

# ANDALAY SOLAR, INC.

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 11/14/13

Address	2071 RINGWOOD AVE. UNIT C SAN JOSE, CA 95131
Telephone	408-402-9400
CIK	0001347452
Symbol	WEST
SIC Code	3433 - Heating Equipment, Except Electric and Warm Air Furnaces
Industry	Constr. - Supplies & Fixtures
Sector	Capital Goods
Fiscal Year	12/31

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

*Andalay Solar*

ANDALAY SOLAR, INC.  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**90-0181035**  
(IRS Employer  
Identification No.)

**1475 S. Bascom Ave. Suite 101**  
**Campbell, CA 95008**  
(Address, of principal executive offices)

**Westinghouse Solar, Inc. 2006 Incentive Stock Plan**  
(Full title of the plan)

**Margaret R. Randazzo**  
**Chief Executive Officer**  
**Westinghouse Solar, Inc.**  
**1475 S. Bascom Ave. Suite 101**  
**Campbell, CA 95008**  
(Name and address of agent for service)

**(408) 402-9400**  
(Telephone number, including area code, of agent for service)

Copy to:

**Leslie Marlow, Esq.**  
**Gracin & Marlow, LLP**  
**The Chrysler Building**  
**405 Lexington Avenue, 26<sup>th</sup> Floor**  
**New York, New York 10174**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  
(do not check if smaller  
reporting company)

Smaller reporting company

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CALCULATION OF REGISTRATION FEE

Title of securities to be registered (1)	Amount to be Registered (2)	Proposed maximum offering price per share (3)	Proposed maximum aggregate offering price (1)	Amount of registration fee
Common Stock, par value \$0.001 per share	47,000,000	\$ 0.0276	\$ 1,297,200	\$ 167

(1) The securities to be registered include options and rights to acquire the common stock of Andalay Solar, Inc.

(2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

(3) Estimated pursuant to Rule 457(c) and 457(h) of the Securities Act solely for purposes of calculating the registration fee. The price for the shares under the plan is based upon the last sale price of the Common Stock on November 12, 2013, as reported by the OTCQB.

(4) Calculated under Section 6(b) of the Securities Act of 1933 as .0001288 of the aggregate offering price.

## **Explanatory Note**

The Registrant filed with the Securities and Exchange Commission (the "SEC") its Registration Statement on Form S-8, Registration No. 333-146613, on October 10, 2007 (the "2007 Registration Statement") pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of registering under the Securities Act of 1933 3,728,014 additional shares of Common Stock to be offered and sold under the 2006 Stock Incentive Plan (the "2006 Plan"). Pursuant to General Instruction E to Form S-8, the contents of the 2007 Registration Statement are incorporated into this Registration Statement by reference.

The Registrant filed with the SEC on Form S-8, Registration No. 333-147760, on November 30, 2007 (the "November 2007 Registration Statement") pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of registering under the Securities Act 911,687 additional shares of Common Stock to be offered and sold under the 2006 Plan. Pursuant to General Instruction E to Form S-8, the contents of the 2007 Registration Statement are incorporated into this Registration Statement by reference.

The Registrant filed with the SEC on Form S-8, Registration No. 333-183127, on August 7, 2012 (the "2012 Registration Statement") pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of registering under the Securities Act 1,840,475 additional shares of Common Stock to be offered and sold under the 2006 Plan. Pursuant to General Instruction E to Form S-8, the contents of the 2007 Registration Statement are incorporated into this Registration Statement by reference.

This Registration Statement on Form S-8 has been prepared and filed pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of registering under the Securities Act 47,000,000 additional shares of Common Stock to be offered and sold under the 2006 Plan. These shares represented 47,000,000 shares of Common Stock that were added to the 2006 Plan as of September 19, 2013 by vote of the Registrant's stockholders and, in accordance with the terms of the 2006 Plan, are to be assigned to and made available for grant under the 2006 Plan.

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## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### **Item 3. Incorporation of Documents By Reference .**

The Company has filed the documents listed below with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and these documents are incorporated into this registration statement by reference:

- Our Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Securities and Exchange Commission on March 28, 2013;
- Our Annual Report on Form 10-K/A for the year ended December 31, 2012, filed with the Securities and Exchange Commission on March 29, 2013;
- Our Annual Report on Form 10-K/A for the year ended December 31, 2012, filed with the Securities and Exchange Commission on April 26, 2013;
- The description of our common stock contained in our registration statement on Form 8-A filed with the Securities and Exchange Commission on September 21, 2007;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on January 18, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on January 30, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on February 15, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on February 15, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on March 4, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on June 3, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on July 19, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on August 29, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on September 5, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on September 23, 2013;
- Our Current Report on Form 8-K filed with the Securities and Exchange Commission on October 2, 2013;
- Our Quarterly Report on Form 10-Q for the Quarter ended March 31, 2013, filed with the Securities and Exchange Commission on May 14, 2013;
- Our Quarterly Report on Form 10-Q for the Quarter ended June 30, 2013, filed with the Securities and Exchange Commission on July 31, 2013; and
- Quarterly Report on Form 10-Q for the Quarter ended September 30, 2013, filed with the Securities and Exchange Commission on November 13, 2013.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the “DGCL”), provides, in general, that a corporation incorporated under the laws of the State of Delaware, as the Company is, may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than a derivative action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. In the case of a derivative action, a Delaware corporation may indemnify any such person against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification will be made in respect of any claim, issue or matter as to which such person will have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or any other court in which such action was brought determines such person is fairly and reasonably entitled to indemnity for such expenses.

The Company’s Certificate of Incorporation and By-laws provide that it will indemnify its directors, officers, employees and agents to the extent and in the manner permitted by the provisions of the DGCL, as amended from time to time, subject to any permissible expansion or limitation of such indemnification, as may be set forth in any stockholders’ or directors’ resolution or by contract. Any repeal or modification of these provisions approved by the Company’s stockholders will be prospective only and will not adversely affect any limitation on the liability of any of the Company’s directors or officers existing as of the time of such repeal or modification.

The Company is also permitted to apply for insurance on behalf of any director, officer, employee or other agent for liability arising out of his actions, whether or not the DGCL would permit indemnification.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibits filed with this Amendment:

- 4.1 Westinghouse Solar, Inc. 2006 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed August 14, 2006)
- 4.2 First Amendment to the Westinghouse Solar, Inc. 2006 Incentive Stock Plan (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed December 27, 2006)
- 4.3 Second Amendment to the Westinghouse Solar, Inc. 2006 Incentive Stock Plan (incorporated herein by reference to Exhibit 10.11 to the Company's Quarterly Report on Form 10-KSB filed March 19, 2008)
- 4.4 Third Amendment to the Westinghouse Solar, Inc. 2006 Incentive Stock Plan (incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K filed on March 16, 2009)
- 4.5 Fourth Amendment to the Westinghouse Solar, Inc. 2006 Incentive Stock Plan (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on November 13, 2013)
- 4.6 Fifth Modification to the Westinghouse Solar, Inc. 2006 Incentive Stock Plan (incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-Q filed on November 13, 2013)
- 5.1 Opinion of Gracin & Marlow, LLP\*
- 23.1 Consent of Burr Pilger Mayer, Inc.\*
- 23.2 Consent of Gracin & Marlow, LLP (contained in Exhibit 5.1 hereof)\*
- 24 Power of Attorney of directors and certain officers of the Company\*

\* Filed Herewith

**Item 9. Undertakings .**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in this registration statement;

*Provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13 (a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15 (d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(5) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to existing provisions or arrangements whereby the registrant may indemnify a trustee, officer or controlling person of the registrant against liabilities arising under the Securities Act, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a trustee, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such trustee, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Campbell and State of California, on the 14th day of November, 2013.

**ANDALAY SOLAR, INC.**

By: /s/ Margaret R. Randazzo  
Margaret R. Randazzo  
Director,  
Chief Executive Officer and  
Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
Margaret R. Randazzo *	Director, Chief Executive Officer and Chief Financial Officer (Principal Executive Officer, Principal Financial and Accounting Officer)	†
Edward L. Bernstein *	Director	†
Mark L. Kalow *	Director	†
Ron Kenedi *	Director	†
Ed Roffman *	Director	†
* By: /s/ Margaret R. Randazzo Margaret R. Randazzo	Individually and as Attorney-in-fact	
† November 14, 2013		

## EXHIBIT INDEX

### Exhibit No.

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- 24 Power of Attorney of directors and certain officers of the Company\*

\* Filed Herewith



GRACIN & MARLOW, LLP  
The Chrysler Building  
405 Lexington Avenue, 26<sup>th</sup> Floor  
New York, New York 10174

November 14, 2013

Andalay Solar, Inc.  
1475 S. Bascom Ave. Suite 101  
Campbell, CA 95008

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-8 (the "Registration Statement") filed on even date by Andalay Solar, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission with respect to the registration of up to an aggregate of 47,000,000 shares of the Company's common stock, par value \$.001 per share (the "Common Stock"), to be issued in connection with the Company's 2006 Stock Incentive Plan (the "Plan").

We have made such examination as we have deemed necessary for the purpose of this opinion. Based upon such examination, it is our opinion, that, when the Registration Statement has become effective under the Securities Act of 1933, as amended, and when the shares of Common Stock to be issued are sold and paid for in the manner described in the Plan, the Common Stock so issued will have been validly issued, fully paid and non-assessable.

Our opinion is limited to the Delaware General Corporation. This opinion is given as of the date hereof and we assume no obligation to advise you of changes that may hereafter be brought to my attention.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement.

Sincerely,

GRACIN & MARLOW, LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Andalay Solar, Inc. f/k/a Westinghouse Solar, Inc. (“Andalay Solar”) of our report dated March 28, 2013, relating to our audit of the consolidated financial statements of Andalay Solar, Inc. included in its Annual Report on Form 10-K, as amended for the year ended December 31, 2012.

/s/ Burr Pilger Mayer, Inc.

San Francisco, California

November 14, 2013

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS** , that each of the undersigned, being a director or officer, or both, of Andalay Solar, Inc., a Delaware corporation (the “Company”), does hereby constitute and appoint MARGARET R. RANDAZZO with full power to each of them to act alone, as the true and lawful attorney and agent of the undersigned, with full power of substitution and resubstitution to each of said attorneys to execute, file or deliver any and all instruments and to do all acts and things which said attorneys and agents deem advisable to enable the Company to comply with the Securities Act of 1933, as amended (the “Securities Act”), and any requirements or regulations of the Securities and Exchange Commission in respect thereof, in connection with the registration under said Securities Act of shares of common stock of the Company subject to the Westinghouse Solar, Inc. 2006 Stock Incentive Plan, including specifically, but without limitation of the general authority hereby granted, the power and authority to sign his name as a director or officer or both, of the Company, as indicated below his signature, to the registration statement, and any amendment, post-effective amendment, supplement or papers supplemental thereto, to be filed with respect to said shares of common stock; and each of the undersigned does hereby fully ratify and confirm all that said attorneys and agents, or any of them, or the substitute of any of them, shall do or cause to be done by virtue hereof. Validity of this Power of Attorney will not be affected by failure to acknowledge, witness or seal it.

This Power of Attorney may be executed in two or more counterparts, each of which shall be original and all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF** , each of the undersigned has subscribed these presents, this 14th day of November 2013.

/s/ Margaret R. Randazzo Director, Chief Executive Officer and Chief Financial Officer  
Margaret R. Randazzo

/s/ Edward L. Bernstein Director  
Edward L. Bernstein

/s/ Mark L. Kalow Director  
Mark L. Kalow

/s/ Ron Kenedi Director  
Ron Kenedi

/s/ Ed Roffman Director  
Ed Roffman