a key task for Orrick was to ensure that the PSA properly delineated which assets were being purchased and which obligations were being assumed by which party. Moreover, as counsel for both parties, it had an obligation not to favor one over the other in carrying out its responsibilities.

31. During the parties' negotiations, as reflected in "Issues Lists" exchanged by counsel to the parties and drafted and reviewed by Orrick, the Sellers initially requested that TerraForm and SunEdison be jointly and severally liable for each other's obligations. Orrick responded on behalf of the Buyers that "TERP cannot agree to guaranty payment of SUNE's portion of the purchase price or indemnity claims or vice versa." In an October 31, 2014 iteration of the Issues List, the Buyers reiterated that, "[a]s we discussed, [we] cannot obtain approval for joint and several [treatment] as TERP and SUNE are separate public companies."

32. By early November, the Sellers conceded the issue. The execution copy of the PSA — and every draft dated November 6, 2014 and after — provided that all Buyers' obligations "shall be the several, and not joint, obligations of each Buyer."

33. Given this clear understanding that TerraForm was not assuming or guaranteeing SunEdison's obligations, Orrick, in draft PSAs circulated internally at Orrick during October 2014, struck the term "Buyers" as obligors in Section 2.04(g) and replaced it with "Holdco Buyer," a PSA defined term referring only to SunEdison. Separately, on November 7, Cleary lawyer Manoj Nair shared Cleary's handwritten markup of a draft PSA with Orrick replacing the word "Buyers" with "Holdco Buyer" in Section 2.04(g). Orrick nonetheless failed to flag or incorporate the correction in any draft PSA it sent back to the Sellers or in the final execution version.

34. To the extent Orrick claims (incorrectly) that the word "Buyers" was the deal, Orrick failed to alert TerraForm, and make sure TerraForm understood and accepted, that Section 2.04(g) exposed TerraForm to a half-billion-dollar earnout liability which could be triggered by events, including events like SunEdison relocating an executive's office, totally outside of TerraForm's control. Orrick instead led TerraForm to believe the exact opposite. For example, on November 12, after Orrick circulated draft Board resolutions authorizing TerraForm's entering into the First Wind Transaction, Orrick's Lopez responded to a TerraForm in-house attorney's question about the earnout by confirming that "SUNE is responsible for the earnout payments."

35. On the same day, Orrick reviewed and commented on a draft of a fairness opinion that Cleary had helped prepare for the Conflicts Committee's review. Orrick provided its edits to

the draft opinion, including to the description of TerraForm's portion of the consideration and its obligations, but again made no reference to any TerraForm earnout obligation.

36. Likewise, as alleged above, the Board presentation itself, which Orrick reviewed in advance, confirmed that TerraForm's responsibility for the earnout was "$0."

37. On November 17, based on Orrick's advice and work, TerraForm's Board approved and TerraForm ultimately signed the PSA in its flawed form. In doing so, Orrick allowed TerraForm to unwittingly agree to a $510 million payment obligation that TerraForm understood and had been advised by its counsel belonged solely to SunEdison.

III. Cleary's Negligence

38. Until just a few months before the First Wind Transaction, TerraForm was a wholly-owned subsidiary of SunEdison. In July 2014, TerraForm went public, but remained majority-owned by SunEdison. To ensure that SunEdison did not intentionally or unintentionally take steps to unduly benefit SunEdison and its shareholders at the expense of TerraForm and its shareholders, TerraForm established a Conflicts Committee authorizing it to review and approve or reject any "potential conflict transactions between [TerraForm] and any affiliated parties, including SunEdison."

39. In late October 2014, TerraForm retained Cleary to advise the Conflicts Committee in connection with the First Wind Transaction. Cleary's team was led by partners, Ethan Klingsberg and Chantal Kordula, and associates, Manoj Nair and Charles Allen.

40. The Conflicts Committee relied on Cleary to advise it on the material terms of the PSA and on whether the PSA posed any actual or potential conflicts between TerraForm's and SunEdison's obligations, so that the Conflicts Committee had all the information and legal advice it needed to consider whether to approve the transaction. To that end, Cleary reviewed,

among other things, multiple drafts of the PSA, with a particular focus on TerraForm's payment obligations.

41. Cleary knew that a TerraForm earnout obligation, and certainly a half-billion-dollar one, would be precisely the type of obligation the Conflicts Committee and its counsel were charged with evaluating. Cleary also knew that TerraForm did not agree to pay any of the earnout — which was strictly a SunEdison obligation — under any circumstance. Despite reviewing several iterations of PSA drafts reflecting a purported contingent liability in Section 2.04(g), Cleary neither took further steps to correct it nor brought the provision and its implications to the Conflicts Committee's attention. If "Buyers" were to assume a $510 million contingent obligation, then Cleary had an obligation to explain the existence of such a provision, the conflict between SunEdison and TerraForm's obligations, and the implications of TerraForm assuming such an obligation. Yet Cleary did none of that.

42. Had Cleary brought the provision to the Conflicts Committee's attention, as it should have, the committee would have rejected it because, among other things, it made TerraForm responsible for SunEdison's defaults over which it had no control. Had the Conflicts Committee rejected it, TerraForm would have avoided entering into the PSA containing such provision.

43. The Conflicts Committee convened on six separate occasions, with Cleary in attendance, to review the First Wind Transaction. Cleary said nothing to the Conflicts Committee, at those meetings or otherwise, about any TerraForm earnout obligation, let alone alert the Committee that Section 2.04(g) exposed TerraForm to a half-billion-dollar earnout liability which could be triggered by events, including events like SunEdison relocating an executive's office, totally outside TerraForm's control.

44. Like Orrick, Cleary, if anything, was instead leading TerraForm to believe the exact opposite. As alleged, like Orrick, Cleary also reviewed a draft of the Board presentation, but Cleary made no material revisions to the slide ascribing the entirety of the earnout responsibility to SunEdison and "$0" to TerraForm.

45. Cleary also failed to do anything to ensure that the final PSA accurately reflected the deal the Conflicts Committee and TerraForm's Board approved based on Cleary's work and advice.

IV. Orrick and Cleary Later Acknowledged That "Buyers" Was An Error.

46. On November 18, 2015, a year after the transaction and with SunEdison's finances now in jeopardy, the Sellers sent TerraForm a letter (the "Sellers' Letter") asserting that "SunEdison's failure to make earnout payments due the following month" would "constitute a material breach of the Agreement and will cause an Acceleration Event, making SunEdison, TerraForm Power, LLC and TerraForm Power, Inc., in their individual capacities, immediately responsible as Buyers … under Section 2.04(g)…to [make] the payment of the aggregate Accelerated Earnout Payment" to the Sellers.

47. TerraForm forwarded the Sellers' Letter to Orrick, which responded that, "after reviewing" the PSA, it is "very clear that SunEd (defined as Holdco Buyer) is responsible for earnout payments … it is very clear that TerraForm (defined as the Operating Buyer) is not referenced" in the earnout payment section, and that "we should write a short response stating that TerraForm has no liability for the earnout payments." However, after reviewing the PSA again, Orrick prepared a draft response stating that "'Buyers' in Section 2.04(g)" was "clearly a scrivener's error." Cleary agreed with the draft but suggested deleting the term "scrivener's."

48. In late February 2016, TerraForm responded to the Sellers' Letter, stating that the "stray use of the plural noun 'Buyers' in Section 2.04(g) of the Agreement is clearly a scrivener's error."

49. Orrick and Cleary's malpractice thus could not be clearer. During the drafting of the PSA, Orrick and Cleary themselves had each caught the drafting error in Section 2.04(g), but neither of them made sure it was corrected in the final execution copy or alerted TerraForm or its Conflicts Committee about it. A year after the signing of the PSA, when the Sellers demanded that TerraForm make good on the earnout obligation, both Orrick and Cleary admitted that the word "Buyers" was erroneous. And, when the Sellers sued TerraForm based expressly on Section 2.04(g), Orrick's Cook testified at his deposition, and in an affidavit submitted on TerraForm's behalf, that he believed "Buyers" in Section 2.04(g) was a mistake that supported TerraForm's reformation defense.

50. Orrick and Cleary cannot now credibly claim otherwise. Every relevant contemporaneous document describing the transaction, including, as alleged, presentations to TerraForm's Board of Directors reviewed by Orrick and Cleary reflects that only SunEdison, and not TerraForm, was to be responsible for earnout payments. But, to the extent Orrick and Cleary try to claim that the erroneous Section 2.04(g) was correct, their malpractice in failing to advise TerraForm, its Board and its Conflicts Committee of, or even to mention, the implications to TerraForm of the provision — a $510 million liability hinging on contingencies entirely outside TerraForm's control to which TerraForm would never have agreed had it been properly advised — would have been at least as egregious as their malpractice in not ensuring the PSA was correct.

V. Orrick and Cleary's Negligence Proximately Caused TerraForm's Injury

51. In April 2016, the Sellers sued TerraForm alleging that it was obligated to make an Accelerated Earnout Payment in the amount of $231 million. Over the next four years, because it had not agreed to this obligation, TerraForm defended itself, incurring millions of dollars in attorneys' fees and disbursements.

52. On December 22, 2020, the Court entered summary judgment against TerraForm, based entirely on the drafting error in Section 2.04(g) that Orrick and Cleary failed to ensure was corrected in the signed PSA. The Court found, among other things, that there was insufficient evidence of a mutual mistake, while expressly noting that it made no findings on whether there had been a unilateral mistake on TerraForm's part.

53. The Court found TerraForm liable for an Accelerated Earnout Payment in the amount of $231 million, plus 9% statutory interest, resulting in a judgment exceeding $327 million.

54. In January 2021, TerraForm filed a notice of appeal and posted a bond in the amount of the judgment. TerraForm notified Orrick and Cleary of the Court's decision, and told them it intended to try to settle with the Sellers. Orrick and Cleary declined to participate in any settlement negotiations. In or around April 2021, TerraForm settled with the Sellers.

55. Orrick's and Cleary's failure to accurately memorialize TerraForm's clear and unambiguous intention into the written and executed PSA, failure to advise TerraForm's Board of Directors and Conflicts Committee of TerraForm's exposure to a $510 million Accelerated Earnout Payment, and misrepresentation to TerraForm's Board of Directors and Conflicts Committee that TerraForm had no earnout-related liability under the PSA directly caused TerraForm's damages arising from the First Wind Litigation and the First Wind Judgment. But

for their malpractice, the PSA would have accurately reflected TerraForm's understanding of the deal or TerraForm's decision makers, including members of the Conflicts Committee and the Board, would have been made aware of its actual contractual exposure before signing, required the provision be fixed or rejected, and TerraForm would not have been damaged.

56. But for Orrick and Cleary's malpractice, including in permitting TerraForm to sign the erroneous agreement, TerraForm would never have been sued, would never have had to expend substantial legal fees to defend itself, would never have been found liable for an Accelerated Earnout Payment, would never had to pay the Sellers to resolve their claims, and would never have suffered over $300 million in damages. As a result, Orrick and Cleary are each responsible for the entirety of TerraForm's damages.

FIRST CAUSE OF ACTION

Legal Malpractice (Orrick)

57. TerraForm repeats and re-alleges each and every allegation set forth in the preceding paragraphs as if fully set forth here.

58. In or around September 2014, TerraForm entered into an attorney-client relationship with Orrick. As TerraForm's attorneys, Orrick owed TerraForm a duty to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession.

59. Orrick breached its duty by, among other things, (i) failing to ensure that the PSA TerraForm signed accurately reflected the transaction terms that TerraForm's Board of Directors approved and accurately reflected the transaction terms TerraForm agreed to, including by failing to correct the term "Buyers" in Section 2.04(g) of the PSA; (ii) failing to properly advise TerraForm concerning the contingency obligation it was assuming under Section 2.04(g); and

(iii) advising or permitting TerraForm to sign the PSA containing the erroneous Section 2.04(g), about which TerraForm had not been properly advised.

60. Orrick's failure to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession proximately caused TerraForm to suffer damages in, among other things, defending and settling the Sellers' lawsuit.

61. As a result of Orrick's malpractice, it is liable for the entirety of TerraForm's damages, including, among other things, TerraForm's settlement payment to the Sellers, the attorneys' fees and disbursements TerraForm expended in defending against the Sellers' lawsuit, and pre- and post-judgment interest.

SECOND CAUSE OF ACTION

Legal Malpractice (Cleary)

62. TerraForm repeats and re-alleges each and every allegation set forth in the preceding paragraphs as if fully set forth here.

63. In or around October 2014, TerraForm, through its Conflicts Committee, entered into an attorney-client relationship with Cleary. Cleary owed the Conflicts Committee and TerraForm a duty to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession.

64. Cleary breached its duty by, among other things, (i) failing to ensure that the PSA TerraForm signed accurately reflected the transaction terms that TerraForm's Conflicts Committee and Board of Directors approved and accurately reflected the terms TerraForm agreed to, including by failing to ensure that the term "Buyers" in Section 2.04(g) of the PSA was corrected; (ii) failing to properly advise TerraForm and the Conflicts Committee concerning the contingency obligation TerraForm was assuming under Section 2.04(g); and (iii) advising or

permitting the Conflicts Committee to recommend that TerraForm sign the PSA containing the erroneous Section 2.04(g), about which TerraForm and the Conflicts Committee had not been properly advised.

65. Cleary's failure to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession proximately caused TerraForm to suffer damages in, among other things, defending and settling the Sellers' lawsuit.

66. As a result of Cleary's malpractice, it is liable for the entirety of TerraForm's damages, including, among other things, TerraForm's settlement payment to the Sellers, the attorneys' fees and disbursements TerraForm expended in defending against the Sellers' lawsuit, and pre- and post-judgment interest.

DEMAND FOR RELIEF

WHEREFORE, TerraForm demands judgment against each of Orrick and Cleary awarding it:

a. Damages in an amount to be determined at trial, but at least $310 million;

b. Pre- and post-judgment interest at the maximum rate allowed by law; and

c. Such other and further relief as the Court may deem appropriate.

Dated: New York, New York
October 13, 2021

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