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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
behalf of themselves and all others
20 similarly situated,

21 Plaintiffs,

22 vs.

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

25 Defendants.

Case No. 3:14-cv-00560-SI

**[PROPOSED] ORDER FOR FINAL
APPROVAL OF ADDENDUM TO
CLASS SETTLEMENT
AGREEMENT**

Judge: Hon. Susan Illston
Crtrm: 1
Date: June 19, 2020
Time: 10:00 a.m.

Action Filed: January 9, 2014

1 Upon review and consideration of the Joint Stipulation for Final Approval of
2 Addendum to Class Settlement Agreement, it is hereby ORDERED and ADJUDGED
3 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. Following a Fairness Hearing on June 19, 2020, the Addendum to the
11 Settlement, including all exhibits thereto, is finally approved as fair, reasonable, and
12 adequate. The Plaintiffs, by and through their counsel, have investigated the pertinent
13 facts and law, have engaged in substantial motion practice and discovery, and have
14 evaluated the risks associated with continued litigation, trial, and/or appeal. The
15 Court finds that the Addendum to the Settlement was reached in the absence of
16 collusion, is the product of informed, good-faith, arm’s-length negotiations between
17 the parties and their capable and experienced counsel, and was reached with the
18 assistance of an experienced mediator. The Court further finds that the modified
19 Class meets the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3)
20 and should be certified for settlement purposes only; that the named Plaintiffs should
21 remain appointed as Class Representatives; that the attorneys identified below should
22 remain appointed as Class Counsel and that the parties have effectuated sufficient
23 notice to the modified Class which gave Class members 85 days to opt-out of the
24 Addendum to the Settlement.

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 final
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 have 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 was reasonable and
19 provided due, adequate and sufficient notice to all persons entitled to receive notice,
20 and met the requirements of due process and Rule 23. The Notice Plan included
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 complied with Rule
27 23(c)(2)(B) because it constituted the best notice practicable under the circumstances,
28 provided individual notice to all Class Members added by the Addendum who could be

1 identified through reasonable effort, and was 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 approved 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 directed
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.

15 8. **Release.** The Release contained in § XII of the Addendum to Settlement
16 Agreement is expressly incorporated herein in all respects, is effective as of the date of
17 this Final Order and Judgment, and forever discharges the Released Parties from any
18 claims or liabilities as described therein.

19 9. **Binding Effect.** The terms of the Addendum to Settlement Agreement,
20 and of this Final Order and Judgment shall be forever binding on Plaintiffs and all
21 other Class Members, as well as their heirs, executors and administrators, successors
22 and assigns, and those terms shall have res judicata and other preclusive effect with
23 respect to all Released Claims.

24 10. **Permanent Injunction.** All Class Members who have not been timely
25 excluded from the Class are hereby permanently barred and enjoined from (a) filing,
26 commencing, prosecuting, maintaining, intervening in, participating in (as class
27 members or otherwise), or receiving any benefits or other relief from, any other
28 lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any

1 jurisdiction for the Released Claims, and (b) organizing or soliciting the participation
2 of any Class Members in a separate class for purposes of pursuing as a purported class
3 action (including by seeking to amend a pending complaint to include class allegations,
4 or by seeking class certification in a pending action) any lawsuit or other proceeding
5 for the Released Claims. The Court finds that issuance of this permanent injunction is
6 necessary and appropriate in aid of the Court's jurisdiction over this action and to
7 protect and effectuate the Court's Final Order and Judgment.

8 **11. Attorneys and Class Representatives Fees and Expenses.** Birka-White
9 Law Offices has requested attorney fees and expenses in the amount of \$235,000.00
10 and stipends to the Class representatives as follows: \$750.00 to Plaintiffs Allagas,
11 Mohrman, and Ray. Defendants do not oppose these requests. The Court will issue a
12 separate order addressing the requests for attorney fees and stipends.

13 **12. Enforcement of Settlement and Retention of Jurisdiction.** Nothing in
14 this Final Order and Judgment shall preclude any action to enforce the terms of the
15 Settlement Agreement. Without affecting the finality of this Order, this Court
16 expressly retains exclusive jurisdiction as to all matters relating to the administration,
17 consummation, enforcement and interpretation of the Settlement Agreement and of this
18 Final Order and Judgment, including, without limitation, for the purpose of:

- 19 a. enforcing the terms and conditions of the Settlement Agreement and
20 resolving any disputes, claims or causes of action that, in whole or in part,
21 are related to or arise out of the Settlement Agreement, and/or this Final
22 Order and Judgment;
- 23 b. entering such additional orders, if any, as may be necessary or appropriate
24 to protect or effectuate this Final Order and Judgment and the Settlement
25 Agreement, or to ensure the fair and orderly administration of the
26 Settlement; and
- 27 c. entering any other necessary or appropriate orders to protect and
28 effectuate this Court's retention of continuing jurisdiction.

