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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: EMPIRE SOLAR GROUP, LLC, Debtor.	Bankruptcy No. 21-23636 Chapter 7 Hon. Joel T. Marker
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**SUNTUITY’S REQUEST FOR PAYMENT
OF ADMINISTRATIVE EXPENSES PURSUANT TO BANKRUPTCY RULE 1007(k)
AND SECTION 503 OF THE BANKRUPTCY CODE**

Pursuant to 11 U.S.C. §§ 503 and 507(a)(2) and Federal Rule of Bankruptcy Procedure 1007(k), creditor SUNTUITY SOLAR LIMITED LIABILITY COMPANY (“**Suntuity**”), through counsel, hereby requests allowance and payment of administrative expenses in the discounted amount of \$76,827.40 (as more fully explained and described below, the “**Administrative Expenses**” or the “**Discounted Amount**”), which amount reflects (a) the actual, necessary fees, costs and expenses incurred by Suntuity and Rock Creek Advisors, LLC (“**Rock Creek**”) to prepare the Statements & Schedules (as defined below) filed in the above-captioned bankruptcy case (the “**Case**”), less (b) a substantial discount in the amount of approximately twenty-five thousand dollars.

This Application is supported by the declaration of Brian Ayers attached hereto as **Exhibit 1** (the “**Ayers Declaration**”). As described in the Ayers Declaration, the Discounted

Amount requested in this application reflects the fees, costs and expenses actually, reasonably and necessarily incurred in preparing the Statements & Schedules, less a substantial discount.

In support of this Application, Suntuity respectfully states as follows:

GENERAL BACKGROUND

1. On August 22, 2021 (the “**Petition Date**”), Empire Solar Group, LLC (the “**Debtor**”) filed a voluntary petition under chapter 7 of title 11 of the United States Code (the “**Bankruptcy Code**”). Steven R. Bailey (the “**Trustee**”) was appointed, and currently serves, as the trustee of the Debtor’s Chapter 7 bankruptcy estate (the “**Estate**”).
2. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334.
3. The Application is a core proceeding arising under and/or arising in a case under the Bankruptcy Code, within the scope of 28 U.S.C. §§ 157(b)(1).
4. Venue of the Case and the Application are proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
5. The authorities applicable to and governing the relief sought in the Application include 11 U.S.C. §§ 503 and 507(a)(2) and Federal Rule of Bankruptcy Procedure 1007(k).

BACKGROUND SPECIFIC TO THE APPLICATION

6. Prior to the Petition Date, the Debtor was engaged in the business of selling and installing solar energy systems.
7. On or about July 9, 2021, the Debtor and its two members, Abby Buchmiller and Amanda Roseburg (together, the “**Members**”), entered in that certain *Management Services Agreement* (the “**Management Agreement**”), pursuant to which the Debtor and its two Members retained Suntuity, as independent contractor, to provide management services to the Debtor.

8. Pursuant to section 1 of the Management Agreement, Suntuity was “appointed [to] provide ..., by and through itself and/or ... third parties, as [Suntuity] may designate from time to time in its sole discretion (collectively hereinafter referred to as the ‘Manager Designees’), management, advisory and consulting services in relation to the affairs of the Company”

9. On or about July 22, 2021, Suntuity engaged Rock Creek, as “Manager Designee”, to act as Chief Restructuring Officer and provide turn-around management and advisory services to the Debtor pursuant to and consistent with the Management Agreement.

10. The Debtor’s filing of the Case on August 22, 2021 constituted a Termination Event under the Management Agreement. Accordingly, the rights and obligations of Suntuity as Manager of the Debtor, and Rock Creek as Manager Designee, terminated on the Petition Date.

11. In short, upon the filing of the Case, the rights and obligations to manage the Debtor reverted to its two Members, Ms. Buchmiller and Ms. Roseburg.

12. Shortly after the Petition Date, the Trustee requested Suntuity and Rock Creek to assist in compiling and preparing the Debtor’s Statements & Schedules (as defined below) as required under Bankruptcy Rule 1007, and to obtain and compile other information relevant to the administration of the Estate. Based on the Trustee’s request for assistance, Suntuity and Rock Creek began undertaking efforts to prepare the Statements & Schedules and providing other assistance to the Trustee.

13. On September 2, 2021, the Trustee filed the *Trustee’s Motion, Pursuant to FRBP 1007(k), Directing Suntuity Solar LLC and Rock Creek Advisors LLC to Prepare and File Lists, Schedules and Statements, and Authorizing Suntuity Solar LLC and/or Rock Creek Advisors LLC to Seek Reimbursement for the Cost of Complying with the Court’s Order as an Administrative Expense* [Docket No. 14] (the “**Rule 1007(k) Motion**”).

14. Pursuant to the Rule 1007(k) Motion, the Trustee requested the Court to direct Suntuity and Rock Creek to prepare the lists, schedules, and statements required by Fed. R. Bankr. P. 1007. The Motion also requested an order authorizing Suntuity and Rock Creek to seek reimbursement for their fees, costs and expenses incurred in preparing the Statements & Schedules and in providing assistance to the Trustee and the Estate.

15. On September 24, 2021, the Court entered an order granting the Rule 1007(k) Motion [Docket No. 50] (the “**Rule 1007(k) Order**”). The Rule 1007(k) Order also expressly provides that “Suntuity and Rock Creek to file an application for allowance of an administrative expense” and to request payment and reimbursement of their fees, costs and expenses in complying with the Rule 1007(k) Order.

16. Consistent with the Trustee’s requests, the Rule 1007(k) Motion and the Rule 1007(k) Order, Suntuity and Rock Creek expended substantial time and effort, and incurred substantial costs and expenses, to prepare the Statements & Schedules and to cause them to be filed.

17. Rock Creek engaged former employees from the Debtor’s finance department, human resources department and information technology department as independent contractors to assist with various tasks detailed below (the “**Contractors**”). The Debtor’s CEO, Ms. Buchmiller, and its President & CFO, Ms. Roseburg, were not retained and did not assist.

18. For the benefit of the Estate and at the request of the Trustee, Rock Creek either directly, or via the Contractors, performed the following duties:

a. Rock Creek and/or the Contractors secured the Debtor’s assets to the best of their abilities, including requesting that the Debtor’s assets be returned to the Debtor’s various office and warehouse locations, and securing locations where possible.

b. Rock Creek and/or the Contractors updated the Debtor’s books and records from the last published financial statements of April 30, 2021, rolling them

forward to July 31, 2021, with the limited information available to best reflect a reasonable July 31, 2021 balance for completion of the Statements & Schedules.

c. Rock Creek and/or the Contractors compiled and prepared various notices, disclosures and filings required under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), including under Bankruptcy Rule 1007(b)(1).

d. Rock Creek and/or the Contractors assisted the Trustee as needed and responded to his inquiries if possible.

19. The Debtor’s counsel, Mark Rose and the law firm McKay Burton & Thurman (collectively, “**Rose**”) had multiple discussions with Rock Creek regarding the documents and disclosures that needed to be filed in the Case, including the Statements & Schedules, and the relevant information necessary to prepare the Statements & Schedules.

20. Rock Creek and the Contractors compiled and provided the information necessary to prepare the Statements & Schedules to Rose.

21. As questions arose, Rock Creek and Rose communicated and resolved them.

22. Rose compiled the information provided by Rock Creek and the Contractors and prepared drafts of the Statements & Schedules and other required Debtor filings.

23. Rose forwarded the drafts to Rock Creek for review, comment, correction and approval. Rock Creek identified and corrected errors, and supplied additional information. Rose then corrected, revised and supplemented the Statements & Schedules.

24. On October 1, 2021, Rock Creek released and delivered the Statements & Schedules to Suntuity for filing. Suntuity then caused the Debtor’s statement of financial affairs [Bankruptcy Form B 207] and schedules [Bankruptcy Form B 206] to be filed at Docket No. 68 (as more fully defined in the Rule 1007(k) Order, collectively, the “**Statements & Schedules**”), together with the Verification (as defined below).

25. Immediately after filing the Statements & Schedules, on October 1, 2021, Suntuity and Rock Creek jointly filed the *Notice of Compliance with Order Pursuant to Bankruptcy Rule 1007(k) Directing Suntuity and Rock Creek to Prepare and File Statements & Schedules and Verification of the Statements & Schedules* [Docket No. 69] (the “**Notice of Compliance**” or the “**Verification**”).

26. As set forth in the Notice of Compliance, Suntuity compensated Rock Creek for the fees, costs and expenses that Rock Creek incurred to comply with the Rule 1007(k) Order. Suntuity also advanced, or reimbursed, the 1099 payments that Rock Creek made to the Contractors for their assistance in preparing the Statements & Schedules.

27. With respect to the Contractors, Rock Creek made 1099 payments to Contractors—and Suntuity fully has reimbursed Rock Creek for such payments—in the total amount of \$40,279.67 for the Contractor’s assistance in preparing the Statements & Schedules (the “**Contractor Payments**”). A detailed spreadsheet of the Contractor Payments, and how the amounts were calculated (*i.e.*, each Contractor’s hours worked as an independent contractor multiplied by the negotiated 1099 hourly rate) is attached to the Ayers Declaration as **Exhibit A**.

28. In addition to the payments to Contractors, Rock Creek professionals actually and necessarily expended no less than 139.2 hours of time in preparing the Statements & Schedules and related financial documents, and engaging in other matters related thereto. On a lode star basis – professional hours reasonably spent multiplied by the reasonable hourly rates of the Rock Creek professionals – the value of the professional services provided by Rock Creek totals \$61,275.00 the (“**Rock Creek Fees**”). A detailed spreadsheet, including specific time entries prepared by Rock Creek’s professionals, is attached to the Ayers Declaration as **Exhibit B**.

29. Rock Creek is located in Belmar, New Jersey. The billing rates for the Rock Creek professionals (ranging from \$350 to \$550 per hour) who assisted in preparing the

Statements & Schedules and other related matters are consistent with, or less than, the typical billing rates provided by comparable professionals in the New Jersey area.

30. Rock Creek expended substantial time and effort to comply within the relatively short timeline specified by the Rule 1007(k) Order, as modified by the contemporaneously entered Order extending time to file the Statements & Schedules [Docket No. 51] (stating: “Debtor shall have until October 1, 2021 to file its statement of affairs, schedules, and other related documents”). Further, Rock Creek submits that the time and effort it spent on the Statements & Schedules and related matters was substantially less than the time and effort it would have taken a similar firm, including the Trustee’s professionals, to prepare the Statements & Schedules by reason of Rock Creek’s experience and background knowledge gained working as the Debtor’s CRO prior to the Petition Date.

31. Suntuity negotiated with Rock Creek to obtain a substantial discount vis-à-vis the \$61,275.00 that would have been payable to Rock Creek on an undiscounted hourly fee basis. Specifically, Rock Creek agreed to accept a discounted payoff in the total amount of \$76,827.40 (the “**Discounted Amount**”), which reflects (a) reimbursement of the Contractor Payments in the full amount of \$40,279.67, plus (b) payment of the Rock Creek Fees in the substantially discounted amount of \$36,547.73. The Discounted Amount reflects approximately a 40% discount in the amount of the Rock Creek Fees, or approximately \$25,000 in dollars.

32. Suntuity paid the Discounted Amount to Rock Creek on or about October 1, 2021. Upon Rock Creek’s receipt of payment from Suntuity in the Discounted Amount, Rock Creek (a) released the Statements & Schedules to Suntuity so that they could be filed in compliance with the Rule 1007(k) Order, and (b) Rock Creek professional Brian Ayers executed the Verification of the Statements & Schedules [Docket No. 69] that was filed October 1, 2021.

33. Pursuant to the agreements among Suntuity and Rock Creek, and by reason of Suntuity’s payment to Rock Creek of the Discounted Amount, Rock Creek has agreed to, and

hereby does, assign to Suntuity all of its rights to seek allowance, and obtain payment and reimbursement on account of the Contractor Payments and the Rock Creek Fees (as discounted), including any and all of Rock Creek's administrative expense claims under the Rule 1007(k) Order, Bankruptcy Rule 1007(k), and/or Bankruptcy Code § 503(b).

RELIEF REQUESTED

Suntuity, for itself and as assignee of the payment rights of Rock Creek, requests entry of an order pursuant to 11 U.S.C. §§ 503 and 507(a)(2) and Federal Rule of Bankruptcy Procedure 1007(k) (a) AWARDING to Suntuity and "ALLOWING" administrative expenses in the amount of \$76,827.40 (*i.e.*, the Administrative Expenses), and (b) AUTHORIZING and DIRECTING the Trustee to pay Suntuity's allowed Administrative Expenses as soon as may be practicable if and when funds become available for distribution to the holders of chapter 7 administrative expenses (and, in no event later than the Trustee pays other administrative expenses in the Case of like priority, and before it pays any claims of lesser priority).

ARGUMENT

I. The Administrative Expenses Resulted in a Substantial Benefit to the Estate.

"In applying [Bankruptcy Code §§ 503 & 507] to past cases, [the Tenth Circuit] ha[s] granted administrative expense priority to claims that satisfy two elements: (1) the claim resulted from a post-petition transaction, and (2) the claimant supplied consideration that was beneficial to the debtor-in-possession (or trustee) in the operation of the company's business." Peters v. Pikes Peak Musicians Ass'n., 462 F.3d 1265, 1268 (10th Cir. 2006). "[C]ourts have determined that an applicant's activities substantially contribute if they 'resulted in an actual and demonstrable benefit to the debtor's estate and the creditors.'" In re Summit Metals, Inc., 379 B.R. 40, 50 (Bankr. D. Del. 2007), *aff'd*, 406 F. App'x 634 (3d Cir. 2011) (quoting Lebron v. Mechem Fin. Inc., 27 F.3d 937, 944 (3d Cir.1994) and Haskins v. United States (In re Lister), 846 F.2d 55, 57 (10th Cir.1988)).

The Administrative Expenses meet the elements for an administrative expense. First, the Administrative Expenses plainly resulted from a post-Petition Date transaction—the Trustee requested (and the Court later ordered and directed) that Suntuity and Rock Creek prepare the Statements & Schedules. Suntuity and Rock Creek complied with the Trustee’s requests and the Rule 1007(k) Order, at substantial effort, cost and expense. Exhibits A and B to the Ayers Declaration reflect that the time actually, necessarily and reasonably expended by Rock Creek professionals and the Contractors after the Petition Date in preparing the Statements & Schedules, and performing related tasks.

Suntuity and Rock Creek provided a substantial benefit to the Estate by preparing the Statements & Schedules. Without the efforts of Suntuity and Rock Creek, it is likely that the Trustee and his professionals would have expended many more hours, and taken a much longer period of time, to obtain and compile the information needed to prepare the Statements & Schedules. In preparing and filing the Statements & Schedules, Suntuity and Rock Creek have provided the Trustee, the Court, and other parties-in-interest with critical information needed to fully evaluate the Estate. For example, the Statements & Schedules provide the Trustee with the information he needs to assess and bring avoidance actions. The Statements & Schedules also provided the Trustee with a picture of the Debtor’s physical assets (located in warehouses across the country), which the Trustee agreed to sell to 1Solar, subject to higher and better offers, and which (following a competitive auction) have been (or soon will be) sold to Suntuity. As another benefit, the Statements & Schedules provide the Trustee with a starting point to assess claims that are filed or may be filed against the Debtor’s Estate.

Finally, the Administrative Expenses were expressly contemplated by the Trustee, the Court, and parties-in-interest pursuant to the Rule 1007(k) Motion and Rule 1007(k) Order. Put another way, there is no “surprise” regarding the Administrative Expenses. Rock Creek kept detailed, contemporaneous records of time spent in preparing the Statements & Schedules and

working on related matters. Rock Creek paid and compensated the Contractors to assist it in preparing the Statements & Schedules. Further, Suntuity negotiated with Rock Creek to obtain a substantial discount, and then paid Rock Creek the Discounted Amount.

Suntuity, for itself and as Rock Creek's assignee, is entitled to receive reimbursement and compensation in the Discounted Amount of \$76,827.40.

WHEREFORE, Suntuity respectfully requests that the Court enter an order as follows:

- A. GRANTING and APPROVING this Application;
- B. AWARDING to Suntuity the Administrative Expenses in the (already) discounted amount of \$76,827.40;
- C. ALLOWING the \$76,827.40 awarded to Suntuity as priority administrative expenses pursuant to 11 U.S.C. §§ 503(b)(2) and 507(a)(2);
- D. AUTHORIZING and DIRECTING the Trustee to pay Suntuity's allowed Administrative Expenses as soon as may be practicable if and when funds become available for distribution to the holders of chapter 7 administrative expenses (and, in no event later than the Trustee pays other administrative expenses in the Case of like priority, and before it pays any claims of lesser priority); and
- E. granting such other and further relief as the Court may just and appropriate.

DATED this 25th day of October, 2021.

COHNE KINGHORN, P.C.

/s/ Jeffrey Trousdale

Matthew M. Boley

Jeffrey Trousdale

Attorneys for SUNTUITY SOLAR LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2021 a true and correct copy of the foregoing **SUNTUITY'S REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO BANKRUPTCY RULE 1007(k) AND SECTION 503 OF THE BANKRUPTCY CODE** was electronically filed and served via ECF on the following:

- B. Scott Allen allen@mvmlegal.com, coley@mvmlegal.com
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/s/ Tresa Kosec _____