IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 (____)
Debtor.	

DEBTOR'S MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(C), 364(C), 364(D), 364(E) AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTOR TO CONTINUE TO USE CASH AND/OR CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND (IV) GRANTING RELATED RELIEF

The above-captioned debtor and debtor-in-possession (the "**Debtor**") hereby moves the Court (the "**Motion**") for entry of interim (substantially in the form of Exhibit A hereto, the "**Interim Order**") and final orders (the "**Final Order**," and together with the Interim Order, the "**DIP Orders**") pursuant to sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "**Bankruptcy Rules**"), and Rules 4001-2, 4001-3, 9013-1(f) and (g) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") seeking:

(I) authorization for the Debtor to obtain debtor-in-possession financing in the form of a revolving credit facility in the aggregate principal amount of up to

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. [6114]. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200, Torrance, CA 90501.

$2,000,000 (the "**DIP Credit Facility**," extensions of credit under the DIP Credit Facility, the "**DIP Loans**"), among Verengo, as borrower (in such capacity the "**DIP Borrower**"), and Crius Solar Fulfillment, LLC ("**Crius Solar Fulfillment**," or in such capacity, the "**DIP Lender**"); on the terms and conditions set forth in:

- the Interim Order and the Final Order; and
- the DIP Credit Agreement (substantially in the form annexed to this Motion as Exhibit B, and as hereafter amended, supplemented or otherwise modified, the "**DIP Credit Agreement**," and, together with and all other agreements, documents and instruments executed and delivered in connection with the DIP Credit Agreement, as hereafter amended, supplemented or otherwise modified, the "**DIP Documents**").

(II) authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(III) authorization for the Debtor to (a) continue to use cash and/or cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, "**Cash Collateral**"), pursuant to section 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), and (b) provide adequate protection to the following parties with respect to the applicable prepetition secured debt obligations:

(i) the first lien lender (the "**First Lien Lender**") under the Amended and Restated Business Financing Agreement, dated as of March 20, 2014 (as amended, supplemented or otherwise modified, the "**First Lien BFA**," and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the "**First Lien Documents**"), between Verengo in its capacity as a borrower thereunder and Crius Solar Fulfillment as the lender thereunder (and successor to

Bridge Bank, National Association) (in such capacity, the "**First Lien Lender**"); and

(ii) the second lien lenders (collectively, the "**Second Lien Lenders**") under the Note Purchase Agreement, dated as of January 15, 2015, the Amended and Restated Note Purchase Agreement, dated as of September 24, 2015, and the Note Purchase Agreement, dated as of December 2, 2015 (as each may be amended, supplemented or otherwise modified, the "**Second Lien NPAs**," and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the "**Second Lien Documents**"), each among Verengo in its capacity as issuer thereunder, Crius Solar Fulfillment, as lender thereunder and any other Second Lien Lenders party thereto from time to time (the First Lien Lenders and the Second Lien Lenders, collectively referred to as the "**Prepetition Secured Parties**");

(IV) authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);

(V) authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor's prepetition and postpetition commercial tort claims and (b) any claims and causes of action of the Debtor or its estate (but not on the actual claims and causes of action) arising under sections 502(d), 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code (collectively, the "**Avoidance Actions**"); and

(VI) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

In support of this Motion, the Debtor respectfully represents as follows:

BANKRUPTCY RULE 4001 CONCISE STATEMENT

1. As required by Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2, essential terms of the proposed DIP Credit Facility, DIP Loan Documents and the DIP Orders are as follows:[2]

(a) **Maximum Borrowing Available:** $2,000,000 (DIP Credit Agreement at Section 2.1(a));

(b) **Interest Rate**: twelve percent (12%) per annum (DIP Credit Agreement at Section 2.3);

(c) **Default Interest Rate**: two (2.00%) in excess of applicable interest rate (DIP Credit Agreement at Section 2.4);

(d) **Maturity**: the earlier of (a) the date a plan is consummated in the chapter 11 case of the Debtor, (b) the date of consummation of a sale of all or substantially all of the assets of the Debtor, or (c) December 31, 2016 (DIP Credit Agreement at Section 2.5(b));

(e) **Bankruptcy Rule 4001(c)(l)(B)(i): Grant of Priority or Lien on Property of Estate Under Section 364(c) or (d)**. The DIP Orders and the DIP Loan Documents grant the DIP Lender the Superpriority Claims and the DIP Liens,[3] which include: a first-priority lien on the Unencumbered Property, a second-priority lien on Non-Primed Liens, and a first priority senior priming lien on all Prepetition Collateral. The Superpriority Claim in favor of the DIP Lender shall be senior to all claims except for the Carve-Out. The DIP Liens also shall be senior to the Prepetition Secured Parties' Adequate Protection Liens. (Interim Order at ¶¶ 8-9).

(f) **Bankruptcy Rule 4001(c)(l)(B)(ii): Adequate Protection or Priority for Prepetition Claims**. The DIP Orders provide the Prepetition Secured Parties the Adequate Protection Liens and the 507(b) Claims. The Adequate Protection Liens will be junior to the DIP Liens under section 364(d) of the Bankruptcy Code (Interim Order at ¶¶ 13, 15).

(g) **Bankruptcy Rule 4001(c)(l)(B)(iii): Determination of Validity, Enforceability, and Priority of Prepetition Lien**. The DIP Orders

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[2] This summary is qualified in its entirety by reference to the provisions of the DIP Credit Agreement. The DIP Credit Agreement will control in the event of any inconsistency between this motion and the DIP Agreement.

[3] Capitalized terms used but not defined in this Motion shall have the meanings given such terms in the Interim DIP Order.

provide that the Prepetition Secured Parties have Prepetition Liens that are valid and enforceable against the Debtor's estate. The DIP Orders also provide that the Prepetition Liens are subordinate to the DIP Liens. (Interim Order at ¶ 4).

(h) **Bankruptcy Rule 4001(c)(l)(B)(iv): Waiver of Automatic Stay**. The DIP Orders provide that the Debtor will waive the protections of the automatic stay to permit the DIP Lender to exercise all rights and remedies under the DIP Documents (defined below) and to grant the DIP Lender the liens and security interests contemplated by the DIP Documents, subject to a five (5) business day notice period. (Interim Order at ¶ 10(a)).

(i) **Bankruptcy Rule 4001(c)(l)(B)(v): Waiver of Right to File Plan, Seek Extension of Time to File Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit under Section 364 of the Bankruptcy Code**. None.

(j) **Bankruptcy Rule 4001(c)(l)(B)(vi): Deadlines for Filing Plan, Approval of Disclosure Statement, Plan Confirmation**. None.

(k) **Bankruptcy Rule 4001(c)(l)(B)(vii): Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to Prepetition Lien or Foreclosure**. None.

(l) **Bankruptcy Rule 4001(c)(l)(B)(viii): Release, Waiver or Limitation on Claim or Cause of Action by the Debtor**. The terms of the DIP Credit Facility include the following waivers and releases by the Debtor:

(i) The Debtor waives the right to discharge the DIP Obligations under section 1141(d) of the Bankruptcy Code (Interim Order at ¶ 18(d));

(ii) The DIP Borrower agrees (a) to pay or reimburse the DIP Lender for all its reasonable out-of-pocket costs and expenses incurred in connection with the development, negotiation, preparation and execution of the Loan Documents and any other documents prepared in connection herewith, and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements of one lead counsel and one local counsel to the DIP Lender, (b) to pay or reimburse the DIP Lender for all its costs and expenses incurred in connection with, and to pay, indemnify, and hold the DIP Lender harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever arising out of or in connection with, the administration, enforcement or preservation of any rights under any Loan

Document and any such other documents, including, without limitation, reasonable fees and disbursements of counsel to the DIP Lender incurred in connection with the foregoing and in connection with advising the DIP Lender with respect to its rights and responsibilities under this Agreement and the documentation relating thereto, (c) to pay, indemnify, and to hold the DIP Lender harmless from any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and any such other documents, and (d) to pay, indemnify, and hold the DIP Lender and its respective Affiliates, officers, directors, trustees, agents, attorneys and advisors harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable fees and disbursements of counsel) which may be incurred by or asserted against the DIP Lender or such Affiliates, officers, directors, trustees, agents, attorneys or advisors arising out of or in connection with any investigation, litigation or proceeding related to this Agreement, the other Loan Documents, the proceeds of the Loan and the transactions contemplated by or in respect of such use of proceeds, or any of the other transactions contemplated hereby, whether or not any of the DIP Lender or such Affiliates, officers, directors or trustees is a party thereto (all the foregoing, collectively, the "***indemnified liabilities***"); provided that the DIP Borrower shall not have any obligation hereunder with respect to indemnified liabilities of the DIP Lender or any of its Affiliates, officers, directors, trustees, agents, attorneys or advisors to the extent such indemnified liabilities are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct by the person seeking indemnification. (DIP Credit Agreement at Section 9.4);

(iii) The DIP Orders contains the following waivers and releases by the Debtor:

A. The Debtor irrevocably waives any right to challenge or contest Prepetition Secured Parties' liens on the Prepetition Collateral or the validity of the prepetition obligations or prepetition debt documents (Interim Order at ¶ 4), subject to the right of any official creditors' committee or other party in interest to conduct an investigation and challenge such liens

and obligations as provided in paragraph 20 of the Interim Order; and

B. Subject to the entry of the Final DIP Order, the Debtor waives rights under section 506(c) of the Bankruptcy Code (Interim Order at ¶ 11).

(m) **Bankruptcy Rule 4001(c)(l)(B)(ix): Indemnification of Any Entity**. As previously noted (see ¶ 1(l)(ii) above)), the Debtor releases and agrees to indemnify the DIP Lender against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with the DIP Loan, the transactions contemplated thereby, and any use made or proposed to be made with the proceeds thereof (DIP Credit Agreement at Section 9.4).

(n) **Bankruptcy Rule 4001(c)(l)(B)(x): Release, Waiver or Limitation on 506(c) Rights**. As previously noted (*see* ¶ 1(l)(iii)(B) above), the Debtor waives rights under section 506(c) of the Bankruptcy Code (Interim Order at ¶ 11). Pursuant to Local Bankruptcy Rule 4001-2(a)(i)(C), including this waiver in the DIP Orders is justified under the circumstances because the DIP Lender would not provide the DIP Credit Facility and fund this estate without it. Accordingly, including this provision in the Final DIP Order provides a substantial benefit to the estate.

(o) **Bankruptcy Rule 4001(c)(l)(B)(xi): Lien on Actions Under Sections 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)**. The DIP Orders do not provide for liens on the Debtor's causes of action pursuant to chapter 5 of the Bankruptcy Code, or any other avoidance actions of any Debtor under the Bankruptcy Code (collectively, "**Avoidance Actions**") but do provide for a lien on the proceeds (the "**Avoidance Proceeds**") on such Avoidance Actions (Interim Order at ¶¶ 9(a) & 9(b)).

2. **Use of Cash Collateral**. As required by Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2, the details of the DIP Orders relating to use of Cash Collateral are set forth below.

(a) **Bankruptcy Rule 4001(c)(l)(B)(i): Name of Each Entity with Interest in the Cash Collateral**. Crius Solar Fulfillment, LLC.

(b) **Bankruptcy Rule 4001(c)(l)(B)(ii): Use of the Cash Collateral**. The Debtor will use Cash Collateral specifically in accordance with the Budget

(defined below and attached as Exhibit C) and generally to the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.

(c) **Bankruptcy Rule 4001(c)(l)(B)(iii) and (iv): Other Material Terms and Adequate Protection**. If approved by this Court:

(i) **Amount**. The Debtor will be authorized to use Cash Collateral in accordance with the Budget until the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.

(ii) **Shortening Challenge Period**. The Debtor is not requesting a shortening of the challenge period. The challenge period is no later than the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation, if formed, of a statutory committee of creditors. (Interim DIP Order at ¶ 19).

(iii) **Adequate Protection to the Prepetition Secured Parties; Adequate Protection Liens**. As security for payment of any claim of Prepetition Secured Parties for any diminution in value of the Prepetition Collateral (an "**Adequate Protection Claim**"), the Debtor has agreed to grant Adequate Protection Liens to the Prepetition Secured Parties on all of the DIP Collateral. The Prepetition Secured Parties' Adequate Protection Liens shall be subordinate in priority and right to the DIP Liens.

(iv) **Superpriority Claim**. Prepetition Secured Parties will be granted Superpriority Claims as provided for in section 507(b) of the Bankruptcy Code; the Superpriority Claims granted to Prepetition Secured Parties shall be subordinate in priority and right to the Superpriority Claims granted to the DIP Lender.

(v) **Priority of Claims Among Prepetition Secured Parties and the DIP Lender**. The Adequate Protection Liens granted to Prepetition Secured Parties shall be subordinate in priority and right to the Adequate Protection Liens granted to the DIP Lender. The Adequate Protection Liens granted to the Second Lien Lenders shall further be subordinate in priority and right to the Adequate Protection Liens granted to the First Lien Lender. The rights of the Prepetition Secured Parties shall at all times remain subject to the Subordination Agreement.

(vi) **Payment of Fees and Expenses**. None, other than payment of the DIP Lender's fees and expenses to reimburse the DIP Lender for

all of the costs and expenses of the DIP Lender in connection with the preparation, negotiation, execution and delivery of the DIP Documents and the DIP Credit Facility, any amendment or waiver to the DIP Documents or the DIP Credit Facility, the collection or other enforcement of the DIP Documents or the DIP Credit Facility, the perfection and priority of any liens, and the preservation of any and all rights of the DIP Lender under the DIP Documents and under the DIP Credit Facility, including, without limitation, all fees and expenses of all counsels to the DIP Lender in connection with any of the foregoing.

(vii) **Modification of the Automatic Stay**. The automatic stay under section 362(a) of the Bankruptcy Code is modified by the DIP Orders as necessary to effectuate all of the terms and provisions of the DIP Orders, including without limitation, to: (a) permit the Debtor to grant the adequate protection provided for in the DIP Orders; (b) permit the Debtor to perform such acts as the Prepetition Secured Parties and the DIP Lender may request to assure the perfection and priority of the liens granted in the DIP Orders; and (c) permit the Debtor to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Lender under the DIP Order. (Interim Order at ¶ 17).

Status of the Case and Jurisdiction

3. On the date hereof (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. On the Petition Date, the Debtor also filed motions or applications seeking certain typical "first day" orders. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11 filing, is set forth in detail in the *Declaration of Dan Squiller in Support of Chapter 11 Petitions and First Day Motions* (the "**Squiller Declaration**"), filed concurrently herewith and fully incorporated herein by reference.

5. The Debtor has continued in possession of its properties and is operating and managing its businesses as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and an official committee of unsecured creditors (a "**Committee**") has not yet been appointed in this case.

7. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

8. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363(c), 364(c), 364(d), 364(e) and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c) and (d) and 9014 and Local Rules 4001-2, 4001-3, 9013-1(f) and (g).

Debtor's Business Operations

9. The Debtor is a privately held corporation organized under Delaware law, headquartered in Torrance, CA with an operations center in Phoenix, AZ. The Debtor originated from Ken Button and Randy Bishop's purchase of Gemstar Builders in February 2008, which was subsequently renamed Verengo Solar, a d/b/a of Verengo, Inc. The Debtor's business focuses on the installation of solar photovoltaic systems and is one of the most well-known and respected brands in residential solar. Moreover, the Debtor offers a range of energy-saving products to help users to conserve the energy generated from their solar systems. The Debtor also markets and sells solar panels and semiconductor-based micro inverter systems in the United States. As of August 2016, the Debtor has installed 19,800 systems. One of the Debtor's key strategic initiatives going forward is coupling energy storage with solar and the Debtor expects to be a leader in this segment by the time the market matures.

10. Following its inception, operations were opened in California, New Jersey, New York, and Connecticut. In February 2015, however, all northeast operations were sold to NRG Energy, Inc.; contemporaneously, Northern and Central California operations were shut down. Notwithstanding, the Debtor remains the largest Southern California-based residential solar provider and its current business focus is California, and the Debtor's processes, operations, and supply chain are scalable for expansion into additional geographies.

11. For the year ending December 31, 2015, the Debtor achieved $82 million in revenue and 3,200 installations. Notwithstanding, the Debtor found itself experiencing reduced cash flow in 2016 and strained liquidity as a result. By pursuing this bankruptcy case using funds made available through the proposed DIP Credit Facility, the Debtor seeks to preserve and capitalize on any extant value of the company by executing a sale of substantially all of its assets under 11 U.S.C. § 363.

Prepetition Capital Structure

A. Secured Loans

12. The Debtor had a line of credit with Bridge Bank ("**Bridge**") with a high balance of $9.3M (the "**Bridge Bank Loan**"), which balance was reduced over time. On July 15, 2016, Bridge delivered a Notice of Default to the Debtor as a result of a payment defaults. On August 25, 2016 Bridge froze the account and thereafter funds were swept from the Debtor's bank account at Bridge, reducing the principal amount of the loan to approximately $983,000. On August 29, 2016, Bridge delivered a second Notice of Default to the Debtor as a result of various covenant defaults. Finally, on August 31, 2016, Bridge delivered a third Notice of Default to the Debtor as a result of various

payment and covenant defaults. Immediately prior to the Petition Date, the loan was purchased from Bridge and is now held by the Crius Solar Fulfillment.

B. Spruce Loans

13. CPF Asset Management, LLC, now known as Spruce Finance ("**Spruce**") loaned $8,500,000 to Verengo via the: (i) *CPF Loan Addendum to Standard Master Installer Contract* dated May 9, 2014; (ii) *Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated June 27, 2014; (iii) *Second Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated September 12, 2014; (iv) *First Amendment to Second Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated January 6, 2015; (v) *Third Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated September 23, 2015; and (vi) *First Amendment to Third Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated December 2, 2015 (collectively, the "**Spruce Loans**"). Spruce is an independent company that facilitates Verengo's business by purchasing the installation projects from Verengo and acting as a finance company for Verengo's customers. Interest is accruing on the Spruce Loans but no principal payments have been made. The Debtor believes the Spruce Loans to be junior to the Bridge Bank Loan. Immediately prior to the Petition Date, the Spruce Loans were also acquired by Crius Solar Fulfillment.

C. Related Party Debt

14. Additional secured notes (the "**Investor Notes**"), believed to be junior to both the Bridge Bank Loan and the Spruce Loan, are as follows:

Angeleno	$	11,089,848
ClearSky		11,089,848
Arnold Fishman		422,191
BainBridge Partners		133,460
Org Bowen Campbell & Lauren Bishop		10,639
Bishop Living Trust		218,695
Total	$	22,964,682

No principal or interest payments are currently being made on the Investor Notes. Immediately prior to the Petition Date, Crius Solar Fulfillment acquired the Investor Notes held by Angeleno and ClearSky.

Events Leading to Bankruptcy

15. In 2013, the Debtor began to experience quality problems with its installations in the eastern part of the US. Eventually, Verengo was suspended by the New York State Energy Research and Development Authority (NYSERDA), which prevented the Debtor from activating many of their installed systems until they were reinstalled. This resulted in additional costs to Verengo and reduced cash flow. In January 2015, all northeast operations were sold to NRG Energy, Inc.; contemporaneously, Northern and Central California operations were shut down. In addition, between 2012 and 2016 sales and marketing expenses for the origination part of the business were excessive and weighed on the Debtor's cash flow.

16. In 2016, the Debtor continued to experience reduced cash flow and strained liquidity as a result. As such, the Debtor implemented a focused business-to-business strategy, eliminating the unprofitable origination business and becoming an engineering, procurement and construction company. As a result of these initiatives, the Debtor reduced year-over-year operating expenditures by $26.0 million and indirect costs by $3.9 million. The Debtor also believes that its 2016 EBITDA will be positive by

December, with 2017's forecasted cost reductions driven by reduced supply chain costs and volume increase. The Debtor projects $2.6MM of revenue from new accounts from August through December 2016.

17. Given the Debtor's inability to independently survive as a going concern, the board of directors of the Debtor has authorized the filing of this Chapter 11 Case to pursue a sale of the Debtor's assets. In order to fund the continued operations of the Debtor during the completion of the marketing process, the DIP Lender has agreed to provide the Debtor with the DIP Facility pursuant to the DIP Documents and the DIP Orders.

18. Additionally, the Debtor has entered into a stalking horse purchase agreement with Crius Solar Fulfillment. The members of Crius Solar Fulfillment are Crius Energy, LLC, Angeleno Investors III—Verengo Solar, L.P. ("**Angelino**"), ClearSky Funding I LLC ("**ClearSky**"), and Spruce. Crius Solar Fulfillment was formed on or about September 22, 2016 to pursue the acquisition of the Bridge Loan and the provision of the DIP Credit Facility, as well as to serve as the stalking horse purchaser of the Debtor's assets. In connection with the formation of Crius Solar Fulfillment, Angeleno, ClearSky and Spruce contributed their holdings of the Spruce Loans and the Investor Notes held by them to Crius Solar Fulfillment.

19. Crius Solar Fulfillment intends to credit bid $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan (as defined in the Stalking Horse Agreement) totaling $2,272,000, plus (z) such amount of Senior Notes (as defined in the Stalking Horse Agreement) necessary to total, when combined with the credit bid amounts from clauses

(x) and (y), $11.7 million, for the purchase of all or substantially all of Verengo's assets. The Debtor intends to seek approval of certain bid protections and bidding procedures to complete the marketing process and ensure that the Debtor realizes the highest and best value for its assets.

20. The Debtor intends to credit bid, subject to the entry of the Final Order and unless the Court orders otherwise, the full amount of the Prepetition First Lien Obligation and the Second Lien Obligations then outstanding, for the assets and property of the Debtor (to the extent such assets are Prepetition Collateral or secured by First Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the First Lien Adequate Protection Liens) or Second Lien Adequate Protection Liens (but with respect thereto, solely to the extent the value of the Second Lien Adequate Protection Liens), as applicable) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

21. The Debtor is facing a liquidity crisis requiring a curtailment of production, and is therefore unable to meet customer demand. The Debtor engaged in substantive discussions with strategic and financial advisors, including several investment banks, to raise outside capital. These discussions have not proven successful. While the Debtor has been able to negotiate certain modifications to the terms of certain equity and debt securities issued by the Debtor, the Debtor's financial position remains dire.

22. The DIP Lender has agreed to terms on which it will provide the Debtor with postpetition financing in the form of the DIP Credit Facility and the DIP Loans. The

DIP Credit Facility and the DIP Loans will provide the Debtor with liquidity as they pursue a sale of its assets under section 363 of the Bankruptcy Code.

RELIEF REQUESTED

23. The Debtor respectfully request the following relief from this Court:

a. authorization for the Debtor to obtain debtor-in-possession financing in the form of the DIP Credit Facility in the aggregate principal amount of up to $2,000,000;

b. authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

c. authorization for the Debtor to (a) continue to use Cash Collateral and all other Prepetition Collateral, and (b) provide adequate protection to the First Lien Lender and the Second Lien Lenders;

d. authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);

e. authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor's prepetition and postpetition commercial tort claims and (b) any Avoidance Actions; and

f. the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

THE DIP CREDIT FACILITY

A. The Debtor's Need for Liquidity

24. The Debtor has a critical need to access the DIP Credit Facility and use the Prepetition Collateral, including the Cash Collateral, to continue operations and conduct a sale of its assets. Access to the DIP Credit Facility and the Debtor's use of Prepetition Collateral (including Cash Collateral) is necessary to ensure that the Debtor has sufficient

working capital and liquidity to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case).

25. To maintain operations and ultimately restore confidence with those entities with whom the Debtor has done business, the Debtor needs access to additional financing in the form of the DIP Credit Facility. The financing will enable the Debtor to stabilize operations, continue servicing existing customers, and take on new jobs.

B. The Debtor's Decision to Enter into the DIP Loan Documents

26. Over the past eight to nine months, the Debtor has been unable to obtain sufficient equity or debt financing. The Debtor could not obtain any unsecured financing, nor could the Debtor and its advisors locate an entity willing to extend credit in exchange for a loan that would provide sufficient liquidity. Nor could the Debtor obtain an additional equity investment from any potential strategic partner, despite having engaged in an aggressive marketing campaign over the last several months to solicit investments in, or the purchase of, the Debtor.

27. Faced with this situation, the Debtor decided to enter into the DIP Loan Documents, and conducted extensive arms' length and good faith negotiations with the DIP Lender. The Debtor ultimately determined that the DIP Lender's proposal for postpetition financing was the most favorable under the circumstances, and adequately addressed the Debtor's reasonably foreseeable liquidity needs.

28. In making its decision to seek financing from the DIP Lender, the Debtor considered many factors. *First*, the Prepetition Secured Parties hold secured priority liens

on substantially all of the Debtor's assets, which liens the Debtor believes are legal, valid and binding obligations of the Debtor. *Second*, the DIP Lender's existing knowledge of the Debtor's business and the collateral provide significant benefits, including the speed with which the DIP Lender is able to close. *Third*, the Debtor did not believe that any lender would be willing to lend money to the Debtor on similar or less favorable terms to those contained in the DIP Loan Documents given the Debtor's inability to obtain alternative postpetition financing proposals from other lenders through (a) credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, (b) unsecured credit allowable under Bankruptcy Code sections 364(a) and 364(b), or (c) credit secured by liens on the Debtor's assets allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims, in each case on the terms and conditions set forth in the Interim Order and the DIP Documents.

29. In the exercise of its sound business judgment, the Debtor believes that the proposal for the DIP Credit Facility provided by the DIP Lender is the most favorable under the circumstances and addresses the Debtor's working capital needs during the pendency of the Debtor's chapter 11 case.

30. The DIP Credit Facility will give the Debtor valuable additional time to pursue a sale of its assets while maintaining the going concern value of the Debtor's business. Thus, the Debtor determined that entry into the DIP Loan Documents was in the best interests of its estate, creditors and other parties in interest.

C. Provisions To Be Highlighted Pursuant to Local Rule 4001-2

31. The Debtor believes the following provisions of the Interim Order must be highlighted pursuant to Local Rule 4001-2:

a. Binding the Estate to Validity, Perfection, or Amount of Secured Creditor's Prepetition Lien. Interim Order ¶ 4. The Debtor is not requesting a shortening of the challenge period, which is no later than the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation of a statutory committee of creditors. (Interim Order at ¶ 19).

b. Waiver of Rights of Estate Under Section 506(c) as to the Final DIP Order. Interim Order at ¶ 11 (preserving right to request a waiver of the provisions of section 506(c) of the Bankruptcy Code at Final DIP Hearing).

32. The provisions of the Interim Order were negotiated at arm's length and in good faith. The Interim Order enables the Debtor to obtain the financing necessary to maintain its operations and preserve and maximize the value of its estate.

D. DIP Superpriority Claims and DIP Liens to Secure the DIP Indebtedness

33. Subject only to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations will constitute allowed senior administrative expense claims (the "**Superpriority Claims**") against the Debtor with priority over any and all administrative expenses, adequate protection and diminution in value claims (including all Adequate Protection Obligations) and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code

be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition property of the Debtor, including, without limitation, any and all cash and Cash Collateral of the Debtor, other than the Avoidance Actions, but the Superpriority Claims shall have recourse to any Avoidance Proceeds).

34. Subject only to the Carve-Out, as security for the DIP Obligations, the Debtor will grant the DIP Lender the following DIP Liens on the DIP Collateral:

a. pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all Unencumbered Property; provided, that the Unencumbered Property shall not include the Avoidance Actions, but shall include any Avoidance Proceeds;

b. pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and postpetition property of the Debtor or its estate (other than the Prepetition Collateral), whether now existing or hereafter acquired, other than the Avoidance Actions, but shall include any Avoidance Proceeds, that is subject to any Non-Primed Liens;

c. pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, all Prepetition Collateral, which liens shall be senior in all respects to the security interests in, and liens on, the Prepetition Collateral of each of the Prepetition Secured Parties (including the applicable Adequate Protection Liens granted to such Prepetition Secured Party) and to all liens which already are junior to the liens of the Prepetition Secured Parties, but shall be junior to any Non-Primed Liens on the Prepetition Collateral.[4]

[4] As defined in the Interim Order, "Non-Primed Liens" include valid, perfected and unavoidable liens in existence immediately prior to the Petition Date that are permitted under the First Lien BFA, or valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case excluding the liens of the Prepetition Secured Parties and liens which already are junior to the liens of the Prepetition Secured Parties.

E. Carve-Out

35. The DIP Credit Facility Liens and the Superpriority Claims are subordinate only to the following (the "**Carve-Out**"): (i) any fees payable to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code, and any interest on such fees payable pursuant to section 3717 of title 31 of the United States Code, (ii) the reasonable fees and expenses up to $10,000 incurred by a trustee appointed in the Debtor's case under section 726(b) of the Bankruptcy Code (irrespective of whether the Carve-Out Notice (as defined below) has been delivered), and (iii) up to $50,000 of allowed fees, expenses and disbursements of professionals retained by order of this Court (including any Committee) incurred after the occurrence of a Carve-Out Event (defined below) plus all unpaid professional fees, expenses and disbursements allowed by this Court for professionals employed by the estates and retained by order of this Court (collectively, the "**Estate Professionals**") up to the amount provided for such Estate Professionals on a line item basis in the Budget (including any previously unused amounts) that were incurred prior to the occurrence of a Carve-Out Event (regardless of when such fees, expenses and disbursements become allowed by order of this Court). For the purposes hereof, a "**Carve-Out Event**" shall occur upon the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement upon (i) delivery of a written notice thereof by the DIP Lender to the Debtor (a "**Carve-Out Notice**") or (ii) in respect of which the Debtor has knowledge and fails to provide notice to the DIP Lender within five (5) days of obtaining such knowledge; provided that, no Carve-Out Event shall be deemed to have occurred if any such Event of Default is subsequently waived by the DIP Lender. So long as no Carve-Out Event shall have occurred and be continuing, the Carve-Out shall not be reduced by

the payment of fees, expenses and disbursements of professionals retained by order of this Court, and allowed by this Court and payable under sections 328, 330 and 331 of the Bankruptcy Code. Upon the occurrence of a Carve-Out Event, the right of the Debtor to pay professional fees incurred under clause (iii) above without reduction of the Carve-Out in clause (iii) above shall terminate (unless the underlying Event of Default or termination event is subsequently waived by the DIP Lender). Upon the occurrence of the Carve-Out Event, the Debtor shall provide immediate notice by facsimile and email to the U.S. Trustee and to all retained professionals informing them that a Carve-Out Event has occurred and that the Debtor's ability to pay professionals is subject to the Carve-Out. Further, the Carve-Out shall not include professional fees and disbursements incurred in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Lender or any of the Prepetition Secured Parties (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents, the First Lien BFA or the Second Lien NPAs, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lender; (c) attempts to prevent, hinder or otherwise delay any of the DIP Lender's assertion, enforcement or realization upon any DIP Collateral (as defined below) in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing; or (d)

paying any amount on account of any claims arising before the commencement of the Case unless such payments are approved by an order of the Court and contained in the Budget; provided that, notwithstanding anything to the contrary, no more than an aggregate of $25,000 of the Prepetition Collateral (including any Cash Collateral), the DIP Loans, the DIP Collateral or the Carve-Out may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, or investigate any Claims and Defenses.

F. Objections by Parties in Interest

36. Except as set forth herein and in the Interim Order, all of the provisions of the Interim Order shall be final and binding on the Debtor (including, without limitation, its successors and assigns), the Debtor's shareholders, and all creditors and other parties in interest, including any chapter 11 or chapter 7 trustee hereinafter appointed. Any Committee and any party-in-interest with requisite standing (other than the Debtor) shall have until the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation, if formed, of a Committee to file, on behalf of the Debtor's estate, and to serve upon counsel for the DIP Lender and Prepetition Secured Parties, an adversary complaint respecting the Debtor's stipulations and admissions contained in paragraph 4 of the Interim Order.

BASIS FOR RELIEF REQUESTED

The DIP Credit Facility Should Be Authorized

37. Approval of the DIP Credit Facility will provide the Debtor with immediate and ongoing access to borrowing availability to fund its bankruptcy case and

pursue a sale of its assets. The Debtor needs access to the DIP Credit Facility in order to preserve the value of its assets and to maximize value for its creditors. Accordingly, the timely approval of the relief requested herein is imperative.

38. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(l) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt (a) with priority over any and all administrative expenses, as specified in section 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364. The Debtor proposes to obtain the financing set forth in the DIP Orders and the DIP Documents by providing, *inter alia*, superpriority claims, security interests, and liens pursuant to section 364(c)(l), (2), (3) and section 364(d) of the Bankruptcy Code.

39. The Debtor's liquidity needs can be satisfied only if the Debtor is immediately authorized to borrow under the DIP Credit Facility and to use such proceeds to fund operations. The Debtor has been unable to procure sufficient financing in the form of unsecured credit allowable under section 503(b)(l), as an administrative expense under section 364(a) or (b), or in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(l). The Debtor has not been able to obtain a DIP Credit Facility or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein.

40. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Say. & Loan Assn. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

41. Furthermore, section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *In re Snowshoe Co.*, 789 F.2 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave, Co.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that "most lend money only in return for a senior secured position"); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991 (debtor adequately established that some degree of priming of loan was necessary if debtor were to obtain funding).

42. The Debtor believes that its assets are fully encumbered and the Debtor has been unable to procure the required funding absent granting the proposed superpriority claims and liens. The Debtor submits that the circumstances of this case require the Debtor to obtain financing pursuant to section 364(c) and section 364(d) of the Bankruptcy Code and, accordingly, the DIP Orders and the DIP Documents reflect the exercise of its sound business judgment.

43. The terms and conditions of the DIP Documents are fair and reasonable, and were negotiated by well-represented, independent parties in good faith and at arms' length. Accordingly, the DIP Lender and all obligations incurred under the DIP Loan Documents should be accorded the benefits of section 364(e) of the Bankruptcy Code.

The Use of Cash Collateral Should Be Approved

44. Under section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use ... in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Use of cash collateral is authorized if the holders of interests in such cash collateral consent or are provided adequate protection for such interests. *See* 11 U.S.C. § 363(e).

45. The Debtor requires the use of the Cash Collateral in order to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make adequate protection payments, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case). Absent such relief, the Debtor will be unable to preserve the value of its assets, with damaging consequences for the Debtor and its estate and creditors.

46. The Debtor submits that, under the circumstances here, its request to use Cash Collateral should be approved. The Prepetition Secured Parties have consented to (or have been deemed to have consented to) being primed provided that the relief requested herein is granted.[5] Absent such authority, the Debtor would not have access to any additional liquidity, which would immediately and irreparably harm the business. In addition, the Debtor believes that the adequate protection proposed herein and in the Interim Order is fair and reasonable and is sufficient to satisfy the requirements of section 363(c) of the Bankruptcy Code. Accordingly, the Debtor's request to use the Cash Collateral in the operation of its businesses and administration of the chapter 11 case should be approved.

Section 364(e) Protections

47. The terms and conditions of the DIP Orders are fair and reasonable, and were negotiated by well-represented, independent parties in good faith and at arms' length. Accordingly, the DIP Lender, the Prepetition Secured Parties, and all obligations incurred by the Debtor under the DIP Orders should be accorded the benefits of section 364(e) of the Bankruptcy Code.

The Proposed Adequate Protection Should Be Authorized

48. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

[5] Pursuant to that certain Second Amended and Restated Subordination Agreement, dated as of December 2, 2015, governing the relationship between the First Lien Lender and the Second Lien Lenders, if the First Lien Lender consents to the use of cash collateral, the Second Lien Lenders are deemed to have consented to the use of cash collateral.

Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, adequate protection liens, and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citation omitted).

49. The Prepetition Secured Parties have agreed to the Debtor's use of the Cash Collateral and the Debtor's entry into the DIP Documents in consideration for the adequate protection provided under the DIP Orders. Accordingly, the adequate protection proposed herein to protect the First Lien Lender's and the Second Lien Lenders' interest in the Prepetition Collateral (including the Cash Collateral) is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

The Automatic Stay Should Be Modified on a Limited Basis

50. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtor to (i) grant the security interests, liens, and superpriority claims described above with respect to the DIP Lender and Prepetition Secured Parties, as the case may be, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the DIP Lender to exercise, upon the occurrence of and during the continuance of an event of

default, all rights and remedies under the DIP Loan Documents; and (iii) implement the terms of the proposed DIP Orders.

51. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtor's business judgment, are reasonable and fair under the present circumstances.

Interim Approval Should Be Granted

52. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

53. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct an expedited preliminary hearing on this motion and (a) authorize the Debtor to borrow under the DIP Credit Facility on an interim basis, pending entry of the Final Order, in order to avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest, and (b) schedule a hearing to consider entry of the Final Order.

54. The Debtor has an urgent and immediate need for cash to continue to operate. Currently, the Debtor does not have sufficient funds with which to fund its bankruptcy and protect and maintain the value of its assets. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending a final hearing on the motion, the Debtor will be immediately and irreparably harmed. The interim relief requested is critical to facilitating the Debtor's reorganization efforts.

55. The Debtor further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

56. To successfully implement the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay under Bankruptcy Rule 6004(h).

Notice

57. Notice of this Motion has been given to the following parties or, in lieu thereof, to its counsel, if known: (a) the Office of the United States Trustee; (b) the Debtor's twenty-three (23) largest unsecured creditors; (c) counsel to the Debtor's prepetition secured lenders; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service and state taxing authorities for states in which the Debtor conducts business; (g) the Debtor's existing banks; (h) following formation, if formed, of the Committee; (i) those parties who have filed a notice of appearance in these cases; and (j) counsel to Crius Solar Fulfillment, LLC. As the Motion is seeking "first day" relief, within two (2) business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the Motion, substantially in the form annexed hereto, and grant such other and further relief as the Court deems just and proper.

Dated: September 23, 2016
Wilmington, Delaware

BAYARD, P.A.

/s/ Scott D. Cousins

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