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Attorneys for Plaintiffs
WILLIAM AND CINDY KUFFNER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

WILLIAM AND CINDY KUFFNER, on behalf
of themselves and all others similarly situated,

Plaintiffs,

vs.

SUNTECH AMERICA, INC., WUXI
SUNTECH POWER CO., LTD.,
BURLINGAME INDUSTRIES d/b/a
EAGLE ROOFING PRODUCTS, ASI
LIQUIDATING, CO. f/k/a APPLIED
SOLAR, INC., f/k/a OPEN ENERGY
CORP., DAVID FIELD and DOES 1
through 20,

Defendants.

Case No. MSC13-01328

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, APPROVING
PROPOSED NOTICE, AND
SCHEDULING FAIRNESS HEARING**

Date: December 11, 2015
Time: 8:30 a.m.
Judge: Hon. Barry Goode
Dept.: 17

Complaint Filed: June 21, 2013

1 Upon review and consideration of Plaintiffs’ Unopposed Motion for Preliminary
2 Approval, the Class Action Settlement Agreement and Release (“Settlement” or “Agreement”),
3 and all declarations and exhibits submitted therewith, which have been filed with the Court, it is
4 hereby ORDERED and ADJUDGED as follows:

5 1. The parties have agreed to settle the following action: *William Kuffner, et al. v.*
6 *Suntech America, Inc., et al.*, Contra Costa County Superior Court, Case No. C13-01328; and the
7 related actions, *Cameron Park Senior Living, LLC, et al. v. Petersen-Dean, Inc., et al.*, El Dorado
8 County Superior Court, Case No. PC20130177; and *Brian Everett, et al. v. Pulte Group, Inc., et*
9 *al.*, Placer County Superior Court, Case No. SCV0033498 (hereinafter, the “Related Actions”)
10 upon the terms and conditions set forth in the Settlement. The definitions in the Settlement are
11 hereby incorporated as though fully set forth in this Order.

12 2. This Court has jurisdiction over all members of the Settlement Class.

13 3. The Settlement, any negotiations, proceedings, documents or anything else related
14 to the Settlement, its implementation, or its judicial approval shall not be construed as, or deemed
15 to be evidence of, any admission or concession by any of the parties or any other Person as to the
16 merits of the claims asserted.

17 4. By entering into the Settlement, it is understood that the Released Parties do not
18 admit and expressly deny that they have breached any duty, obligation, or agreement; deny that
19 they have engaged in any illegal, tortious, or wrongful activity; deny that they are liable to any
20 member of the Settlement Class or any other Person; and/or deny that any damages have been
21 sustained by any member of the Settlement Class or by any other Person in any way arising out of
22 or relating to the product at issue.

23 5. The Settlement, any negotiations, proceedings, or documents related to the
24 Settlement, its implementation, or its judicial approval (as well as the fact of the Settlement and
25 any acts or documents related to the Settlement or its implementation) shall not be construed as,
26 or deemed to be evidence of, any admission or concession by any of the parties or any other
27 Person regarding any matter, including, without limitation, the absence or presence of liability,
28 the absence or presence of damage, or the propriety or impropriety of class treatment.

1 6. Permissible Uses of Settlement Agreement/Fact of Settlement
2 a. The Settlement is for settlement purposes only.
3 b. The Settlement, any negotiations, proceedings, or documents related to the
4 Settlement, its implementation, or its judicial approval (as well as the fact of the Settlement and
5 any acts or documents related to the Settlement or its implementation) cannot be asserted or used
6 by any Person to support a contention that class certification is proper or improper or that liability
7 does or does not exist, or for any other reason, in the above-captioned action or any other
8 proceeding (other than a proceeding to enforce its terms).

9 7. In the event the Effective Date does not occur, or the Settlement terminates, or is
10 canceled, or does not become effective for any reason, this Preliminary Approval Order, except
11 for paragraphs 5 and 6 (including subparts), shall be rendered null and void and shall be vacated,
12 *nunc pro tunc*, and the parties shall be returned to their respective positions in the litigation.

13 8. For purposes of disseminating Class Notice to the Settlement Class, the
14 Settlement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and
15 adequate.

16 9. The Court finds, on a preliminary basis, that the Plaintiffs, by and through their
17 counsel, have investigated the pertinent facts and law and have evaluated the risks associated with
18 continued litigation, trial, and/or appeal.

19 10. The Court finds, on a preliminary basis, that the Settlement was reached in the
20 absence of collusion, is the product of informed, good-faith, arms-length negotiations between the
21 parties and their capable and experienced counsel, and was reached with the assistance of well-
22 qualified and experienced mediators, John Bates, Esq. of JAMS, Hon. Rex Heeseman (Ret.) of
23 JAMS and Robert Kaplan of Judicate West / Kaplan Mediation.

24 11. The Court further preliminarily finds that the proposed Settlement Class meets the
25 requirements of California Code of Civil Procedure § 382 and should be certified for settlement
26 purposes only; that the named Plaintiffs in the Kuffner Action should be appointed as Class
27 Representatives; that the attorneys identified below should be appointed as Class Counsel; and
28 that it is appropriate to effectuate notice to the Settlement Class and to schedule a Fairness

1 Hearing to assist the Court in determining whether to grant final approval to the Settlement and
2 enter the Final Order and Judgment.

3 12. The Settlement appears to confer substantial benefits upon the Settlement Class
4 and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial,
5 and/or appeal. Under the proposed Settlement, Defendants will pay \$9,088,480 into a common
6 fund benefiting owners of the Solar Tiles at issue in this case. Various Defendants will also
7 provide in-kind contributions, including labor and construction materials, as provided in the
8 Settlement. The combined value of these Settlement Benefits is estimated as \$10,622,183. The
9 Court finds that the Settlement falls within the range of reasonableness and, as such, merits
10 preliminary approval.

11 13. The Settlement Class, which is to be certified for settlement purposes only,
12 consists of:

13 “All Persons who purchased or installed Solar Tiles, or who
14 purchased a Property on which Solar Tiles were installed at the time
15 of purchase, or who otherwise have a financial interest in the Solar
16 Tiles or the energy generating capacity of the Solar Tiles. Excluded
17 from the Settlement Class are: Defendants in this Action and any
18 entity in which any of such Defendants have a controlling interest,
19 and their legal representatives, heirs and successors (except to the
20 extent of a valid assignment from an Eligible Class Claimant or one
21 who has become subrogated by law to such Eligible Class
22 Claimant’s claim as a result of previously replacing the Solar Tiles
23 for such Eligible Class Claimant), any judge of the Superior Court
24 of Contra Costa County or other judge to whom any aspect of this
25 Action is assigned, and any member of such judge’s immediate
26 family.”

27 14. The Court finds, for purposes of the settlement only and without prejudice to
28 Defendants’ right to contest class certification if the Settlement is not finally approved, that the
prerequisites for a class action under California Rules of Court, Rule 3.769 and California Code
of Civil Procedure § 382 have been preliminarily satisfied:

a. Members of the Settlement Class are so numerous that joinder of all
members appears impractical.

b. This litigation appears to involve common class-wide issues that would
drive the resolution of the claims absent a settlement.

1 c. The claims of the named Plaintiffs appear typical of the claims of the
2 Settlement Class.

3 d. The named Plaintiffs appear to be adequate Class Representatives and
4 possess the same interests in the outcome of this case as the other Settlement Class members. The
5 named Plaintiffs purchased and installed the Solar Tiles on their home. Accordingly, the Court
6 preliminarily appoints William and Cindy Kuffner as Class Representatives. Additionally, the
7 Court preliminarily appoints the following firms as Class Counsel for purposes of effectuating the
8 Settlement: Birka-White Law Offices and Farella Braun + Martel LLP. The Court preliminarily
9 finds that these law firms are qualified to serve as Class Counsel.

10 e. Common issues appear to predominate and the proposed Settlement
11 appears to be a superior way to resolve this controversy.

12 15. The Court approves, as to form and content, the Class Notice attached as Exhibit 3
13 to the Declaration of Shannon Wheatman for dissemination to the Settlement Class. The parties
14 shall make, therein, the minor, insubstantial changes discussed in chambers on December 11,
15 2015.

16 16. The Court finds that this Class Notice is reasonable and provides due, adequate
17 and sufficient notice to all Persons entitled to receive notice, and meets the requirements of due
18 process. The Court further finds that the Notice Program specified in the Settlement constitutes
19 the best notice practicable under the circumstances, provides direct notice to all Settlement Class
20 members who can be identified through reasonable effort, and is reasonably calculated under the
21 circumstances to apprise the Settlement Class members of the nature of the action, the claims it
22 asserts, the Settlement Class definition, the Settlement terms, the right to appear through an
23 attorney, the right to opt out of the Settlement Class or to comment on or object to the Settlement,
24 how to do so, and the binding effect of a final judgment upon Settlement Class members who do
25 not opt out.

26 17. The Claims Administrator shall disseminate Class Notice to the Settlement Class.
27 Known Settlement Class members shall receive direct notice via United States Mail as described
28 in the Settlement and the Notice Program. All costs associated with this Notice Program shall be

1 paid as provided for in the Settlement.

2 18. Final Approval Schedule

3 a. Under the Settlement, Class Counsel shall file their Motion for Final
4 Approval and Motion for Class Counsel's Attorneys' Fees and Cost Reimbursement and
5 Incentive Awards to Class Representatives by **January 29, 2016**.

6 b. Any Class member may request exclusion from the proposed Settlement;
7 any such request for exclusion must be postmarked by **February 15, 2016**, and received by the
8 Claims Administrator. Requests for exclusion may be rescinded as provided for in the
9 Settlement.

10 c. Any Class member may object to the Settlement and/or to Class Counsel's
11 request for attorneys' fees and costs; any such objection must be received by the Court and by
12 Counsel by **February 15, 2016**. The objection must be signed by the class member. An objection
13 signed by an attorney shall not be sufficient.

14 d. Plaintiffs' and Defendants' responses to Objections, if any, shall be filed
15 by **February 22, 2016**.

16 e. The Reply Brief, if any, in support of the Settlement shall be filed by
17 **February 22, 2016**.

18 19. The dates of performance contained herein may be extended by Order of the
19 Court, for good cause shown, without further direct mail notice to the Settlement Class.

20 20. The Fairness Hearing shall be held before this Court on **March 3, 2016**, to
21 (i) consider the fairness, reasonableness, and adequacy of the Settlement; (ii) consider entry of a
22 Final Order and Judgment approving the Settlement; (iii) consider any objections to the
23 Settlement filed by Settlement Class members; (iv) consider Class Counsel's application for an
24 award of attorneys' fees and reimbursement of costs and expenses; (v) consider the payment of an
25 Incentive Award to the Class Representatives; and (vi) consider such other matters as the Court
26 may deem necessary or proper under the circumstances in accordance with the California Code of
27 Civil Procedure and California Rules of Court. The Fairness Hearing may be postponed,
28 adjourned, or continued by Order of the Court without further direct mail notice to the Settlement

1 Class.

2 21. Pending the Fairness Hearing, other than proceedings necessary to carry out or to
3 enforce the terms and conditions of the Settlement, this matter and the Related Actions are hereby
4 stayed.

5 22. The Court hereby appoints Kinsella Media, LLC of Washington, D.C., to serve as
6 the Notice Provider as provided under the Settlement. All reasonable fees, costs, and expenses of
7 the Notice Provider shall be paid as provided in the Settlement. Notice shall be completed by
8 **December 18, 2015.**

9 23. The Court hereby appoints Class Litigation Administration and Support Services
10 (C.L.A.S.S.) of Lancaster, California, to serve as the Claims Administrator as provided under the
11 Settlement and Plan of Allocation. All reasonable fees, costs, and expenses of the Claims
12 Administrator shall be paid as provided in the Settlement.

13 24. The Court hereby appoints Michael J. Ney of Walnut Creek, California, to serve as
14 the Special Master as provided for under the Settlement and Plan of Allocation. All reasonable
15 fees, costs, and expenses of the Special Master shall be paid as provided in the Settlement.

16 25. Defendants shall have the option to terminate the Settlement and withdraw from
17 the Settlement if any of the grounds for termination specified in the Settlement are satisfied. Any
18 Person authorized and wishing to exercise such right shall follow the procedure specified in the
19 Settlement and file notice with the Court. Notwithstanding any other provision in this Order or
20 the Settlement to the contrary, if a notice of termination is provided, but then withdrawn by the
21 noticing party before the Settlement (or any part) is terminated pursuant to such notice, then the
22 act of providing such notice shall be deemed void *ab initio*.

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26. Class Counsel and Counsel for Defendants are hereby authorized to employ all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, non-material changes to the form or content of the Notice.

IT IS SO ORDERED.

Dated: December 11, 2015



Hon. Barry Goode
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email=cxlit@contracos
ta.courts.ca.gov, c=US
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HON. BARRY GOODE
JUDGE OF THE SUPERIOR COURT