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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

**EMPIRE SOLAR GROUP, LLC,
Debtor.**

Bankruptcy Case No. 21-23636

Chapter 7

Honorable Joel T. Marker

**CHAPTER 7 TRUSTEE'S MOTION TO MODIFY THE AUTOMATIC STAY TO
ALLOW CUSTOMERS UNDER COMPLETED AND FULLY PAID CONTRACTS TO
SEEK REDRESS FROM APPLICABLE STATE RECOVERY FUNDS**

Pursuant to 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001 and Local Rule 4001-1, Steven R. Bailey, the duly appointed Chapter 7 Trustee in the above-entitled case (the “Trustee”), through counsel, hereby files this motion (the “Motion”) seeking the entry of an Order modifying the automatic stay to permit Empire customers whose contracts were already completed and paid in full prior to the Petition Date, which completed contracts have no remaining economic value to the estate and will not be sold by the Trustee, to pursue state court actions against the Debtor for the sole purpose of obtaining a judgment so that they can then seek restitution from various state-administered contractor recovery funds.

In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (G).

STATEMENT OF FACTS

4. Empire Solar Group, LLC (the “**Debtor**”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 22, 2021 (“**Petition Date**”).
5. Prior to the Petition Date, the Debtor engaged in the selling and installing, either directly or through contractors, of residential solar energy systems.
6. As of the Petition Date, the Debtor had completed or substantially completed a number of contracts with customers (the “**Completed Contracts**”), and had been paid in full for its services either through direct payment from the customer or through payment from third-party financing companies.
7. Although the Debtor has already been paid in full for the Completed Contracts, the Trustee is informed that limited work may be required in order to finalize hookups to the local utility grid so that the customers’ solar power systems are fully operational. Such work could include local inspection and sign-off by local permitting agencies, and final power hookup to the utility grid. Certain additional paperwork may also be required.
8. The Trustee is further informed that, with respect to certain Completed Contracts, certain customers do or may have warranty claims.

9. The Debtor ceased operating on the Petition Date. It has no ability to provide warranty work or to complete solar projects under Completed Contracts for which the Debtor was already paid in full.

10. The Trustee recently filed a Motion to sell certain assets, including Uncompleted Contracts, to Telt Ventures, LLC, dba 1 Solar or to a third party making a higher and better offer for the assets that are the subject of the APA between the Trustee and Telt Ventures, LLC, dba 1 Solar. *See* Dkt. 36. The Completed Contracts that are the subject of this motion ***are not included*** in the assets to be sold under the APA. Rather, the Completed Contracts that are the subject of this motion are contracts under which, prior to the Petition Date, the Debtor had substantially completed and had already received payment in full.

11. The Trustee is informed that various states have promulgated certain laws to create contractor recovery funds (the “**Recovery Funds**”) to compensate homeowners who have suffered an actual and direct out-of-pocket loss due to a licensed contractor’s failure to adequately complete a construction project. *See, e.g.*, Utah Code Ann. § 38-11-101 et seq. One such jurisdiction is the State of Minnesota. *See* Minn. Stat. Ann. § 326B.89.

12. As a prerequisite to obtaining compensation from the Recovery Funds, certain states, such as the State of Minnesota, require homeowners to obtain a court judgment against the licensed contractor. *See, e.g.*, Minn. Stat. Ann. § 326B.89, subd. 5 (“The commissioner shall only pay compensation from the fund for a final judgment that is based on a contract directly between the [contractor] and the homeowner.”).

13. The State of Minnesota, through its employees in the Minnesota Attorney General’s Office and in the Minnesota Department of Labor and Industry, has contacted the

Trustee about those Minnesota residents who have Completed Contracts and who would like to make a claim against Minnesota's Recovery Fund. The State of Minnesota has confirmed that, to be eligible for payment under Minnesota's Recovery Fund, Minnesota residents must first obtain a final judgment against the Debtor.

14. While the Trustee has not reviewed all of the recovery fund statutes in the various states where the Debtor did business, the Trustee believes that at least some of the laws in those other states are similar in that, as a prerequisite to obtaining relief from the applicable state Recovery Fund, the homeowner must obtain a final judgment against the licensed contractor.

15. The Trustee believes that, with respect to Completed Contracts, affected homeowners who may have claims against the Debtor should be allowed to seek redress from their state's applicable Recovery Fund. Further, allowing affected homeowners to make claims against the Recovery Funds maintained by the states could reduce the amount of claims that are asserted against the bankruptcy estate.

16. While the Trustee takes no position as to the ability of any customer under a Completed Contract to receive compensation from a Recovery Fund, the Trustee believes that a limited modification of the automatic stay is warranted for the sole purpose of allowing affected customers under Completed Contracts to pursue redress from their state's Recovery Fund.

RELIEF REQUESTED

17. By this Motion, the Trustee seeks the entry of an Order modifying the automatic stay to allow any customer of the Debtor who has a Completed Contract under which the Debtor has already been paid in full to bring suit against the Debtor, and obtain a money judgment, for the limited and sole purpose of pursuing restitution from the customer's applicable state

Recovery Fund. Affected customers, however, would not be allowed to pursue any further collection activities against the Debtor, or to attempt to enforce against the Debtor or property of the estate any judgment so obtained.

ARGUMENT

18. Section 362(a)(1) of the Bankruptcy Code imposes an automatic stay on the “commencement . . . of a judicial . . . action or proceeding against the debtor.” 11 U.S.C. § 362(a)(1). Courts, however, may modify the automatic stay for cause. 11 U.S.C. § 362(d)(1).

A. Cause Exists to Modify the Stay Under Section 362(d)(1).

19. Because the term “cause” is not defined by the Bankruptcy Code, “relief from stay for cause is a discretionary determination made on a case by case basis.” *In re Carbaugh*, 278 B.R. 512, 525 (B.A.P. 10th Cir. 2002). In making such a determination, courts generally consider, among other things, (1) “the lack of any connection with or interference with the bankruptcy case” and (2) whether the proposed modification to the stay would result in prejudice to creditors or other interested parties. *In re Curtis*, 40 B.R. 795, 800 (Bankr. D. Utah 1984).

20. The Trustee submits that, under the circumstances of this case, cause exists to modify the stay in the limited fashion he has requested.

21. The limited modification sought by the Trustee will have little to no connection to the bankruptcy case, nor will it result in any interference with the bankruptcy case or the administration of the estate. Further, the limited modification may result in a reduction of claims against the bankruptcy estate.

22. A modification of the stay will also not result in prejudice to any creditors or any other parties in interest. Rather, the modification will allow customers under Completed

Contracts for which the Debtor has already been paid in full to seek relief and redress from their applicable Recovery Fund without disturbing the bankruptcy case or the administration of the estate.

23. Courts generally grant stay modifications for the sole purpose of allowing aggrieved parties to seek compensation from similar recovery funds. *See, e.g., In re Phillips*, 40 B.R. 194, 197 (Bankr. D. Colo. 1984) (modifying the stay to allow plaintiffs to perfect their right for recovery from the Colorado Real Estate Recovery Fund but precluding plaintiffs from asserting personal liability against the debtor); *In re Bruce*, No. 00-1452DWS, 2000 WL 968777, at *6 (Bankr. E.D. Pa. July 10, 2000) (modifying the stay and allowing movants to proceed in state court to obtain a judgment and apply for recovery from the Pennsylvania Real Estate Recovery Fund but precluding movants from taking any action to execute against or otherwise collect from the debtor or his property based on the state court judgment).

24. Accordingly, cause exists to modify the stay to allow Customers to seek redress from the Recovery Funds.

B. Customers Will Remain Subject to Section 362(k).

25. Section 362(k) of the Bankruptcy Code provides that any “individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” 11 U.S.C. § 362(k)(1).

26. Because the requested modification of the stay here is for the sole purpose of allowing affected customers under Completed Contracts to pursue relief from the Recovery Funds, to the extent any customers attempt to collect and/or enforce any potential judgment

against the Debtor or property of the estate, the Trustee asserts that such actions will constitute violations of the automatic stay and give rise to liability under Section 362(k).

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an Order granting this Motion, and:

- A. Modify the automatic stay to allow customers under Completed Contracts for which the Debtor has already been paid in full to pursue state court actions against the Debtor for the sole and limited purpose of obtaining redress from the Recovery Funds; and
- B. Granting such other relief as the Court deems just and appropriate.

A proposed form of Order granting this Motion is attached hereto for the Court's review. As noted therein, the Trustee further requests that the 14-day stay period of FRBP 4001(a)(3) be waived and not apply to any order granting this Motion.

DATED this 28th day of September 2021.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson

Michael R. Johnson

David H. Leigh

Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2021, a true and correct copy of the foregoing **CHAPTER 7 TRUSTEE'S MOTION TO MODIFY THE AUTOMATIC STAY TO ALLOW CUSTOMERS UNDER COMPLETED AND FULLY PAID CONTRACTS TO SEEK REDRESS FROM APPLICABLE STATE RECOVERY FUNDS** was electronically filed and therefore served via ECF on the following:

- **Steven R. Bailey tr** karen@baileylaw.org, UT06@ecfcbis.com
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I further certify that on the 28th day of September, 2021, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to the following:

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/s/ Carrie Hurst

EXHIBIT A

Prepared and Submitted by:

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**EMPIRE SOLAR GROUP, LLC,
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Chapter 7

Honorable Joel T. Marker

**ORDER MODIFYING THE AUTOMATIC STAY TO ALLOW CUSTOMERS UNDER
COMPLETED AND FULLY PAID CONTRACTS TO SEEK REDRESS FROM
APPLICABLE STATE RECOVERY FUNDS**

This matter is before the Court on the *Chapter 7 Trustee's Motion to Modify the Automatic Stay to Allow Customers Under Completed and Fully Paid Contracts to Seek Redress from Applicable State Recovery Funds* (the "**Motion**") that was filed on September 28, 2021, by Steven R. Bailey, the Chapter 7 Trustee (the "**Trustee**").

In the Motion, the Trustee requests entry of an Order, entered pursuant to 11 U.S.C. § 362(d)(1) and Bankruptcy Rule 4001, modifying the automatic stay, on a limited basis, for cause,

to permit the Debtor's customers whose contracts were already completed and paid in full prior to the Petition Date, to pursue state court actions against the Debtor for the sole purpose of obtaining a judgment so that they can then seek restitution from various state-administered contractor recovery funds.

The Court, after carefully reviewing the Motion and such other and further papers and pleadings that were filed in support of and in opposition thereto, has determined that the Motion is well-taken, and that the relief requested therein should be granted.

Based upon the foregoing, and good cause appearing, **IT IS HEREBY ORDERED** as follows:

1. Effectively immediately upon the entry of this Order, the automatic stay of 11 U.S.C. § 362(a) shall be, and it hereby is, modified for cause to permit the Debtor's customers whose contracts were already completed and paid in full prior to the Petition Date, to pursue state court actions against the Debtor for the sole purpose of obtaining a judgment so that they can then seek restitution from various state-administered contractor recovery funds.

2. Except as set forth above, the automatic stay remains in full force and effect as it relates to the Debtor's customers and, among other things, the Debtor's customers shall continue to be stayed from collecting or enforcing, or attempting to collect or enforce, against the Debtor, its property and/or property of the bankruptcy estate, any judgment so obtained. The automatic stay also remains in full force and effect with respect to any contracts the Debtor had with customers which are not yet fully completed or paid in full, and for which additional funds may flow to the bankruptcy estate.

3. This Order shall take effect immediately upon its entry, and the 14-day stay period set forth in Fed. R. Bankr. P. 4001(a)(3) shall not apply to this Order.

-----END OF ORDER-----

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of September, 2021, a true and correct copy of the foregoing [Proposed] **ORDER MODIFYING THE AUTOMATIC STAY TO ALLOW CUSTOMERS UNDER COMPLETED AND FULLY PAID CONTRACTS TO SEEK REDRESS FROM APPLICABLE STATE RECOVERY FUNDS** was electronically filed and therefore served via ECF on the following:

- **Steven R. Bailey tr** karen@baileylaw.org, UT06@ecfbis.com
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- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

I further certify that on the ____ day of September, 2021, a true and correct copy of the foregoing proposed Order was mailed by first class mail, postage prepaid, to the following:

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