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Attorneys for Creditor  
CATHAY BANK

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

IN RE:

MARTIFER AURORA SOLAR, LLC, a  
Nevada limited liability company,

- Affects Martifer Aurora Solar, LLC
- Affects Martifer Solar USA, Inc.
- Affects All Debtors

Case No. BK-S-14-10355-abl  
and BK-S-14-10357-abl

Jointly Administered under  
Case No. BK-S-14-10355-abl

Chapter 11

**DATE: February 14, 2014**  
**TIME: 1:30 p.m.**

**REPLY TO DEBTORS' OBJECTION TO MOTION FOR RECONSIDERATION OF  
FORM OF CASH COLLATERAL ORDER<sup>1</sup>**

25 Secured creditor Cathay Bank (the "Bank"), by and through its attorneys of the law firms  
26 of Frandzel Robins Bloom & Csato, L.C. and Kolesar & Leatham, hereby replies to Debtors  
27

28 <sup>1</sup> Refers to the Interim Order Pursuant to 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors to Use Cash Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III) Scheduling Final Hearing. [Doc. No 107] (the "Interim Cash Collateral Order").

1 Martifer Aurora Solar, LLC's ("Martifer Aurora") and Martifer Solar USA, Inc.'s (Martifer  
2 Solar") (collectively Martifer Aurora and Martifer Solar are referred to herein as "Debtors")  
3 Objection to Motion for Reconsideration of Form of Cash Collateral Order [Dkt. 131] (the  
4 "Motion for Reconsideration").

5 The Debtors essentially argue in opposition to the Motion for Reconsideration that the  
6 Court should deny the Motion for Reconsideration because (1) the Debtors noted the Bank's and  
7 the U.S. Trustee's disapproval of the form of the Interim Cash Collateral Order on the uploaded  
8 the version of the Interim Cash Collateral Order; (2) the insertion of the Revised Budget into the  
9 Order as if it, and not the 13-week budget, was the budget the Court and the parties' relied upon  
10 at the hearing on the Cash Collateral Motions<sup>2</sup> is appropriate because the changes are of no  
11 consequence; (3) the Court must have granted the \$2 million carve-out and ordered the priming  
12 of the Bank's adequate protection liens because Debtors' counsel mentioned the carve-out at the  
13 hearing and Cathay Bank's counsel did not ask for clarification of the ruling on the carve-out  
14 during the hearing; and (4) all rights are reserved to challenge the findings of fact and  
15 conclusions of law. As set forth below, each of these arguments fail.

16 **1. Whether The Debtors' Noted The Bank's And U.S. Trustee's Disapproval Of**  
17 **The Order On The Uploaded Version Is Irrelevant To The Issue Of Whether**  
18 **The Interim Order Accurately Reflects The Court's Decision.**

19 The purpose of the Bank's Motion for Reconsideration was to seek the Court's  
20 reconsideration of the entry of the Interim Cash Collateral Order so that it could consider the  
21 Bank's and U.S. Trustee's timely filed objections to the Interim Cash Collateral Order. The  
22 purpose of highlighting the fact that the Court's entry of the Interim Cash Collateral Order  
23 preceded the Bank's and the U.S. Trustee's timely filed objections to the Interim Cash Collateral  
24 Order and that the version of the Interim Cash Collateral Order on the record does not reflect  
25 counsels' disapproval was to clarify that the Court could not have considered the timely filed

26 <sup>2</sup> The term "Cash Collateral Motions" refers to Debtor Martifer Aurora Solar, LLC's Motion for Interim and Final  
27 Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing  
28 Debtors To Use Cash Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III)  
Scheduling Final Hearing [Dkt. 25] and Debtor Martifer Solar USA, Inc.'s Motion for Interim and Final Order  
Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors To  
Use Cash Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III) Scheduling Final  
Hearing [Dkt. 24].

1 objections and may not have had any reason to know there was a dispute as to the Interim Cash  
 2 Collateral Order when it entered the order thereby supporting the appropriateness of the request  
 3 to reconsider.

4 Regardless of whether the Debtors' noted the disapproval, there is no dispute that that  
 5 Court could not have reviewed the timely objections and it is appropriate under such  
 6 circumstances to do so.

7 **2. The Insertion Of The Revised Budget Into The Order As If It, And Not The**  
 8 **13-Week Budget, Was The Budget The Court And The Parties' Relied Upon**  
 9 **At The Hearing On The Cash Collateral Motions Is Inappropriate.**

10 There appears to be no dispute that the version of the 8-week budget submitted as Exhibit  
 11 A to the Interim Cash Collateral Order was not the budget the Debtors' relied upon in the  
 12 Debtors' moving papers or during oral argument at the hearing on the Cash Collateral Motions.  
 13 Therefore, there should be no dispute that neither the Bank, nor the Court, was ever offered an  
 14 opportunity to review the 8-week budget prior to finding it as an attachment to the Interim Cash  
 15 Collateral Order.

16 The Debtors apparently believe that inserting the newly configured budget (the 8-week  
 17 budget) and suggesting in the language of the Interim Cash Collateral Order that it was the  
 18 budget everyone relied on in opposing and considering the Cash Collateral Motions is somehow  
 19 appropriate. It is not appropriate and its inclusion into the Order after-the fact denies the Bank  
 20 the due process it is entitled. Neither the Bank, nor any other interested party, including the  
 21 Court, were provided the opportunity to review and/or object to the propriety of the budget. As  
 22 such, it is inappropriate for the revised budget to appear for the first time in the Interim Cash  
 23 Collateral Order.

24 **3. The Court Did not Grant the Carve-Out Nor Did it Order that the Bank's**  
 25 **Adequate Protection Liens Were Subject to the Carve-Out.**

26 The Bank's objections to the carve-out are specifically set forth in its statement of  
 27 objections. As drafted, the Interim Cash Collateral Order grants a currently effective carve-out  
 28 for attorney's and other professional fees accrued to date. Notwithstanding the foregoing, there  
 is no question, as confirmed by the transcript of the hearing, that the Court did not explicitly

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1 grant the carve-out and did specifically order that there would be "no priming" resulting from the  
2 Court's Order. *See* transcript (p.m.) p. 8, line 1. Certainly the 13 week budget did not budget for  
3 the payment of professionals until week 13. Therefore, when the Court limited the Debtors' use  
4 of cash collateral on an interim basis through week 8 of the 13-week budget, the propriety of the  
5 carve-out was not ripe for decision. Given the Debtors' current requests for employment of  
6 professionals on a nunc pro tunc basis, it is imperative that the Court resolve whether its order  
7 includes a currently effective carve-out and that the carve-out does not prime the Bank's liens.

8 **4. The U.S. Trustee's Objection to the Interim Cash Collateral Order**  
9 **Adequately Address the Impropriety of the Inclusion of the Debtors'**  
10 **Proposed Findings of Fact.**

11 With respect to the U.S. Trustee's objections to the inclusion of the findings of fact as set  
12 forth in the Interim Cash Collateral Order, the Bank defers to the U.S. Trustee but notes that the  
13 U.S. Trustee and the Bank are in agreement as to the appropriate form of the order.

14 **5. CONCLUSION**

15 Based on the foregoing reasons, the Bank respectfully requests that the Court grant its  
16 Motion to Reconsider Form of Cash Collateral Order, consider the timely filed objections to the  
17 Interim Cash Collateral Order and enter the order approved by the Bank and the U.S. Trustee.

18 DATED this 12<sup>th</sup> day of February, 2014.

19 **KOLESAR & LEATHAM.**

20 By: /s/ Natalie M. Cox, Esq.

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