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Attorneys for Defendants
BP Solar International, Inc. and
Home Depot U.S.A., Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF JOINT MOTION AND
MOTION TO MODIFY
ADMINISTRATION AND FOR CY
PRES**

DATE: September 19, 2025
TIME: 10:00 a.m.
COURTOOM: 1

The Honorable Susan Y. Illston

Action Filed: January 9, 2014
Trial Date: None

NOTICE OF JOINT MOTION AND MOTION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 19, 2025 at 10:00 a.m. in Courtroom 1 of this Court, located at 450 Golden Gate Ave., San Francisco, California, Class Counsel will move and hereby do move the Court for: (1) an order allowing BP to take on the role of administering the remaining claims at no cost to the common fund; (2) an order modifying the relief available under the Settlement Agreement to be limited to cash buy outs only; and (3) an order that of the remaining \$7,102,946.96 in the common fund, that the parties be permitted to cy pres approximately \$3 million as soon as practicable.

The joint motion is based upon this Notice of Joint Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof, the Declaration of David M. Birka-White, the argument of counsel, and all pleadings and records on file in this matter.

DATED: August 14, 2025

Respectfully submitted,

BIRKA-WHITE LAW OFFICES

By: s/s David M. Birka-White
DAVID M. BIRKA-WHITE

*Attorneys for Plaintiffs
Michael Allagas, Arthur Ray, Brett
Mohrman, and the Settlement Class*

ARNOLD & PORTER

By: s/s E. Alex Beroukhim
E. ALEX BEROUKHIM

*Attorneys for Defendants
BP Solar International, Inc. and
Home Depot U.S.A., Inc.*

ATTESTATION

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

/s/ David M. Birka-White

DAVID M. BIRKA-WHITE

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BP SOLAR INTERNATIONAL,
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and DOES 1 -10, inclusive,

Defendants.

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

**DECLARATION OF DAVID M.
BIRKA-WHITE IN SUPPORT OF
JOINT MOTION TO MODIFY
ADMINISTRATION AND FOR CY
PRES**

DATE: September 19, 2025
TIME: 10:00am
COURTOOM: 1

The Honorable Susan Y. Illston

Action Filed: January 9, 2014
Trial Date: None

1 I, DAVID M. BIRKA-WHITE, declare as follows:

2 1. I am an attorney at law duly licensed to practice before this Court and all
3 courts of the State of California and all Federal District Courts in California. I am
4 counsel of record for Plaintiffs Michael Allagas, Arthur Ray, and Brett Mohrman
5 (“Plaintiffs”). I have personal knowledge as to the facts stated herein and, if called
6 upon to do so, could and would competently testify thereto.

7 2. I submit this declaration in support of the Joint Motion to Modify
8 Administration and for Cy Pres.

9 3. I have been practicing law for over 46 years. For approximately 35
10 years, my practice has been significantly devoted to product failure and consumer
11 fraud class actions. During that time, I have served as lead or co-lead court-appointed
12 class counsel in dozens of class action and related complex cases.

13 4. BWLO has served as lead counsel throughout the pendency of this
14 litigation. We were appointed Class Counsel on September 2, 2016, as part of the
15 Court’s Order Preliminarily Certifying the Settlement Class and the granting of
16 Plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement.

17 5. Since 2016, I have had a primary role in the management and
18 performance of all work associated with the administration of this nationwide class
19 action settlement in this case.

20 6. Given the low volume of claims and the high cost of Independent Claims
21 Administration, the Parties propose that the services of the independent claims
22 administrator, JND Legal Administration, be largely concluded as soon as is
23 reasonably possible.¹ The Parties have met and conferred with JND and JND is in
24 agreement that the small number of claims no longer justifies its services.

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27 ¹ As discussed with JND, the Parties propose that JND complete the claims that are currently
28 pending and begin transitioning any new claims to BP, as discussed further below.

1 7. \$7,102,946.96 remains in the Common Fund Trust Account.

2 8. There are currently five (5) inspections that are assigned out to
3 inspectors, three in Northern California and two in Southern California. There are a
4 total of 15 remediations that are showing as pending: 8 in California, 2 each in New
5 York, New Jersey and Colorado, and 1 in Arizona. Of those, 11 are Option 1
6 (remove/replace) and 4 are Option 2 (removal only). Two of these claims are near
7 completion.

8 9. Going forward, the Parties propose that BP take on the role of
9 administrating the remaining claims at no cost to the common fund. In the future,
10 JND would forward all claims to the BP warranty department.

11 **A. Settlement Administration Going Forward.**

12 10. BP is currently handling warranty claims for non-Class Panels and can
13 absorb the administration of the Class Panels with its existing resources. The
14 settlement website and telephone lines would remain in place and JND would refer
15 all future claimants to BP.

16 11. BP in turn would take the information necessary from claimants to verify
17 that they have class panels that are eligible under the Settlement Agreement.

18 12. After that determination is made, BP would provide an agreement to the
19 claimants and submit that agreement to Class Counsel for approval of payment.

20 13. Once BP receives payment from Class Counsel, BP would arrange for
21 removal and disposal of class panels and make payments to claimants consistent with
22 the Settlement Agreement.

23 14. To make this process more efficient, the Parties jointly propose that the
24 relief available under the Settlement Agreement be limited to cash buyouts only.
25 Currently, class claimants are able to select between two remedies, (1) having the
26 claims administrator hire a contractor to remove and replace all Class Panels or (2)
27 receive fixed monetary compensation for the Class Panels, less removal and disposal
28 costs. (Dkt. 179-1 at page 9).

1 15. Limiting the relief to cash payouts is essential to transitioning the
2 settlement administration to BP as the replacement option is very time consuming and
3 inefficient.

4 **B. Common Fund Reserve.**

5 16. As of June 4, 2023, JND reports that the total amounts paid to and on
6 behalf of claimants since 2023, is approximately \$710,000. Assuming that claims stay
7 flat for the next seven years (the remaining warranty period), that equals
8 approximately \$2,500,000 in potential future claims during the remaining warranty
9 period. As a conservative estimate, the Parties suggest that \$3,000,000 remain the
10 Common Fund Trust Account as a reserve for the remaining warranty period.

11 **C. Proposed Cy Pres Distribution.**

12 17. The Parties propose that the balance of the common fund
13 (\$7,102,946.96) less \$3,000,000 and any supplemental attorneys' fees awarded by the
14 Court to Class Counsel (discussed further below) be distributed now through Cy Pres.
15 The Parties have met and conferred and suggest the following entities for Cy Pres
16 distribution. The below information is based upon research by counsel regarding the
17 proposed Cy Pres recipients.

18 18. **Solar and Storage Industries Institute ("SI2")**. SI2 is a 501(c)(3)
19 nonprofit. SI2 is the research and education arm of the Solar Energy Industries
20 Association (SEIA). SI2 is accelerating the transition to carbon-free electricity
21 through clean-energy research and analysis. The Institute aims to use policy research,
22 public education, initiatives, and direct outreach to policy makers to explain the
23 benefits of clean energy and develop pathways to widespread solar and storage use.
24 It works with federal, state, and local officials to develop policies that support the
25 widespread adoption of solar and storage projects, and helps developers and
26 communities deploy solar and storage systems that benefit people across the entire
27 country. It has performed research and published papers on, and is working to
28 streamline, the interconnection process, which is the process by which all solar

1 systems (residential, commercial, and utility) connect to the electrical grid. SI2 is
2 also engaged in cutting-edge research centered on addressing siting and permitting
3 challenges in solar project development. In short, SI2's work is directly relevant to
4 the types of products at issue in this action and the interests of the consumers who
5 purchased them.

6 More information regarding SI2 can be found on its website:
7 <https://www.ssii.org/>.

8 Proposed Cy Pres Distribution Amount: **\$1,250,000.00**

9 19. **Public Counsel.**

10 Public Counsel is a 501(c)(3) nonprofit. Public Counsel provides
11 services to low-income and disenfranchised communities in Los Angeles County and
12 across the nation, especially in the area of consumer rights. It handles a cases
13 involving a wide range of fraudulent and unfair business practices, from large-scale
14 scams to individual cases. It has a dedicated Consumer Rights & Economic Justice
15 team that handles a broad range of consumer matters and provides access to justice
16 through direct legal and pro bono representation, self-help clinics, and policy
17 advocacy. Of particular relevance here, for over eight years, Public Counsel's
18 Consumer Rights & Economic Justice project has been one of the nation's leading
19 providers of legal services to homeowners who have been victims of predatory home
20 improvement loans – mainly loans that originated as part of Property Assessed Clean
21 Energy (PACE) programs, which were meant to help homeowners finance the
22 installation of clean energy products like solar panels. Just last year, Public Counsel
23 secured a \$12 million settlement for homeowners in a suit brought against Los
24 Angeles County and a home improvement financing company related to predatory
25 PACE loans that often failed to provide even the most basic of consumer protections,
26 such as ensuring that homeowners could afford to make the payments that they were
27 agreeing to. Public Counsel's expansive consumer-rights work, and in particular its
28

1 work related to PACE programs, has a direct and substantial nexus with the interests
2 of the class members in this case.

3 More information regarding Public Counsel can be found on its website:
4 <https://publiccounsel.org/>.

5 Proposed Cy Pres Distribution Amount: **\$1,250,000.00.**

6 20. **Bay Area Legal Aid.** Bay Area Legal Aid (BayLegal) is a 501(c)(3)
7 non-profit. Its mission is to provide meaningful access to the civil justice system
8 through quality legal assistance regardless of a client's location, language or
9 disability. BayLegal offers free, high-quality legal services throughout the Bay Area.
10 BayLegal provides low-income clients with free civil legal assistance, including legal
11 advice and counsel, referrals, and representation. BayLegal serves low-income and
12 vulnerable homeowners by addressing legal issues related to deceptive energy-
13 efficiency product marketing, predatory financing mechanisms such as PACE loans,
14 and utility access disputes. BayLegal's work is directly relevant to the types of
15 products at issue in this action, and the interests of the consumers who purchased
16 them, and has a direct and substantial nexus with the interests of the class members in
17 this case.

18 Proposed Cy Pres Distribution Amount: **\$250,000.00**

19 21. **National Consumer Law Center.** The National Consumer Law Center
20 (NCLC) is a nationwide 501(c)(3) non-profit, non-partisan organization focused on
21 serving the needs of the nation's most vulnerable people and communities. Originating
22 as a provider of legal services for low-income communities during the 1960s "War on
23 Poverty," the NCLC has continued for over 55 years to pursue its mission of
24 improving access to the legal system for all people and enabling advocates to seek
25 justice wherever justice for low-income people is needed. NCLC is now at the center
26 of a national network of legal aid lawyers and private attorneys, and "courts in this
27 Circuit have consistently recognized the NCLC as an appropriate *cy pres* recipient in .
28 . . consumer class action cases." *Reyes v. Experian Info. Sols., Inc.*, No. 8:16-CV-

00563-SVW-AFM, 2025 WL 1571756, at *2–*3 (C.D. Cal. May 30, 2025) (collecting cases and noting that “[t]he NCLC fully satisfies the criteria set forth for *cy pres* distribution” set forth in *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102 (9th Cir. 2021 and in Cal. Civ. Proc. Code § 384). NCLC’s expertise in consumer protection and energy financing, including its work addressing predatory lending practices such as PACE loans and consumer challenges with energy-efficient products, directly aligns with the issues presented in this case involving solar panels. As such, NCLC’s mission and resources make it a fitting recipient to advance the interests of consumers and has a direct and substantial nexus with the interests of the class members in this case.

Proposed Cy Pres Distribution Amount: **\$250,000.00**

22. **Painted Bins.** Painted Bins is a 501(c)(3) nonprofit. Painted Bins creates environmental stewards by providing youth, with critical education and opportunities to share their knowledge through visual arts, speaking, engagements, and online content. In the first three years since its inception, the focus of the organization has been on waste diversion. During that time, over 1,000 students in 13 schools have participated in the program (predominately third through six graders).

23. Through their work with five municipalities, 25 Compost bins with 60+ children’s posters have been installed in parks and public places. The Art is changed annually, creating new environmental stewards, while further, inspiring the public to sort their waste. The 25 bins are estimated to keep 9 tons of food waste from the landfill each year. This is an important step in signing climate change as food waste in the landfill releases method gas, which is 28 times more, potent at trapping heat in the atmosphere and carbon dioxide. Food waste the largest single material in the landfill.

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24. Painted Bins' work in fostering environmental stewardship and reducing climate impact aligns with the broader goals of promoting sustainable energy solutions and protecting public safety, key interests implicated by the solar panels at issue in this case. By educating future generations and supporting community awareness around climate and environmental health and waste reduction, Painted Bins complements the settlement's public interest objectives and has a direct and substantial nexus with the interests of the class members' use of solar energy and the overarching goal of energy reduction through the use of more sustainable materials.

Proposed Cy Pres Distribution amount: **\$50,000.00**

25. **San Ramon Educational Foundation.** The San Ramon Valley Educational Foundation is a 501(c)(3) nonprofit. San Ramon Valley Educational Foundation invests in education, supports parent organizations, and engages the community for the benefit of the San Ramon Valley Unified School District. The school district faces significant funding shortfalls and the acquisition budget for the libraries has been significantly reduced. The Cy Pres funds would be dispersed to the foundation to purchase books for the school libraries with a special emphasis on science, technology, engineering, art, and math. Books involving science, technology, engineering, art and math are an important source for young people to understand climate and energy related issues that consumers face. In this fashion, the acquisition and distribution of books on these topics provide the nexus to class members. The class members in this case installed their solar arrays between 2000 and 2007, long before most consumers were aware of solar systems. The class members were uniquely interested in conserving energy and limiting the use of renewable energy sources. In this regard, books that educate children in science and technology are highly relevant and connected to the interests of the class members in this case.

Proposed Cy Pres distribution amount: **\$50,000.00**

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26. In addition, the Parties would consider any cy pres candidates that the Court would like the Parties to consider.

D. Final Cy Pres Awards.

27. At the conclusion of the remaining warranty period, the Parties will suggest to the Court the proposed Cy Pres recipients of any remaining settlement funds.

I declare under penalty of perjury, under the laws of the United States of California, that the foregoing is true and correct.

This declaration was executed this 14th day of August, 2025, at Danville,
California.

/s/ *David M. Birka-White*

DAVID M. BIRKA-WHITE