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Attorneys for Individual and Representative  
Plaintiffs STEVE R. ROJAS and ANDREA N.  
ROJAS, on behalf of themselves and all others  
similarly situated

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**(SAN JOSE DIVISION)**

STEVE R. ROJAS and ANDREA N.  
ROJAS, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

BOSCH SOLAR ENERGY  
CORPORATION; and DOES 1-20,  
inclusive,

Defendants.

Case No. 5:18-cv-5841BLF

**[PROPOSED] ORDER PRELIMINARILY  
CERTIFYING SETTLEMENT CLASS,  
GRANTING PRELIMINARY APPROVAL  
OF SETTLEMENT, AND APPROVING  
CLASS NOTICE**

DATE: September 21, 2022  
TIME: 9:00 a.m.  
LOCATION: Courtroom 3, 5<sup>th</sup> Floor  
280 S. First Street  
San Jose, CA 95113

The Honorable Judge Beth Labson Freeman

Action Filed: September 24, 2018

1 THIS MATTER having been opened to the Court by way of Plaintiffs' Unopposed Motion  
2 for Preliminary Approval of Class Action Settlement in the above-captioned action (the "Motion");

3 WHEREAS, the Court having reviewed and considered the Motion and supporting  
4 materials filed by Settlement Class Counsel, and having also reviewed the Court file in this action;

5 WHEREAS, the Court having found that it has jurisdiction over this action, Plaintiffs, the  
6 proposed Settlement Class, and Defendant Bosch Solar Energy Corporation ("Bosch Solar") for  
7 purposes of settlement;

8 WHEREAS, the Court having fully considered the record and the requirements of law; and  
9 good cause appearing;

10 IT IS THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022, ORDERED that the proposed Settlement  
11 (including all terms of the parties' Settlement Agreement and exhibits thereto) is hereby  
12 PRELIMINARILY APPROVED.

13 THE COURT FURTHER FINDS AND ORDERS AS FOLLOWS:

14 **Preliminary Approval of Settlement**

15 1. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d), and  
16 venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1).

17 2. The Court has personal jurisdiction over Plaintiffs, the Settlement Class Members,  
18 and Bosch Solar.

19 3. The Settlement was the result of hard-fought arm's length negotiations by counsel  
20 experienced with similar consumer class action litigation and well versed with the risks associated  
21 with such cases.

22 4. The proceedings and extensive negotiations that occurred before the parties reached  
23 the Settlement Agreement gave counsel for all parties the opportunity to adequately assess this  
24 case's strengths and weaknesses, and thus to structure the Settlement in a way that adequately  
25 accounts for those strengths and weaknesses.

26 5. The Settlement appears to be the product of serious, informed, non-collusive  
27 negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to  
28 Class Representatives or segments of the Settlement Class.

6. Especially in consideration of the risks associated with attempting to continue with class litigation through trial, the relief offered by the Settlement appears to be adequate, reasonable, and fair, and the Settlement falls well within the range of possible approval.

7. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement, including the Settlement Agreement and all of its exhibits.

### **Settlement Class Certification and Appointment of Class Counsel**

8. The Court finds, for settlement purposes only, and without prejudice to Bosch Solar's right to oppose class certification should the Court not grant final approval of the Settlement, that all requirements of Fed. R. Civ. P. 23(a) and at least one of the subsections of Rule 23(b) have been satisfied. The Court certifies the following Settlement Class:

All persons or entities in the United States who are the current owners of Bosch c-Si M 60 NA30119 solar modules or the current owners of premises on which Bosch c-Si M 60 NA30119 solar modules are installed.

Excluded from the Settlement Class are:

- a. All persons or entities who have entered into agreements with Bosch Solar regarding warranty or Recall claims with respect to NA30119 Modules;
- b. All persons or entities who have claims relating to the NA30119 Module installations located at the addresses listed on Exhibit A attached to the Settlement Agreement, which are the subject of ongoing negotiations between Bosch Solar and owners represented by counsel;
- c. All persons or entities in the United States who are the current owners of an array with one hundred (100) or more ground-mounted Bosch c-Si M 60 NA30119 solar modules;
- d. All persons and entities who timely exercise their rights under Fed. R. Civ. P. 23 to opt out of the Settlement;
- e. Defendant, any entity in which Defendant has a controlling interest, and

Defendant's legal representatives, heirs and successors;

f. Settlement Class Counsel and any member of Settlement Class Counsel's immediate family; and

g. Any judge, including federal District and Magistrate Judges, to whom any aspect of this case is or has been assigned, and any member of such a judge's immediate family.

9. The Court conditionally certifies the proposed Settlement Class and appoints Plaintiffs as its Class Representatives for the reasons that follow.

10. The Court finds that the requirements of Rule 23 are satisfied, for settlement purposes only and without prejudice to Bosch Solar's right to oppose class certification should the Court not grant final approval of the Settlement, as follows:

a. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

b. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the following are questions of law and fact common to the Settlement Class:

i. whether all NA30119 modules have the solder defect;

ii. whether all NA30119 modules have the delamination defect;

iii. whether Bosch Solar is obligated to pay for or replace class members' NA30119 modules under its express warranty; and

iv. whether Bosch Solar was unjustly enriched by receiving the purchase price of the solar panels and retaining that benefit.

c. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of Plaintiffs are typical of the claims of the entire Settlement Class.

d. Pursuant to Fed. R. Civ. P. 23(a)(4), Plaintiffs will fairly and adequately protect and represent the interests of all members of the Settlement Class as Class Representatives, and the interests of Plaintiffs are not antagonistic to those of the Settlement Class. Plaintiffs, as Class Representatives, are represented by counsel who is experienced and competent in the prosecution of complex class action

litigation.

e. The Court finds that in this settlement context, where there is no need to consider the manageability issues that would be posed by a trial, the requirements of Rule 23(b)(3) are satisfied, without prejudice to Bosch Solar's right to oppose class certification should the Court not grant final approval of the Settlement, as follows:

i. Questions of law and fact common to the members of the Settlement Class, as described above, predominate over questions that may affect only individual members; and

ii. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

f. The Court finds that in this settlement context, the proposed Settlement Class is ascertainable, in that it is defined with reference to objective criteria and there exists a reliable and administratively feasible mechanism for determining whether putative Settlement Class Members fall within the Settlement Class definition, without prejudice to Bosch Solar's right to oppose class certification should the Court not grant final approval of the Settlement.

11. The Court appoints the Birka-White Law Offices, 178 E. Prospect Ave, Danville, CA 94526, Farella Braun + Martel LLP, 235 Montgomery Street, 17th Floor, San Francisco, California 94104, and Levin Sedran & Berman, LLP, 510 Walnut Street, Suite 500, Philadelphia, PA 19106 (collectively "Settlement Class Counsel") as Class Counsel for the Settlement Class. The Court preliminary finds that Settlement Class Counsel will fairly and adequately represent the interests of the Settlement Class.

### **Approval of Class Notice**

12. The Court finds that the contents of the proposed Notice Program and the methods for giving notice of the Settlement to members of the Settlement Class, as reflected in the Settlement Agreement and the motion for preliminary approval, constitute the best notice practicable under the circumstances and satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process. The Court approves (a) the contents of the proposed Notice Program, (b) the

1 proposed Mailed Long-Form Notice, Published Summary Notice, and Claim Form (attached to the  
 2 Settlement Agreement as Exhibits C through E), and (c) the proposed Toll-Free Telephone Number  
 3 and Settlement Website, as described in the Settlement Agreement; and approves the payment of  
 4 notice costs as provided in the Settlement Agreement.

5 13. The Court appoints Richard Simmins of Analytics LLC as the third-party Notice  
 6 Provider, to administer the proposed Notice Program as set forth in the Settlement Agreement.

7 14. Notice of the Settlement and Final Approval Hearing shall be given as follows:

8 a. No later than forty-five (45) days after the entry of this Order, the Notice  
 9 Administrator shall commence publication of Notice by:

10 i. Causing copies of the Published Summary Notice, substantially in the form  
 11 attached as Exhibit D to the Settlement Agreement, to be published in solar  
 12 industry print media, as detailed in the Notice Program set forth in the  
 13 Settlement Agreement and joint motion for preliminary approval;

14 ii. Causing copies of the Mailed Notice, substantially in the form attached as  
 15 Exhibit C to the Settlement Agreement, to be mailed first-class postage  
 16 prepaid to any member of the Settlement Class that can be identified by the  
 17 Parties through reasonable efforts, recognizing that Bosch does not maintain  
 18 records of purchasers of the Settlement Panels (given that the panels were  
 19 purchased through third parties);

20 iii. Prepare and disseminate the required notice to State and Federal officials  
 21 under the Class Action Fairness Act of 2005;

22 iv. Establishing the Settlement Website, as detailed in the Notice Program set  
 23 forth in the Settlement Agreement; and

24 v. Establishing the Toll-Free Number, as detailed in the Notice Program set  
 25 forth in the Settlement Agreement.

26 b. On or before the Final Approval Hearing, the Notice Administrator and shall file  
 27 with the Court a declaration of compliance with this Order as to the Notice Program.

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**Final Approval Hearing**

15. The Court directs that, pursuant to Fed. R. Civ. P. 23(e)(2), a hearing will be held on \_\_\_\_\_, to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”), including but not limited to the following issues:

- a. whether the Settlement Class should be certified, for settlement purposes only;
- b. the fairness, reasonableness, and adequacy of the Settlement; and
- c. approval of the award of attorneys’ fees to Class Counsel as set forth in the Settlement Agreement.

For avoidance of doubt, the above date for the Final Approval Hearing is 90 days or more after service of notice upon federal and state officials pursuant to 28 U.S.C. § 1715.

16. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set forth above, including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Court’s website and the Settlement Website.

17. All briefs, memoranda, and papers in support of final approval of the Settlement shall be filed no later than fourteen (14) days before the Final Approval Hearing.

18. Any putative Settlement Class Member shall have the right to appear at the Final Approval Hearing by filing a Notice of Intention to Appear with the Court no later than \_\_\_\_\_, with a copy thereof to be served upon the following counsel by the same date:

**Class Counsel:**

David M. Birka-White  
Birka-White Law Offices  
178 E. Prospect Avenue  
Danville, CA 94526

**Defense Counsel:**

Joseph C. Wylie  
K&L Gates LLP  
70 West Madison Street, Suite 3300  
Chicago, Illinois 60602

**Procedures for Objecting to or Opting Out of Settlement**

19. A putative member of the Settlement Class who wishes to object to the proposed Settlement shall adhere to the following requirements:

- a. To object, a putative member of the Settlement Class must file a written objection with the Court, postmarked or filed no later than \_\_\_\_\_, and must serve a copy thereof upon counsel for the Parties at the addresses listed above by the same date. Objections sent by any putative Settlement Class Member to incorrect addresses or after the expiration of the above deadline shall be treated as invalid.
- b. Any objection to the Settlement must bear the signature of the putative Settlement Class Member and must:
  - i. state the putative Settlement Class Member's current address and telephone number;
  - ii. state the address of the property on which the settlement panels are installed;
  - iii. state the total number of Qualifying Panels owned by the putative Settlement Class Member and their original date of purchase;
  - iv. describe the exact nature of the putative Settlement Class Member's objection;
  - v. state whether the putative Settlement Class Member intends to appear at the Final Approval Hearing; and
  - vi. state whether settlement class member is represented by counsel, and if so, the objection must also be signed by the counsel.

If the putative Settlement Class Member is represented by counsel, the objection shall also be signed by the attorney who represents the putative Settlement Class Member.

- c. Any putative Settlement Class Member who files and serves an objection in accordance with this Order containing a written statement of intent to appear at the Fairness Hearing, may appear at the Fairness Hearing, to the extent permitted by the



Court, either in person or through an attorney hired at the Settlement Class member's expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a putative Settlement Class Member for the purpose of making objections must also file a Notice of Appearance with the Court and must also serve copies by mail to the counsel listed above.

- d. Any putative Settlement Class Member who does not make their objection in the manner provided herein shall be deemed to have waived their right to object to any aspect of the proposed Settlement, including the award of attorneys' fees to Class Counsel as provided in the Settlement Agreement. Such Settlement Class Member shall forever be barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement and attorneys' fees, and otherwise from being heard concerning the Settlement and attorneys' fees in this or any other proceeding.

20. A putative member of the Settlement Class who wishes to be excluded from the Settlement Class (including all obligations and benefits of the Settlement) shall adhere to the following procedures:

- a. The putative Settlement Class Member must, no later than \_\_\_\_\_, send a written request for exclusion (an "Opt-Out Request") via first-class mail to Settlement Class Counsel at the address provided above. An Opt-Out Request sent by any putative Settlement Class Member to an incorrect address or after the expiration of the above deadline shall be treated as invalid.
- b. An Opt-Out Request must bear the signature of the putative Settlement Class Member and must state:
  - i. the putative Settlement Class Member's current address and telephone number;
  - ii. the address of the property on which the putative Settlement Class Member's Panels are installed;
  - iii. the total number of Qualifying Panels owned by the putative Settlement

1 Class Member; and

2 iv. that the putative Settlement Class Member wishes to be excluded from the  
3 Settlement in the above action.

4 c. Any putative Settlement Class Member who fails to submit a timely Opt-Out  
5 Request will not be permitted to object to or opt out of the Settlement and will be  
6 bound by the Settlement and all subsequent proceedings, orders, and judgments in  
7 this action.

8 d. Any putative Settlement Class Member who elects to opt out of the Settlement will  
9 not be entitled to the relief provided by the Settlement Agreement, including access  
10 to the Claims Protocol and Settlement Remedies described therein.

11 e. Any putative Settlement Class Member who submits an Opt-Out Request may  
12 withdraw their Opt-Out Request prior to the date on which the Court's Final Order  
13 and Judgment approving the Settlement has become final (meaning the time to file  
14 an appeal has expired without an appeal being filed; or, in the event an appeal is  
15 filed, the appeal is denied and the time to file a petition for a writ of certiorari has  
16 expired without the filing of a writ for certiorari; or, in the event a petition for writ  
17 of certiorari is filed, the petition is denied or a final order is entered fully disposing  
18 of the appeal on its merits). To withdraw an Opt-Out Request, a putative Settlement  
19 Class Member must:

20 i. send a written withdrawal notice via first-class mail to Settlement Class  
21 Counsel at the address provided above, signed by the putative Settlement  
22 Class member, in which the putative Settlement Class Member accepts in  
23 writing the benefits and terms of the Settlement, including all waivers and  
24 releases therein; and

25 ii. dismiss with prejudice any pending action against Bosch Solar arising from  
26 or pertaining in any way to the subject matter of the action.

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**Deadlines**

21. The following are the deadlines for events to occur between this Order and the Final Approval Hearing:

| EVENT                                                                                                                           | DATE                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| Publication of Published Summary Notice, Mailing of Mailed Notice, and Establishment of Settlement Website and Toll-Free Number | _____<br>(no later than 45 days after this Order)                                                                |
| Postmarking/filing of Objections and/or Opt-Out Requests                                                                        | _____<br>(no later than 45 days after the final scheduled appearance of Published Summary Notice in print media) |
| Filing of response(s) by Class Counsel to Objections                                                                            | _____<br>(no later than 14 days after opt-out/objection deadline)                                                |
| Filing of Motion for Final Approval by Class Counsel                                                                            | _____<br>(no later than 14 days before Final Approval Hearing)                                                   |
| Submission of affidavits of compliance with notice requirements by Notice Administrator                                         | _____<br>(on or before the Final Approval Hearing)                                                               |
| Final Approval Hearing                                                                                                          | _____<br>(no earlier than 100 days after the filing of the Motion for Preliminary Approval)                      |

**Other Terms and Conditions**

22. To the extent not otherwise defined herein, all defined terms in this Order have the meaning assigned in the Settlement Agreement.

23. All other proceedings in this action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regard to this action, or with respect to the proposed Settlement, shall be permitted other than as may be

1 directed by the Court upon a proper showing by the party seeking such discovery by motion  
2 properly noticed and served in accordance with this Court's Local Rules.

3 24. The Court shall retain continuing jurisdiction over this action, the Parties, the  
4 Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any  
5 disputes or controversies arising with respect to the Settlement shall be presented by motion to the  
6 Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to  
7 exercise their rights as described above.

8 IT IS SO ORDERED.  
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12 HON. BETH LABSON FREEMAN  
13 UNITED STATES DISTRICT JUDGE  
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