

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
Solyndra LLC, *et al.*,<sup>1</sup> )  
Debtors. ) Case No.: 11-12799 (MFW)  
) (Jointly Administered)  
)  
Hearing Date: January 23, 2012 at 11:30 a.m. (Eastern Time)  
Objection Deadline: January 16, 2012 at 4:00 p.m. (Eastern Time)

**DEBTORS' MOTION FOR ORDER APPROVING A KEY EMPLOYEE  
INCENTIVE PLAN AND AUTHORIZING PAYMENTS THEREUNDER**

In order to maximize the value of their assets for the benefit of all creditor constituencies, the Debtors are pursuing a chapter 11 plan (the "Plan") and a proposed sale (the "Sale") of the Debtors' core assets (exclusive of real estate and intellectual property) or of substantially all of the Debtors' assets on a turnkey basis or through an auction. In light of the highly technical nature of the Debtors' assets, by this Motion the Debtors seek court approval of a key employee incentive plan (the "Incentive Plan") in order to incentivize certain of the employees whose work is critical to achieving the Plan and/or Sale. A copy of the Incentive Plan is attached hereto as Exhibit A. The Incentive Plan covers up to 21 key employees (the "Eligible Employees"). None of the Eligible Employees are insiders of the Debtors within the meaning of section 101(31)(B) of the Bankruptcy Code. The maximum aggregate amount of incentive payments that could be payable under the Incentive Plan is \$500,000.

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors' address is 47488 Kato Road, Fremont, CA 94538.

The Debtors believe that the approval of the Incentive Plan is in the best interest of their estates and will be necessary to maximize the value of the remaining assets. Within the past few months, the Debtors have experienced a serious loss of key personnel which has made the continuation of the sales process in an orderly fashion more difficult. The further loss of experienced personnel may seriously jeopardize the ongoing sales efforts and, should it continue, require the engagement of experienced consultants at a much higher cost than maintaining the existing personnel. In addition, the Debtors believe that the Incentive Plan will motivate the Eligible Employees to work as hard as possible to achieve the Plan and Sale. While the existing employees have rendered faithful service in the past, the Debtors believe that such additional motivation is necessary pending the Plan and Sale because the Eligible Employees must undertake a significant number of additional responsibilities, in addition to their normal jobs, for which they will not be compensated. The Debtors believe that the Eligible Employees' best efforts are needed to achieve the filing of the Plan by February 29, 2012, the completion of tax, accounting and human resources compliance tasks and filings for the calendar year 2011 by April 30, 2012, and the conclusion of the auctions or closing of the private sales comprising the Sale by June 30, 2012, and that approval of the Incentive Plan will motivate the Eligible Employees to maximize the potential that creditors will obtain the greatest recoveries possible on their claims. Under the terms of the Incentive Plan, the Eligible Employees will only be paid an incentive payment if they actually meet the objective benchmarks set forth in the Incentive Plan by the requisite dates. In support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Debtors' chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a), 363(b) and 503(c)(3) of title 11 of the United States Code (the "Bankruptcy Code").

### **Background**

3. On September 5, 2011 (the "Petition Date"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors are continuing in possession of their property and are managing their business as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in any of the Debtors' chapter 11 cases. On September 15, 2011, the Office of the United States Trustee appointed a committee of unsecured creditors and appointed seven initial members thereto (the "Committee").

### **The Debtors' Workforce and the Proposed Incentive Plan<sup>2</sup>**

6. In order to incentivize the Eligible Employees whose work is critical to filing the Plan by no later than February 29, 2012, the completion of tax, accounting and human resources compliance tasks and filings ("Compliance") for the calendar year 2011 by April 30,

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<sup>2</sup> This summary of material terms of the Incentive Plan has been included for the convenience of the parties receiving this Motion. It in no way alters, changes or amends the actual terms set forth in the Incentive Plan itself. In the event that there are any inconsistencies between this summary and the Incentive Plan, the language set forth in the Incentive Plan controls.

2012, and concluding the auctions or closing the private sales comprising the Sale by June 30, 2012, the Debtors, subject to approval by the Court, seek to implement the Incentive Plan. The Debtors have drastically reduced their workforce from approximately 1,100 immediately prior to the Petition Date, to 84 on the date of the filing of this Motion. The Eligible Employees have increased both their responsibilities and their workloads due to this substantial workforce reduction and the need to comply with the obligations imposed by chapter 11, without additional compensation or the possibility of continued employment beyond the Debtors' bankruptcy cases. In addition, the Eligible Employees, none of whom are insiders, are well aware that the clock is ticking on their employment by the Debtors and will be likely to accept employment elsewhere absent the Incentive Plan. Should these experienced employees depart, the Debtors estates will be forced to hire third party contractors to effect the necessary preparation for and execution of the Sale.

7. Significantly, the Debtors' assets are large and technically complex. Furthermore, Sale of these assets requires sophisticated environmental and regulatory compliance and coordination. The Eligible Employees could not, therefore, be replaced except through expensive outside contractors. The cost of such contractors would be significantly higher than the cost (including the cost of the Incentive Plan) of existing employees. Also, third party contractors do not possess the historical knowledge of Solyndra's operations and, as a result, would inherently be less efficient in the execution of the necessary work with respect to filing the Plan, completing the Compliance, and effectuating the Sale. The Debtors believe that the best efforts of the Eligible Employees are necessary to achieving the Plan, Compliance and

Sale, and that the best way to help insure that such efforts are achieved is to motivate the Eligible Employees by instituting the Incentive Plan.

8. Eligible Employees. The Eligible Employees consist of up to nine equipment engineers, up to four facilities personnel, up to six general business and finance personnel, and up to two information technology personnel, whose services are absolutely critical to the Plan and/or Sale process. The proposed amount of the incentive payment for each Eligible Employee ranges from eight percent (8%) to thirty percent (30%) of annual base pay. The annual base pay of the Eligible Employees ranges from approximately \$72,000 to approximately \$206,000.<sup>3</sup>

Performance Goals. The Incentive Plan has two (2) performance goals for each Eligible Employee. For Eligible Employees for whom the goals are denoted “Final Auction” on the Incentive Plan attached as Exhibit A: (1) first, the Debtors must file their Plan by no later than February 29, 2011, and (2) second, the Debtors must conclude the auctions and close on any private sales comprising the Sale by no later than June 30, 2012. For Eligible Employees for whom the goals are denoted “Plan Filing/2011 Compliance” on the Incentive Plan attached as Exhibit A: (1) first, the Debtors must file their Plan by no later than February 29, 2011, and (2) second, the Debtors must complete the 2011 calendar year Compliance by no later than April 30, 2012. An Eligible Employee must be employed by the Debtors at the completion of both goals applicable to that employee (collectively, the “Performance Goals”) in order to receive the

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<sup>3</sup> The Incentive Plan also permits the Debtors to replace one or more of the Eligible Employees listed on Exhibit A with comparable, non-insider employees, provided that these parameters continue to be satisfied.

incentive payment.

9. Additional Terms. In addition to the foregoing terms and conditions, the Incentive Plan provides, among other things, that: (i) except as otherwise set forth in the Incentive Plan, payments thereunder will be in lieu of any other postpetition performance bonus or retention compensation otherwise payable to the Eligible Employees; and (ii) the Eligible Employees shall release the Debtors and related parties in accordance with the terms of the release set forth in the Incentive Plan.

10. The Debtors' Board of Directors has considered and approved the Incentive Plan, and the Debtors have apprised their prepetition and postpetition secured lenders and the Committee of the proposed Incentive Plan.

#### **Relief Requested**

11. By this Motion, the Debtors request that the Court enter an order, pursuant to sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, approving the proposed Incentive Plan and authorizing the Debtors to make the payments contemplated thereunder, if the Eligible Employees satisfy the applicable Performance Goals.

#### **Basis for the Relief Requested**

##### **A. Implementation of the Incentive Plan Is a Valid Exercise of the Debtors' Business Judgment Pursuant to Section 363(b) of the Bankruptcy Code**

12. The Court may authorize the Debtors to implement the Incentive Plan under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate,

other than in the ordinary course of business, is authorized when a “sound business purpose” justifies such action. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under §363(b) when there is a legitimate business justification); In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D Del. 1991) (explaining that the Third Circuit has adopted the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)).

13. Historically, courts have approved employee compensation programs that are outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code. See, e.g., Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court approval of key employee retention program; stating that “in determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions”); In re Global Home Products, LLC, 2007 Bankr. LEXIS 758, at \*15 (Bankr. D. Del. March 6, 2007) (“The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.”); In re Nobex Corp., 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan 19, 2006) (approving incentive pay outside of ordinary course where it was “an appropriate exercise of the Debtor’s business judgment.”); In re America West Airlines, Inc., 171 B.R. 674, 678 (Bankr. D. Ariz 1994) (it is the proper use of a debtors’ business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process); In re Interco Inc., 128 B.R. 229,

234 (Bankr. E.D. Mo 1991) (“debtors’ business judgment” was controlling in the approval of a “performance/retention program”). See also, In re Riverstone Networks, Inc., Case No. 06-10110 (CSS) (Bankr. D. Del. March 28, 2006); In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. March 14, 2004).

14. The Debtors submit that the implementation of the Incentive Plan is a proper exercise of their business judgment. As noted above, in order to maximize creditor outcomes in the Chapter 11 Cases, the Debtors need to sell substantially all of their assets and obtain confirmation of a plan. To file the plan by February 29, 2012, the Debtors, among other things, must: (i) engage in significant negotiations with their major creditor constituencies; and (ii) draft and file the plan, disclosure statement, and liquidation analyses for the Debtors. To conclude the auctions and close on the private sales comprising the Sale by June 30, 2012, the Debtors, among other things, must: (i) obtain approval for a court-approved auction process; (ii) market substantially all of their assets; (iii) generate interest upon the part of potential purchasers; (iv) receive qualified bids; (v) engage in the auction process; (vi) obtain court approval for the Sale to the highest and best bidders; and (vii) close on any private sales involved in the Sale.

15. The Debtors have created the proposed Incentive Plan to help ensure that all of the above-noted tasks are in fact completed by such dates. Pursuant to the terms of the Incentive Plan, the Eligible Employees will only be paid an incentive payment if they meet the objective Performance Goals set forth in the Incentive Plan.



16. The Debtors submit that implementation of the Incentive Plan is an appropriate exercise of their business judgment under section 363(b)(1) of the Bankruptcy Code, and should therefore be approved by the Court.

**B. The Incentive Plan Complies With Section 503(c) of the Bankruptcy Code**

17. Section 503(c) of the Bankruptcy Code is applicable to all bankruptcy cases filed after October, 2005. It provides criteria for courts to use in approving certain types of payments to insiders and “other transfers of obligations that are outside of the ordinary course of business.” Section 503(c) contains: (1) a general prohibition of retention plans for insiders of a debtor; (2) limitations on severance payments to insiders of a debtor; and (3) standards governing other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the Petition. 11 U.S.C. § 503(c). None of the Eligible Employees are insiders within the meaning of section 101(31)(B) of the Bankruptcy Code. Thus neither section 503(c)(1) nor 503(c)(2) is applicable to the Incentive Plan. Moreover, as set forth below, the Incentive Plan complies with section 503(c)(3) of the Bankruptcy Code and should therefore be approved.

**Sections 503(c)(1) and (2) Are Not Applicable to the Incentive Plan**

18. Section 503(c)(1) of the Bankruptcy Code pertains solely to retention plans benefitting insiders, and section 503(c)(2) only addresses the requirements for severance plans benefitting insiders. None of the Eligible Employees are insiders. Further, neither section 503(c)(1) nor section 503(c)(2) applies to performance-based incentive plans. See, e.g., Global

Home Products, 2007 Bankr. LEXIS 758, at \*14 (“If [the proposed plans] are plans to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”); In re Nobex Corp., Case No. 05-20050, 01/12/06 Hearing Tr. at 67 (Bankr. D. Del. 2006) (MFW); In re Calpine Corp., Case No. 05-60200, 04/26/2006 Hearing Tr. at 87 (Bankr. S.D.N.Y. 2006)(BRL). Indeed, Judge Lifland has held that:

If sections 503(c)(1) and (c)(2) are not operative, a court may consider whether the payments are permissible under section 503(c)(3), which limits payments made to management and employees, among other things, outside of the ordinary course, unless such payments are shown to be justified under the facts and circumstances of the chapter 11 case. As one treatise points out, the test appears to be no more stringent a test than the one courts must apply in approving any administrative expense under section 503(b)(1)(A).

In re Dana Corporation, 358 B.R. 567, 576 – 77 (Bankr. S.D.N.Y. 2006).

19. The Incentive Plan does not benefit insiders, and is neither a retention plan nor a severance plan. Instead, the Incentive Plan is a non-insider performance-based plan that provides for targeted payments to certain employees if they meet the objective performance criteria set forth in the Incentive Plan. The purpose of the Incentive Plan is to motivate the Eligible Employees to work very hard in order to obtain the incentive payments. Neither the Performance Goals nor the incentive payments provided under the Incentive Plan has an impermissible retention or severance component. Therefore, sections 503(c)(1) and (c)(2) are not applicable to the Incentive Plan.

20. Finally, even if the Incentive Plan could be characterized as a retention plan, it does not benefit any insider. Thus the requirements of section 503(c)(1) of the Bankruptcy Code are satisfied as well.

**The Incentive Plan Complies With Section 503(c)(3)**

21. The Incentive Plan, and the payments contemplated thereunder, also comply with section 503(c)(3) of the Bankruptcy Code. The statute states that:

Notwithstanding subsection (b), there shall neither be allowed, nor paid—

(3) other transfers or obligations that are outside of the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c)(3). Since courts have begun to analyze various payments under section 503(c)(3), they have held that they must use the “business judgment” standard as the proper standard for determining whether non-insider plans and incentive programs and payments thereunder are justified. See e.g., Global Home Products, 2007 Bankr. LEXIS 758, at \*14; In re Werner Holding Co., Inc., Case No. 06-10578 (KJC) (Bankr. D. Del. July 20, 2006, August 22, 2006, and December 20, 2006); In re Riverstone Networks, Inc., Case No. 06-10110 (CSS) (Bankr. D. Del. March 28, 2006); In re Pliant Corp., Case No. 06-10001 (MFW) (Bankr. D. Del. March 14, 2006).

22. Indeed, in the Nobex case, this Court stated that:

[Section] (c)(3) was meant to provide a standard, albeit not as clear, for any other transfers or obligations outside of the ordinary course of business ... I read (c)(3) to be the catch-all and the standard under (c)(3) for any transfers or obligations made outside of the ordinary course of business are those that are justified by the facts and circumstances of the case... I find it quite frankly nothing more than a reiteration of the standard under 363... under which courts had previously authorized transfers outside of the ordinary course of business and that [are], based on the business judgment of the debtor...

Transcript of January 12, 2006, Hearing at 86-87, In re Nobex Corp., Case No. 05-20050 (MFW) (Bankr. D. Del.) (an order approving the management incentive plan was entered January 20, 2006). In Dana, Judge Lifland agreed with this Court's opinion in Nobex, stating that management incentive programs should be evaluated under the business judgment standard, which requires a debtor to satisfy the Court's inquiry into factors such as:

- (1) Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e. will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or in the case of a performance incentive, is the plan calculated to achieve the desired performance (emphasis added)?
- (2) Is the cost of the plan reasonable in the context of the debtors' assets, liabilities and earning potential?
- (3) Is the scope of the plan fair and reasonable; does it apply to employees; does it discriminate unfairly?
- (4) Is the plan or proposal consistent with industry standards?
- (5) What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- (6) Did the debtors receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

Dana Corp., 358 B.R. at 576 - 577 (citations omitted). Moreover, Judge Lifland noted that courts generally take a "holistic" view of and measure of compensation packages. Id. at 571.

23. As noted above, the Debtors have a sound business purpose for establishing the Incentive Plan, and the Incentive Plan does not benefit insiders.

24. The Incentive Plan, in addition, satisfies the factors articulated by Judge Lifland in Dana.

25. First, the Incentive Plan is a performance-based plan that has been calibrated by the Debtors to motivate the Eligible Employees to “achieve the desired performance” under Performance Goals of the Incentive Plan.

26. Second, the Debtors believe that the cost of the Incentive Plan is reasonable in the context of the chapter 11 cases, and in light of the amount of work that must be completed by the Eligible Employees, in a compressed amount of time, to obtain their incentive payments.

27. Third, the Incentive Plan is “fair and reasonable” in its scope and does not “discriminate unfairly,” because the Debtors designed the Incentive Plan to only include those employees whose services, in the Debtors’ opinion, are truly necessary to achieving the Performance Goals.

28. The Debtors submit that the fourth factor noted by Judge Lifland – i.e. is the plan or proposal consistent with industry standards – is not applicable to the facts and circumstances of the Debtors’ cases. To the best of the Debtors’ knowledge, there is no “industry standard” for compensation programs for the employees of failed companies in the Debtors’ business.

29. Fifth, the Debtors engaged in appropriate due diligence in formulating the Incentive Plan under the facts and circumstances of the chapter 11 cases. Moreover, as set forth

above, the Debtors' Board of Directors considered and approved the Incentive Plan presented herein.

30. Finally, the Debtors have obtained independent counsel from compensation consultants in formulating the Incentive Plan.<sup>4</sup>

31. Based upon the foregoing, the Debtors submit that they have established a "sound business purpose" for the formulation and implementation of the Incentive Plan, and therefore have satisfied the requirements of section 363(b) and 503(c)(3) of the Bankruptcy Code. As set forth in detail above, the Incentive Plan is a "true" non-insider incentive plan that has been designed to motivate the Eligible Employees to produce results. Moreover, in consideration of the benefits offered under the Incentive Plan, the Eligible Employees have waived any claims and causes of action (as provided in the Incentive Plan) against the Debtors. The Debtors believe that this waiver of claims further ensures that the Eligible Employees have the requisite "skin in the game" to be truly motivated to achieve the Performance Goals.

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<sup>4</sup> Even if the Debtors had not obtained outside advice, this one factor would not preclude approval of the Incentive Plan. As noted above, the application of the Dana "factors" is a holistic endeavor. Id. at 571. Moreover, in In re American Home Mortgage Holdings, Judge Sontchi articulated the holistic application of the Dana factors while considering the interim approval of a retention plan. In approving that plan, in part on an interim basis, Judge Sontchi stated that:

Did the debtor receive independent counsel from some sort of expert? Frankly, I don't consider those overtly significant, and certainly understandable that they weren't done in the context of what was an extremely quick meltdown of the debtors' business.  
(emphasis added)

Transcript of August 7, 2007, Hearing at 110, In re American Home Mortgage Holdings, et al., Case No. 07-11047 (CSS) (Bankr. D. Del.).

32. Accordingly, the Debtors submit that the Incentive Plan should be approved and, if the Eligible Employees meet the applicable Performance Goals provided thereunder, they should be paid their respective incentive payments by the Debtors.

**Notice**

33. Notice of this Motion has been given to the following parties, or their counsel, if known: (i) the Office of the United States Trustee; (ii) the Debtors' prepetition lenders; (iii) counsel for the Committee; and (iv) those persons who have requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

34. No prior request for the relief sought in this Motion has been made to this or any other court.

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

Dated: January 9, 2012

PACHULSKI STANG ZIEHL & JONES LLP



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Richard M. Pachulski (CA Bar No. 90073)  
Debra I. Grassgreen (CA Bar No. 169978)  
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Counsel for the Debtors and Debtors in Possession



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
Solyndra LLC, *et al.*,<sup>1</sup> ) Case No.: 11-12799 (MFW)  
) (Jointly Administered)  
Debtors. )  
Hearing Date: January 23, 2012 at 11:30 a.m. (Eastern Time)  
Objection Deadline: January 16, 2012 at 4:00 p.m. (Eastern Time)

**NOTICE OF DEBTORS' MOTION FOR ORDER APPROVING A KEY  
EMPLOYEE INCENTIVE PLAN AND AUTHORIZING PAYMENTS THEREUNDER**

**PLEASE TAKE NOTICE** that a hearing on the Debtors' *Motion for Order Approving a Key Employee Incentive Plan and Authorizing Payments Thereunder* (the "Motion") filed herewith by the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), will be held before the Honorable Mary F. Walrath, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Fifth Floor, Courtroom No. 4, Wilmington, Delaware 19801 (the "Bankruptcy Court") on **January 23, 2012 at 11:30 a.m. (Eastern Time)** (the "Hearing").

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion, must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds thereof, shall be filed with the Bankruptcy Court, and be served upon:

(i) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup>

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors' address is 47488 Kato Road, Fremont, CA 94538.

Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Bruce Grohsgal Esq.; (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Blank Rome LLP, 1201 N. Market Street, Ste 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell, Esq.; and (iv) any other party entitled to receive notice in these cases, so as to be received no later than **January 16, 2012 at 4:00 p.m. (Eastern Time)** (the "Objection Deadline").

**PLEASE TAKE FURTHER NOTICE** if an objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought in the Motion.

Dated: January 9, 2012

PACHULSKI STANG ZIEHL & JONES LLP



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Richard M. Pachulski (CA Bar No. 90073)  
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Counsel for the Debtors and Debtors in Possession

# **EXHIBIT**

**A**

## Solyndra Incentive Plan

	Title	Proposed Incentive	Payout Milestone	Base Salary	Date of Last Increase	% of Base
Level 2	Sr. Manager, Info Systems	\$20,000	<i>Final Auction</i>	\$157,000	11/7/2011	
Level 1	Network Admin	\$15,000	<i>Final Auction</i>	\$75,190	11/22/2010	
Level 2	Sr. Manager, Manufacturing Eng	\$27,500	<i>Final Auction</i>	\$159,073	11/7/2011	17%
Level 2	Sr. Manager, Manufacturing Eng	\$32,500	<i>Final Auction</i>	\$162,400	11/7/2011	20%
Level 2	Equipment Maintenance Sup	\$30,000	<i>Final Auction</i>	\$120,000	2/28/2011	25%
Level 3	Sr. Director, Prod Line Main	\$50,000	<i>Final Auction</i>	\$206,499	11/7/2011	24%
Level 2		\$32,500	<i>Final Auction</i>	\$108,150	11/22/2010	
Level 2		\$22,500	<i>Final Auction</i>	\$108,900	11/22/2010	
Level 2		\$32,500	<i>Final Auction</i>	\$124,500	2/28/2011	
Level 2		\$10,000	<i>Plan Filing/2011 Compliance</i>	\$123,500	2/28/2011	
Level 1/Level 2		\$20,000	<i>Final Auction</i>	\$100,000	1/17/2011	
Level 1		\$15,000	<i>Final Auction</i>	\$85,000	6/6/2011	
Level 2		\$25,000	<i>Final Auction</i>	\$101,760	11/22/2010	
Level 1		\$20,000	<i>Final Auction</i>	\$72,842	11/22/2010	
Level 1		\$15,000	<i>Final Auction</i>	\$71,781	11/22/2010	
Level 2		\$20,000	<i>Plan Filing/2011 Compliance</i>	\$150,000	1/17/2011	
Level 2		\$25,000	<i>Final Auction</i>	\$190,800	11/7/2011	
Level 2		\$12,500	<i>Plan Filing/2011 Compliance</i>	\$150,000	9/13/2010	
Level 1/Level 2		\$10,000	<i>Final Auction</i>	\$75,705	11/22/2010	
Level 3		\$35,000	<i>Final Auction</i>	\$189,000	11/7/2011	
Level 2		\$12,500	<i>Plan Filing/2011 Compliance</i>	\$114,400	12/5/2011	
Totals		<b>\$482,500</b>		<b>\$2,646,501</b>		

(1) The Debtors under the Incentive Plan may replace one or more of the Eligible Employees listed on on this Exhibit A with comparable, non-insider employees, provided that the incentive payment to any such replacement employee does not exceed the highest payment and/or percentage payable under this Exhibit A, and that the total incentive payments do not exceed \$500,000.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
Solyndra LLC, *et al.*,<sup>1</sup> )  
Debtors. ) Case No.: 11-12799 (MFW)  
) (Jointly Administered)  
)  
Related Docket No. \_\_\_\_\_

**ORDER APPROVING A KEY EMPLOYEE INCENTIVE  
PLAN AND AUTHORIZING PAYMENTS THEREUNDER**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order, pursuant to sections 105(a), 363(b) and 503(c)(3) of Title 11 of the United States Code (the "Bankruptcy Code"), for approval of a Key Employee Incentive Plan (the "Incentive Plan"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

**ORDERED** that the Motion is granted; and it is further

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors' address is 47488 Kato Road, Fremont, CA 94538.

**ORDERED** that the Incentive Plan is approved; and it is further

**ORDERED** that the Debtors may pay to each Eligible Employee the incentive payment amount set forth in the Incentive Plan with respect to such Eligible Employee, according to the terms of the Incentive Plan; and it is further

**ORDERED** that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2012

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The Honorable Mary F. Walrath  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
Solyndra LLC, *et al.*,<sup>1</sup> )  
 ) Case No.: 11-12799 (MFW)  
 )  
Debtors. ) (Jointly Administered)  
 )

**CERTIFICATE OF SERVICE**

I, Bruce Grohsgal, hereby certify that on the 9<sup>th</sup> day of January, 2012, I caused a copy of the following document to be served on the individuals on the attached service list in the manner indicated:

**Notice and Debtors' Motion for the Approval of a Key Employee Incentive Plan and Authorizing Payments Thereunder**



\_\_\_\_\_  
Bruce Grohsgal (DE Bar No. 3583)

DOCS\_DE:176812.1 80368-002

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<sup>1</sup> The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors' address is 47488 Kato Road, Fremont, CA 94538.

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03 – Express Mail  
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