

1 BIRKA-WHITE LAW OFFICES
David M. Birka-White (SBN 85721)
2 dbw@birka-white.com
3 178 E. Prospect Avenue
Danville, CA 94526
4 Telephone: 925.362.9999
Facsimile: 925.362.9970
5

6 Attorneys for Plaintiffs MICHAEL ALLAGAS,
ARTHUR RAY, BRETT MORHMAN, and the
7 SETTLEMENT CLASS

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

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

15 Plaintiffs,

16 vs.

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

19 Defendants.
20

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

**[PROPOSED] ORDER GRANTING
MOTION FOR ATTORNEYS' FEES AND
COSTS AND INCENTIVE AWARDS**

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

Action Filed: January 9, 2014

21 Plaintiffs' Motion for Attorneys' Fees and Costs and Incentive Awards ("Fee Motion")
22 came before the Court for hearing on June 19, 2020. The Court has read and considered the Fee
23 Motion, the supporting Declaration of David M. Birka-White and all related materials. For the
24 reasons stated herein, the motion is granted.

25 **A. The requested fee is reasonable and supported under the lodestar method.**

26 "While attorneys' fees and costs may be awarded in a certified class action where so
27 authorized by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent
28 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have

1 already agreed to an amount.” *Jordan v. Paul Fin., LLC*, No. C 07-04496 SI, 2013 WL 6086037,
2 at *2 (N.D. Cal. Nov. 19, 2013) (quoting *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d
3 935, 941 (9th Cir. 2011)).

4 The Ninth Circuit has approved two different methods to calculate reasonable attorneys’
5 fees: the percentage-of-recovery or the lodestar method. The fee request in this case is suitable for
6 consideration using the lodestar method. Under the lodestar method, the “figure is calculated by
7 multiplying the number of hours the prevailing party reasonably expended on the litigation (as
8 supported by adequate documentation) by a reasonable hourly rate for the region and for the
9 experience of the lawyer.” *Id.*

10 Class Counsel David M. Birka-White, of Birka-White Law Offices, is highly experienced in
11 prosecuting and settling complex class actions, and specifically product defect cases. Birka-White
12 Decl., ¶ 3. Their representation was contingent in nature, meaning they took on risk of nonpayment
13 over the course of several years. The benefits to the class were meaningful and required the work of
14 experienced and dedicated counsel very familiar with the underlying settlement and the
15 appropriateness of expanding the class definition to include owners of the BP365TS solar panel
16 models.

17 The Court has conducted a lodestar analysis of the requested fees. Class Counsel have spent
18 approximately 252.40 hours investigating, analyzing, researching, and negotiating a resolution of
19 this action. Birka-White Decl., ¶ 27. Class Counsel’s hourly rates, used to calculate the lodestar
20 here, are in line with prevailing rates in this District, and have recently been approved by this Court
21 and other courts. Birka-White Decl., ¶ 26; *see Michael Allagas, et.al. v. BP Solar International,*
22 *Inc.*, 3:14-cv-00560, Doc 201 filed December 22, 2019 (approving Birka-White Law Offices rates;
23 *see also, United Desert Charities, Inc., et al. v. Sloan Valve Company, et al.*, 2:12-cv-06878 SJO
24 (SHx) (C.D. Cal. August 25, 2014) (approving Birka-White Law Offices rates).

25 ///

26 ///

27 ///

28

1 **B. The fees are reasonable and are to be paid by Defendants.**

2 The resulting total lodestar is \$189,170.00. The requested fee of \$226,839.54 constitutes a
3 multiplier of 1.24, which is well within the limits established by precedent. *See In re LinkedIn User*
4 *Privacy Litigation*, 309 F.R.D. 573, 591 (N.D. Cal. 2015) (“most multipliers range between 1.0 and
5 4.0” (citing *Vizcaino*)); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015
6 WL 5158730, at *10-11 (N.D. Cal. Sept. 2, 2015) (awarding a \$40.043 million fee with a 2.2 (net
7 2.5) multiplier, and praising the work of class counsel); *Moore v. Verizon Commc’ns Inc.*, No. C 09-
8 1823 SBA, 2014 WL 588035, at *9 (N.D. Cal. Feb. 14, 2014) (awarding a \$7.5 million fee with a
9 1.58 multiplier, and noting that class counsel, deserved a multiplier of at least 1.5 “given the results
10 achieved, Class Counsel’s efforts on behalf of the class, and the substantial risk that Plaintiffs would
11 not succeed at the class certification or merits stage of the litigation”). Under a lodestar analysis,
12 this multiplier is warranted here for all the reasons described above: the quality of the result, and the
13 sustained effort by Class Counsel, including the real risk of nonpayment in this contingency matter.
14 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (lodestar figure may be adjusted
15 upward to account for several factors including the quality of the representation, the benefit
16 obtained for the class, the complexity and novelty of the issues presented, and the risk of
17 nonpayment). The requested fee is reasonable and the lodestar multiplier of 1.24 is warranted and
18 well within the appropriate range in this Circuit.

19 **C. The requested costs and expenses reimbursement are reasonable.**

20 Class Counsel are entitled to recover the out-of-pocket costs reasonably incurred in
21 investigating, prosecuting, and settling this action. *Deatrick v. Securitas Security Services USA,*
22 *Inc.*, No. 13-CV-05016-JST, 2016 WL 5394016, at *7 (N.D. Cal., Sept. 27, 2016). During the
23 course of their representation, Birka-White Law Offices has incurred reasonable costs and expenses
24 of approximately \$8,160.46 in connection with investigating claims, retention of experts,
25 performing legal research, photocopies, faxes, mail, and telephone calls. Birka-White Decl., ¶ 27.
26 Based on a review of Class Counsel’s summary expense reports, the Declaration of David M. Birka-
27 White, and the Court’s familiarity with the underlying settlement and work performed to achieve
28

1 the addendum to the settlement, the Court is satisfied that the requested costs and expenses
2 reimbursement of \$8,160.46 is reasonable.

3 **D. The requested class representative service awards are reasonable and**
4 **appropriate.**

5 “[N]amed plaintiffs, as opposed to designated Class members who are not named plaintiffs,
6 are eligible for reasonable incentive payments.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.
7 2003); *Rodriguez v. West Pub’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (noting that such service
8 awards “are fairly typical in class action cases.”). They are “intended to compensate class
9 representatives for work done on behalf of the class [and] make up for financial or reputational risk
10 undertaken in bringing the action.” *Id.*

11 Here, the Class representatives from the underlying case remained involved and willing to
12 assist Class Counsel’s efforts to amend the settlement and expand the class to include the BP365TS
13 solar panel model to the class definition. Birka-White Decl., ¶¶ 33-34. Plaintiffs Allagas, Ray and
14 Mohrman are to be commended for their work and dedication to serve as class representatives for
15 this settlement. Their efforts to assist counsel several years after the underlying settlement was
16 concluded have conferred a substantial benefit to the other Class Members. Birka-White Decl., ¶ 34.

17 Accordingly, service awards of \$750.00 each for Plaintiffs Michael Allagas, Arthur Ray,
18 and Brett Mohrman are reasonable and in line with precedent.

19 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

20 1. A full and fair opportunity was accorded to all such persons and entities to be heard
21 with respect to the Fee Motion and that adequate notice was directed to Class Members.

22 2. The Court hereby grants Class Counsel’s request for attorneys’ fees of \$226,839.54
23 and reimbursement of out-of-pocket costs of \$8,160.46, for a combined total of \$235,000.00 to be
24 paid by Defendants.

25 3. The Court approves payment of a \$750.00 service award each to Plaintiffs Michael
26 Allagas, Arthur Ray, and Brett Mohrman to be paid by Defendants.

27 ///

