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11 Counsel for Plaintiffs MICHAEL ALLAGAS,
12 ARTHUR RAY, BRETT MOHRMAN, and the
SETTLEMENT CLASS

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 MICHAEL ALLAGAS, ARTHUR
19 RAY and BRETT MOHRMAN, on
20 behalf of themselves and all others
similarly situated,

21 Plaintiffs,

22 vs.

23 BP SOLAR INTERNATIONAL, INC.,
24 HOME DEPOT U.S.A., INC. and
DOES 1 -10, inclusive,

25 Defendants.
26
27
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Case No. 3:14-cv-00560-SI

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER FOR
PRELIMINARY APPROVAL OF
ADDENDUM TO CLASS
SETTLEMENT AGREEMENT**

Judge: Hon. Susan Illston
Crtrm: 1

Action Filed: January 9, 2014
Trial Date: None

1 Upon review and consideration of the Joint Stipulation for Preliminary
2 Approval of Addendum to Class Settlement Agreement, it is hereby ORDERED and
3 ADJUDGED as follows:

4 1. The parties have agreed to modify the nationwide class action settlement
5 agreement (“Settlement” or “Agreement”). This Court has jurisdiction over the
6 subject matter and parties to this action pursuant to 28 U.S.C. § 1332(d)(2) and 28
7 U.S.C. § 1453. To accomplish this, they have submitted an “Addendum to Settlement
8 Agreement and Release” and a “Conditional Fourth Amended Complaint for
9 Damages and Injunction.”

10 2. The Addendum to the Settlement, including all exhibits thereto, is
11 preliminarily approved as fair, reasonable, and adequate. The Plaintiffs, by and
12 through their counsel, have investigated the pertinent facts and law, have engaged in
13 substantial motion practice and discovery, and have evaluated the risks associated
14 with continued litigation, trial, and/or appeal. The Court finds that the Addendum to
15 the Settlement was reached in the absence of collusion, is the product of informed,
16 good-faith, arm’s-length negotiations between the parties and their capable and
17 experienced counsel, and was reached with the assistance of an experienced mediator.
18 The Court further finds that the modified Class meets the requirements of Federal
19 Rules of Civil Procedure 23(a) and 23(b)(3) and should be certified for settlement
20 purposes only; that the named Plaintiffs should remain appointed as Class
21 Representatives; that the attorneys identified below should remain appointed as Class
22 Counsel; and that it is appropriate to effectuate notice to the modified Class and to
23 schedule a Fairness Hearing to assist the Court in determining whether to grant final
24 approval to the Addendum to the Settlement and enter a Final Order and Judgment.

25 3. The modified Settlement Class includes all persons or entities in the
26 United States who purchased Class Panels, as defined in the Addendum to the
27 Settlement Agreement, for installation on a property or who purchased a property on
28 which Class Panels had previously been installed and (in either case), currently some

1 or all of such Class Panels. Excluded from the Class are: (1) Defendants, any entity in
2 which they have a controlling interest, and such entity's legal representatives,
3 officers, directors, employees, assigns and successors; (2) the United States
4 government and any agency or instrumentality thereof; (3) the judge to whom this
5 case is assigned and any member the judge's immediate family; and (4) persons who
6 timely and validly opt to exclude themselves from the Settlement Class.

7 4. The Addendum confers substantial benefits upon the modified
8 Settlement Class and avoids the costs, uncertainty, delays, and other risks associated
9 with continued litigation, trial, and likely appeals. The Court finds that the modified
10 Settlement falls within the range of reasonableness and, as such, merits preliminary
11 approval.

12 5. The Court finds that the prerequisites for a class action under Rules
13 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied, and
14 therefore certifies the modified Settlement Class under Rules 23(a) and 23(b)(3) for
15 settlement purposes only

- 16 a. Class Members are ascertainable based on BP solar panels' model
17 numbers and serial numbers.
- 18 b. The members of the Class are so numerous that joinder of all members is
19 impractical. Fed. R. Civ. P. 23(a)(1). The parties estimate that there are
20 hundreds of Class Members, based on the number of BP365TS model
21 panels manufactured between 2005 to 2007 ("BP365TS 2005-2007")
22 still in circulation throughout the country.
- 23 c. This litigation involves common class-wide issues, including that the
24 BP365TS 2005-2007 panels are defectively designed, BP's
25 representations of reliable solar panels, BP's knowledge of the defect,
26 and its uniform omissions. Fed. R. Civ. P. 23(a)(2), (b)(3). Likewise, the
27 express and implied warranty claims turn on the defective nature of the
28 panels, a question common to all the Class Members.

- 1 d. The claims of the named Plaintiffs are typical of the claims of the Class,
2 and the named Plaintiffs are adequate representatives of the Class. Fed.
3 R. Civ. P. 23(c), (d). The typicality and adequacy requirements are
4 satisfied because the Plaintiffs are owners of the Class Panels, and BP's
5 conduct at issue is alleged to have caused similar harm to Plaintiffs and
6 the Class. Accordingly, the Court re-appoints as Settlement Class
7 Representatives Michael Allagas, Arthur Ray and Brett Mohrman.
- 8 e. Plaintiffs' counsel has the qualifications and experience to represent the
9 Settlement Class. Fed. R. Civ. P. 23(d). Accordingly, the Court appoints
10 Birka-White Law Offices as Class Counsel for purposes of effectuating
11 the Settlement.
- 12 f. The Court also finds that common issues predominate and the proposed
13 Settlement is a superior way to resolve this national controversy. Fed. R.
14 Civ. P. 23(b)(3). The common issues include those identified above.
15 Further, given the inefficiencies and difficulties in pursuing thousands of
16 individual claims, the class mechanism is superior to any other for
17 resolution of these common disputes.

18 6. The Court finds that the Notice Plan in the Addendum is reasonable and
19 provides due, adequate and sufficient notice to all persons entitled to receive notice,
20 and meets the requirements of due process and Rule 23. The Notice Plan includes
21 individualized first-class mail and email service to Class Members added by the
22 Addendum known to BP and Class Counsel, a settlement website maintained by the
23 Claims Administrator and linked to Class Counsel, a toll-free telephone line staffed by
24 the Claims Administrator, internet and social media advertisements, and publication
25 notice in numerous periodicals throughout the United States where the Class Panels
26 added by the Addendum were installed. The Notice Program complies with Rule
27 23(c)(2)(B) because it constitutes the best notice practicable under the circumstances,
28 provides individual notice to all Class Members added by the Addendum who can be

1 identified through reasonable effort, and is reasonably calculated under the
2 circumstances to apprise the Class Members added by the Addendum of the nature of
3 the action, the claims it asserts, the Class definition, the Settlement terms, the right to
4 appear through an attorney, the right to opt out of the Class or to comment on or object
5 to the Settlement and how to do so, and the binding effect of a final judgment upon
6 Class Members added by the Addendum who do not opt out. The Court approves for
7 dissemination to the Class the notices filed with the Court with the parties joint
8 stipulation for preliminary approval of the modification to the Settlement, and directs
9 the Claims Administrator and the Parties to carry out the Notice Plan as provided for in
10 the Settlement.

11 7. The Court re-appoints Jennifer Keough of JND Legal Administration to
12 serve as the Independent Claims Administrator (“ICA”) as provided under the
13 Settlement. All reasonable fees, costs, and expenses of notice and claims
14 administration shall be paid as provided in the Settlement. The Parties are ordered to
15 finalize the publication notice dates as soon as practicable after the entry of this Order.
16 Notice shall be completed within 75 days of the entry of this Order.

17 8. Class Counsel shall file a stipulation for Final Approval and Motion for
18 Class Counsel’s Attorneys’ Fees and Costs and Service Awards to Class
19 Representatives on or before 30 days after the date of this Preliminary Approval Order.

20 9. Any Class Member added by the Addendum may opt out of the proposed
21 Settlement in the manner prescribed in the Addendum to the Settlement Agreement
22 and provided their request is postmarked by not later than the date indicated in the
23 Long Form Notice (which corresponds to no less than 85 days following
24 commencement of the Notice Program). Any Class Member added by the Addendum
25 may object to the Settlement and/or to Class Counsel’s request for attorneys’ fees and
26 costs in the manner prescribed in the modified Settlement Agreement and Long Form
27 Notice, and provided any such objection is postmarked to the Court, Counsel, and the
28 ICA by the date indicated in the Long Form Notice (which corresponds to no less than

1 85 days following the commencement of the Notice Program). Plaintiffs' and
2 Defendants' responses to Objections and Reply Briefs, if any, shall be filed 9 days
3 after the optout and objection deadline. Any Class Member added by the Addendum
4 that wishes to appear at the Fairness Hearing must so state in their objection, or if the
5 Class Member added by the Addendum has no objection, in a letter addressed to Class
6 Counsel and Defendants by the objection deadline.

7 10. The Fairness Hearing shall be held no less than 100 days after
8 commencement of the Notice Program to (i) consider the fairness, reasonableness, and
9 adequacy of the modified Settlement; (ii) consider entry of a Final Order and Judgment
10 approving the modified Settlement and the dismissal with prejudice of the Action; (iii)
11 consider any objections to the Settlement filed by Class Members added by the
12 Addendum; (iv) consider Class Counsel's application for an award of attorneys' fees
13 and reimbursement of costs and expenses; and (v) consider such other matters as the
14 Court may deem necessary or proper under the circumstances in accordance with
15 Federal Rule of Civil Procedure 23.

16 11. The Fairness Hearing may be postponed, adjourned, or continued by
17 Order of the Court without further notice to the Class. After the Fairness Hearing, the
18 Court may enter a Final Order and Judgment in accordance with the modified
19 Settlement.

20 12. Pending the Fairness Hearing, other than proceedings necessary to carry
21 out or to enforce the terms and conditions of the modified Settlement, this matter is
22 and shall remain stayed.

23 13. If the Addendum to the Settlement does not receive Final Approval, then
24 the Addendum to the Settlement shall become null and void. Plaintiffs, Class
25 Members, and Defendants shall be restored to their respective positions prior to the
26 entry of this Order.

27 14. Class Counsel and Counsel for Defendants are hereby authorized to
28 employ all reasonable procedures in connection with approval and administration of

1 the Addendum to the Settlement that are not materially inconsistent with this Order or
2 the modified Settlement, including making, without further approval of the Court, non-
3 material changes to the form or content of the Notice.

4 15. The dates of performance contained herein may be extended by Order of
5 the Court, for good cause shown, without further notice to the Class.

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7 IT IS SO ORDERED this 30th day of January, 2019.

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10 The Honorable Susan Illston
11 United States District Judge
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