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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re

Case Nos. BK-S-14-10355-abl
and BK-S-14-10357-abl

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

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

Chapter 11

- 13
14 Affects Martifer Aurora Solar, LLC
15 Affects Martifer Solar USA, Inc.
16 Affects all Debtors

DEBTOR’S OMNIBUS REPLY TO LIMITED OBJECTION OF TIER ONE SOLAR LLC AND STATEMENT; LIMITED OPPOSITION OF MARTIFER SOLAR, INC. AND RESERVATION OF RIGHTS OF SUDDATH GLOBAL LOGISTICS, LLC TO MOTION FOR SALE OF PROPERTY UNDER SECTION 363(B) MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(A), 363, 365, 503 AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 6004, 6006, 9007, 9008 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING AND AUTHORIZING: (A) BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS ASSETS; (B) STALKING HORSE BID PROTECTIONS; (C) FORM AND MANNER OF NOTICE

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OF THE SALE HEARING; (D) SALE OF SUBSTANTIALLY ALL OF THE DEBTORS ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS PROVIDED IN THE SUCCESSFUL BIDDERS ASSET PURCHASE AGREEMENT; (E) PURCHASE AGREEMENT THERETO; (F) ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTORS EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (G) RELATED RELIEF

Hearing Date: June 27, 2014
Hearing Time: 1:30 p.m.

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Martifer Solar USA, Inc. ("Martifer Solar USA" or "Debtor"), debtor and debtor in possession in the above-captioned chapter 11 case (the "Chapter 11 Case"), respectfully submits this omnibus reply (the "Reply") to (a) the Official Committee of Unsecured Creditors (the "Committee") Response (the "Committee Response"); to Debtor's *Motion For Sale/Use/Lease of Property under Section 363(b) Motion for Entry of an Order Pursuant to Sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code and Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure Approving and Authorizing: (A) Bidding Procedures in Connection with the Sale of Substantially all of the Debtors Assets; (B) Stalking Horse Bid Protections; (c) Form and Manner of Notice of the Sale Hearing; (d) Sale of Substantially all of the Debtors Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, Except as Provided in the Successful Bidders Asset Purchase Agreement; (E) Purchase Agreement Thereto; (F) Assumption and Assignment of Certain of the Debtors Executory Contracts and Unexpired Leases Related Thereto; and (G) Related Relief* [Docket No. 853] (the "Sale Motion"); (b) the Limited Opposition [Dkt No. 969] (the "MSI Opposition") to the Sale Motion filed by Martifer Solar, Inc. ("MSI"); (c) the Limited Objection [Docket No. 970] (the "Tier One Objection") to the Sale Motion filed by Tier One Solar LLC ("Tier One"); and (d) the Statement and Reservation of Rights (the "Suddath Statement") of Suddath Global Logistics, LLC regarding the Sale Motion filed

1 by Suddath Global Logistics, LLC (“Suddath”). This Reply is made and based on the Sale Motion,
2 the Declaration of Dawn M. Cica (the “Cica Declaration”) filed in support of this Reply and any
3 other papers filed in support of the Sale Motion, the other papers and pleadings on file with the
4 Court in these Chapter 11 Cases.

5 In the Tier One Limited Objection, Tier One asserts that the Debtors have not identified the
6 LNTP Agreement as an executory contract to be potentially assumed and assigned to the Stalking
7 Horse Bidder, and argues that the LNTP Materials, the Earmarked Funds, and the Returned Jinko
8 Down Payment are not property that the Debtors have the right to sell or otherwise transfer without
9 the assumption and assignment of the LNTP Agreement or otherwise without Tier One’s consent.

10 In the Suddath Statement, Suddath expresses concern that though the Debtors’ suggest in
11 their Sale Motion that any creditor holding a lien in the Purchased Assets will be adequately
12 protected by the attachment of such lien to the proceeds of the Sale, the Debtors have adduced no
13 evidence in support of the Sale Motion regarding the value of Suddath’s security interest or the
14 allocation of the purchase price to paid by BayWa for any particular Purchased Asset. Accordingly,
15 in the event the Debtors intend that any Product securing Suddath’s claim be included in the Sale,
16 the Debtors have not established that Suddath is adequately protected.

17 In order to resolve the Tier One Limited Objection and Suddath’s concerns, Debtors have
18 added the following language to the proposed Sale Order:

19 “For the avoidance of doubt, the Assets sold pursuant to the Sale Motion do
20 not include any of the Tier One Assets, as defined in the Limited Objection of Tier
21 One Solar LLC to Debtors’ Motion for Order Approving and Authorizing Bidding
22 Procedures, Sale of Substantially All of Debtors’ Assets, Etc. [Docket No. 970] or in
23 the Statement and Reservation of Rights of Suddath Global Logistics, LLC regarding
24 Debtor's Sale Motion [Docket No. 971]; notwithstanding the foregoing, nothing
25 herein shall be intended to change any parties rights with respect to disputes
26 regarding ownership, amounts due or other disputes with respect thereto, and all
27 parties reserve such rights.”

28 A blackline copy of the proposed Sale Order is attached to the Cica Declaration as **Exhibit 1**.

1 In the MSI Opposition, MSI asks the Court to preserve the status quo with respect to the
2 effect of any release of Cathay’s claims and rights against the Debtors pursuant to the Sale Order,
3 until MSI’s subrogation rights can be fully adjudicated before the Court on July 14, 2014.

4 The Debtors and MSI have resolved MSI’s concerns expressed in the MSI Opposition and in
5 MSI’s Motion for Preliminary Injunction and Temporary Restraining Order [Dkt. No. _] regarding
6 the subrogation issues by adding language requested by MSI in the proposed Sale Order and MSI’s
7 counsel has represented to Debtors’ counsel that the redlined changes to the proposed Sale Order
8 [Docket No. 982] are sufficient to resolve MSI’s objections to the proposed Sale Order and to
9 withdraw MSI’s Motion for Preliminary Injunction and Temporary Restraining Order. A true and
10 correct copy of the emails with MSI’s counsel resolving the matter are attached to the Cica
11 Declaration as **Exhibit 2** and are incorporated herein by this reference.

12 In the Committee’s Response, due to the competing interests in the Sale Proceeds, the
13 Committee requests that the cash proceeds from the Sale received by the Debtors not be disbursed
14 until further order from the Court authorizing the release of such sale proceeds.

15 To resolve the Committee’s concerns, the Debtors have added the following requested
16 language to the proposed Sale Order:

17 “Notwithstanding anything to the contrary herein, the cash proceeds from
18 the sale to the Successful Bidder received by the Debtors shall not be
19 distributed pending further Court order(s) authorizing the release of such
20 sale proceeds.”

21 See Cia Declaration, Exhibit 1.

22 WHEREFORE, based upon all the foregoing, Debtors respectfully request that the Court
23 (i) overrule the Objections, (ii) grant the Sale Motion, and (iii) and grant such other relief as the
24 Court deems necessary and appropriate.

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1 DATED this 26th day of June, 2014.

2 **FOX ROTHSCHILD LLP**

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