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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
JOINT 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Plaintiff filed this action on January 9, 2014, against defendants on behalf of nationwide consumers and subsequent owners of certain BP Solar photovoltaic solar panels (“Class Panels”). (Dkt. 1-2) The parties entered into a settlement agreement on or about September 1, 2016. (Dkt. 179-1). The Court entered an Order and Judgment Granting Final Approval of Class Action Settlement and dismissing the case with prejudice on December 22, 2016. (Dkt. 200).

In 2016, JND Legal Administration was appointed by the Court to serve as administrator of the common fund and claims made settlement funds. On December 22, 2016 Court entered an Order Granting Plaintiffs’ Motion for Attorney Fees and Costs and Class Representative Services Awards. (Dkt. 201). On July 23, 2020, the Court entered an Order for Final Approval of Addendum to Class Action Settlement Agreement. The Order added solar panel model number BP 365TS to the Class Panels. The Order also included an attorney fee award of an additional \$235,000 to the Birka-White Law Offices for work related to the Addendum to the Settlement Agreement.

II. STATUS OF THE COMMON FUND SETTLEMENT

For the last eight and one half years, the parties and JND Legal Administration have dutifully complied with all Orders of this Court in enforcing the Settlement agreement. The class members have received substantial benefits under the terms of the settlement.

Given the low volume of claims and the high cost of independent claims administration, the Parties propose that the services of JND Legal Administration, be largely concluded as soon as is reasonably possible.¹ \$7,102,946.96 remains in the

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

1 Common Fund Trust Account. (Declaration of David M. Birka-White (“DBW
2 Decl.”), ¶ 6-7)

3 There are currently only five (5) inspections that are assigned out to inspectors,
4 three in Northern California and two in Southern California. There are a total of 15
5 remediations that are showing as pending: 8 in California, 2 each in New York, New
6 Jersey and Colorado, and 1 in Arizona. Of those, 11 are Option 1 (remove/replace)
7 and 4 are Option 2 (removal only). Two of these claims are near completion. (DBW
8 Decl., ¶ 8). The Parties have met and conferred with JND and JND is in agreement
9 that the small number of claims no longer justifies its services. (DBW Decl., ¶ 6).

10 Going forward, the Parties propose that BP take on the role of administrating
11 the remaining claims at no cost to the common fund. In the future, JND would
12 forward all claims to the BP warranty department. (DBW Decl. ¶ 9).

13 **A. Settlement Administration Going Forward.**

14 BP is currently handling warranty claims for non-Class Panels and can absorb
15 the administration of the Class Panels with its existing resources. The settlement
16 website and telephone lines would remain in place and JND would refer all future
17 claimants to BP. BP in turn would take the information necessary from claimants to
18 verify that they have class panels that are eligible under the Settlement Agreement.
19 After that determination is made, BP would provide an agreement to the claimants
20 and submit that agreement to Class Counsel for approval of payment. Once BP
21 receives payment from Class Counsel, BP would arrange for removal and disposal of
22 Class Panels and make payments to claimants consistent with the Settlement
23 Agreement. (DBW Decl. ¶¶ 10-13).

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

(Dkt. 179-1 at page 9). Limiting the relief to cash payouts is essential to transitioning the settlement administration to BP as the replacement option is very time consuming and inefficient. (DBW Decl. ¶¶ 14-15).

B. Common Fund Reserve.

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

C. Proposed Cy Pres Distribution.

The Parties propose that the balance of the common fund \$7,102,946.96) less \$3,000,000 and any supplemental attorneys' fees awarded by the Court to Class Counsel (discussed further in concurrently filed Motion for Supplemental Attorneys' Fees) be distributed now through Cy Pres.

“[F]ederal courts have widely recognized the *cy pres* doctrine as a tool for ‘distribut[ing] unclaimed or non-distributable portions of a class action settlement fund to the “next best” class of beneficiaries.’” *In re Google Inc. St. View Elec. Commc’ns Litig.*, 21 F.4th 1102, 1111 (9th Cir. 2021) (quoting *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011)). When determining whether a particular *cy pres* remedy is appropriate, courts examine whether the *cy pres* disbursements “account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the interests of the silent class members, including their geographic diversity.” *Nachshin*, 663 F.3d at 1036 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307–08 (9th Cir.1990)). But the “touchstone of the inquiry” is “whether an award bears a ‘substantial nexus to the interests of the class members.’” *In re Easysaver Rewards Litig.*, 906 F.3d 747, 761–62 (9th Cir. 2018) (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 821 (9th Cir. 2012)). And “[i]t is well

1 established in this circuit that district courts may approve settlements with *cy pres*
 2 provisions that affect only a portion of the total settlement fund.” *In re Google Inc.*,
 3 21 F.4th at 111 (citing *Molski v. Fleisch*, 318 F.3d 937, 954 (9th Cir. 2003)).

4 The Parties have met and conferred and suggest the following entities for Cy
 5 Pres distribution. (DBW Decl. ¶ 17).

6 1. **Solar and Storage Industries Institute (“SI2”)**. SI2 is a
 7 501(c)(3) nonprofit. SI2 is the research and education arm of the Solar Energy
 8 Industries Association (SEIA). SI2 is accelerating the transition to carbon-free
 9 electricity through clean-energy research and analysis. The Institute aims to use
 10 policy research, public education, initiatives, and direct outreach to policy makers to
 11 explain the benefits of clean energy and develop pathways to widespread solar and
 12 storage use. It works with federal, state, and local officials to develop policies that
 13 support the widespread adoption of solar and storage projects, and helps developers
 14 and communities deploy solar and storage systems that benefit people across the
 15 entire country. It has performed research and published papers on, and is working to
 16 streamline, the interconnection process, which is the process by which all solar
 17 systems (residential, commercial, and utility) connect to the electrical grid. SI2 is
 18 also engaged in cutting-edge research centered on addressing siting and permitting
 19 challenges in solar project development. In short, SI2’s work is directly relevant to
 20 the types of products at issue in this action and the interests of the consumers who
 21 purchased them.

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

24 Proposed Cy Pres Distribution Amount: **\$1,250,000.00** (DBW Decl. ¶ 18).

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1 2. **Public Counsel.**

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

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

24 Proposed Cy Pres Distribution Amount: **\$1,250,000.00** (DBW Decl. ¶ 19).

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1 3. **Bay Area Legal Aid.**

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

13 Proposed Cy Pres Distribution Amount: **\$250,000.00** (DBW Decl. ¶ 20).

14 4. **National Consumer Law Center.**

15 The National Consumer Law Center (NCLC) is a nationwide 501(c)(3)
16 non-profit, non-partisan organization focused on serving the needs of the nation’s
17 most vulnerable people and communities. Originating as a provider of legal services
18 for low-income communities during the 1960s “War on Poverty,” the NCLC has
19 continued for over 55 years to pursue its mission of improving access to the legal
20 system for all people and enabling advocates to seek justice wherever justice for low-
21 income people is needed. NCLC is now at the center of a national network of legal aid
22 lawyers and private attorneys, and “courts in this Circuit have consistently recognized
23 the NCLC as an appropriate *cy pres* recipient in . . . consumer class action cases.”
24 *Reyes v. Experian Info. Sols., Inc.*, No. 8:16-CV-00563-SVW-AFM, 2025 WL
25 1571756, at *2–*3 (C.D. Cal. May 30, 2025) (collecting cases and noting that “[t]he
26 NCLC fully satisfies the criteria set forth for *cy pres* distribution” set forth in *In re*
27 *Google Inc. St. View Elec. Commc’ns Litig.*, 21 F.4th 1102 (9th Cir. 2021) and in Cal.
28 Civ. Proc. Code § 384). NCLC’s expertise in consumer protection and energy

1 financing, including its work addressing predatory lending practices such as PACE
 2 loans and consumer challenges with energy-efficient products, directly aligns with the
 3 issues presented in this case involving solar panels. As such, NCLC's mission and
 4 resources make it a fitting recipient to advance the interests of consumers and has a
 5 direct and substantial nexus with the interests of the class members in this case.

6 Proposed Cy Pres Distribution Amount: **\$250,000.00** (DBW Decl. ¶ 21).

7 **5. Painted Bins.**

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

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

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

3 Proposed Cy Pres Distribution amount: **\$50,000.00** (DBW Decl. ¶¶ 22-24).

4 **6. San Ramon Educational Foundation.**

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

20 Proposed Cy Pres distribution amount: **\$50,000.00** (DBW Decl. ¶ 25).

21 In addition, the Parties would consider any cy pres candidates that the
 22 Court would like the Parties to consider. (DBW Decl. ¶ 26).

23 **D. Final Cy Pres Awards.**

24 At the conclusion of the remaining warranty period, the Parties will suggest to
 25 the Court the proposed Cy Pres recipients of any remaining settlement funds. (DBW
 26 Decl. ¶ 27).

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1 **III. CONCLUSION**

2 For the reasons stated, the Parties request (1) an order allowing BP to take on the
 3 role of administrating the remaining claims at no cost to the common fund; (2) an order
 4 modifying the relief available under the Settlement Agreement to be limited to cash
 5 buy outs only; and (3) an order that of the remaining \$7,102,946.96 in the common
 6 fund, that the parties be permitted to cy pres approximately \$3 million as soon as
 7 practicable.

8 DATED: August 14, 2025

Respectfully submitted,

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