

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Solyndra LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 11-12799 (MFW)

(Jointly Administered)

Hearing Date: March 30, 2016 at 11:30 a.m.

Objection Deadline: March 11, 2016 at 4:00 p.m.

**MOTION OF THE SOLYNDRA RESIDUAL TRUSTEE
FOR AN ORDER APPROVING SETTLEMENT AGREEMENT
WITH YINGLI GREEN ENERGY HOLDING CO., LTD.**

R. Todd Neilson, in his capacity as trustee (the “Solyndra Residual Trustee”) of the Solyndra Residual Trust (“Solyndra”), moves this Court for the entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the *Settlement Agreement* dated as of February 25, 2016, attached hereto as Exhibit A (the “Settlement Agreement”), between Solyndra and Yingli Green Energy Holdings Co., Ltd. (“Yingli Green Energy”) and Yingli Green Energy Americas, Inc. (“Yingli Americas” and, together with Yingli Green Energy, “Yingli”).² Solyndra and Yingli are referred to herein as the “Parties” and each a “Party.”

Pursuant to the Settlement Agreement, the Parties seek to resolve the pending civil litigation in the United States District Court for the Northern District of California against Yingli. The case is *The Solyndra Residual Trust, by and through its Liquidating Trustee R. Todd Neilson v. Suntech Power Holdings Co., Ltd., et al.*, Case No. 12-cv-5272 (the “Anti-Trust”

¹ 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 2880 Zanker Road, Suite 203, San Jose, CA 95143.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement. Any summary of the terms of the Settlement Agreement provided for herein is provided solely for the convenience of the Court. To the extent that any summary conflicts with the actual terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

Litigation”). As set forth in the Anti-Trust Litigation, Solyndra has asserted claims for, *inter alia*, price-fixing, conspiracy, predatory pricing, and tortious interference against three Chinese solar panel manufacturers under both federal and California law. The Anti-Trust Litigation has advanced, with a motion to dismiss being denied, discovery completed, and motion for summary judgment pending.

In support of the Motion, the Solyndra Residual Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Settlement Agreement represents the final chapter in the Anti-Trust Litigation. As detailed below, Solyndra has reached favorable settlements with each non-Yingli defendant in the Anti-Trust Litigation. For example, Solyndra consummated a settlement of the Anti-Trust Litigation with Trina Solar (U.S.), Inc. and Trina Solar Limited (together, “Trina”) for \$45 million. Solyndra also settled the Anti-Trust Litigation with (a) Suntech Power Holdings Co., Ltd. (“Suntech Holdings”) for an allowed claim in its Cayman Island liquidation proceeding and (b) Suntech America, Inc. (“Suntech America”) in exchange for a \$216 million allowed claim in its chapter 11 bankruptcy case with a guaranteed cash payment of approximately \$6 million. For the reasons discussed below, the reasonableness of these extraordinary settlements are not subject to debate and the Solyndra Residual Trustee entered into these settlements pursuant to the powers afforded to him in the Trust Agreement. The only non-settling defendant remaining in the Anti-Trust Litigation is Yingli.

2. Under the proposed Settlement Agreement, Yingli will contribute at least \$7.5 million and potentially up to \$17.5 million.³ The economic result of the settlement with

³ The Settlement Agreement provides for an additional payment of up to \$10 million by Yingli if it should reach certain sales milestones within a calendar three year period.

Yingli is comparable to the settlement with the Suntech entities, the latter of which are in insolvency proceedings. This reflects the fact that Yingli has provided evidence (in the form of an affidavit of an officer of Yingli) that Yingli's financial condition strongly supports the settlement discussed herein, including, but not limited to, the facts that:

- a. On May 15, 2015, Yingli disclosed in its publicly reported financial statements that "[s]ubstantial doubt exists as to [Yingli's] ability to continue as a going concern;" and
- b. On October 13, 2015, Yingli only partially repaid more than \$100 million in certain Mid-Term Notes due at that time.

3. The settlement with Yingli, however, is at an amount that is quantitatively lower than the settlement with the other non-debtor defendant, Trina. This is because Trina is the only defendant not in an insolvency proceeding or otherwise subject to evidenced economic limitations. Trina simply had greater economic resources to settle the litigation. Thus, the settlements with Yingli and Suntech are reflective of certain practicalities.

4. The Solyndra Residual Trustee believes the Settlement Agreement is a result of extensive good faith negotiations and reflects an appropriate settlement amount in light of the evidence produced by Yingli. It also recognizes the risk inherent in litigation, the pendency of the trial court's ruling on motions for summary judgment, and the expense that could be incurred if the matters are pursued to a trial.

5. With this final settlement, all classes of creditors will receive a recovery from the Anti-Trust Litigation. Collectively, the settlements reached in the Anti-Trust Litigation should result in full satisfaction of the "Tranche A" Secured Debt, a payment of approximately \$4.6 million to the Creditor Trust which was established for the benefit of general unsecured creditors (this is in addition to the \$3 million settlement pool general unsecured creditors received under the Plan) and a recovery of approximately \$2.6 million to the Department of

Energy. For these reasons and others discussed below, the Solyndra Residual Trustee respectfully requests that the Court approve the Settlement Agreement.

6. The Solyndra Residual Trust Committee was consulted on the settlement, and voted to approve the Settlement Agreement. Notwithstanding, given that this is the last in a series of settlements that will fully dispose of the Anti-Trust Litigation, and given the disparity in settlement value that was achieved with Trina, the Solyndra Residual Trustee believes that it is prudent in the abundance of caution to obtain this Court's approval of the Settlement Agreement.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334 and section 4.6 of the Trust Agreement (defined below). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELEVANT FACTS

A. General Background

8. On September 6, 2011 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

9. On September 7, 2011, this Court entered an order authorizing the joint administration of the Debtors' chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

10. On September 15, 2011, the United States Trustee appointed an Official Committee of Unsecured Creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”).

11. On October 22, 2012, the Court entered an order confirming the *Debtors’ Amended Joint Chapter 11 Plan* (the “Plan”), which became effective on November 7, 2012.

B. The Solyndra Residual Trust

12. Pursuant to the Plan and the *Solyndra Residual Trust Agreement* dated November 6, 2012 (the “Trust Agreement”), certain assets were transferred to the Solyndra Residual Trust, including, but not limited to, any antitrust and other claims against certain defendants for, inter alia, such defendants’ anticompetitive or tortious conduct.

13. Mr. Neilson, the former court-appointed Chief Restructuring Officer of the Debtors, was named Solyndra Residual Trustee. The Solyndra Residual Trustee, in consultation with the Solyndra Residual Trust Committee, is authorized to compromise claims in favor of the Solyndra Residual Trust.

14. The Solyndra Residual Trust Committee consists of (a) Frederic Dorwart, (b) Robert Thomas, and (c) a designee of the U.S. Department of Energy (the “DOE”). As discussed above, the Solyndra Residual Trust Committee was consulted on the proposed settlement, and voted to approve the Settlement Agreement.

15. Although the Solyndra Residual Trustee is not required to obtain the approval of the Bankruptcy Court in exercising any power, rights, or discretion conferred under the Trust Agreement, the Solyndra Residual Trustee has “the right to submit to the Bankruptcy Court any question or questions regarding which the Solyndra Residual Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to

be taken by the Solyndra Residual Trustee with respect to the Solyndra Residual Trust Assets . . .” Trust Agreement at § 4.6.

C. The Anti-Trust Litigation

16. On October 11, 2012, Solyndra commenced the Anti-Trust Litigation against a group of six defendants: (i) Suntech Holdings, (ii) Suntech America, (iii) Trina, and (iv) Yingli (collectively, the “Antitrust Defendants”).

17. The complaint (the “Solyndra Complaint”) asserts claims for, *inter alia*, price fixing, conspiracy, predatory pricing, and tortious interference by an alleged illegal cartel of Chinese solar panel manufacturers, including, but not limited to, the Antitrust Defendants, under both federal and California state law. Through the Anti-Trust Litigation, Solyndra seeks compensation for the \$1.5 billion value of Solyndra’s business, which the Solyndra Complaint alleges that the Antitrust Defendants conspired to destroy.

18. The Anti-Trust Litigation is in its final stages of litigation. Since the commencement of the Anti-Trust Litigation in 2012, Solyndra has produced approximately 1.5 million documents, attended four settlement conferences, defended eleven depositions, completed discovery, successfully defended a motion to dismiss, and is now preparing for a hearing on summary judgment, which is scheduled for March 9, 2016. A trial date has been adjourned to a date to be determined.

19. As set forth below, these efforts have allowed Solyndra to settle its claims against Suntech Holdings, Suntech America, and Trina. Although Suntech Holdings and Suntech America are both in the midst of insolvency proceedings, Solyndra was able to reach reasonable and favorable settlement terms with both parties. In addition, in light of Trina’s position as one of the world’s largest solar module manufacturers and installers, Solyndra was

able to settle the Anti-Trust Litigation with Trina for \$45 million, which was paid by December 31, 2015. By this Motion, Solyndra seeks to settle the Anti-Trust Litigation with the last remaining defendant – Yingli. The following is a brief summary of the settlements reached with the non-Yingli defendants.

i. The Suntech Holdings Settlement

20. On November 5, 2013, Suntech Holdings filed a winding up petition (the “Cayman Proceeding”) in the Grand Court of the Cayman Islands (the “Cayman Court”). On November 7, 2013, based on the winding up petition, the Cayman Court appointed joint provisional liquidators (“JPLs”) pursuant to section 104(3) of the Companies Law of Cayman Islands (2013 Revision).

21. On February 21, 2014, the JPLs sought relief in the United States Bankruptcy Court for the Southern District of New York (the “New York Court”) under chapter 15 of the Bankruptcy Code, requesting recognition of the Cayman Proceeding as a foreign main proceeding (the “Chapter 15 Proceeding”). On December 4, 2014, the New York Court entered an order recognizing the Cayman Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

22. After three months of intense negotiations and mediation sessions, Suntech Holdings and Solyndra reached a settlement resolving the Anti-Trust Litigation as it pertains to Suntech Holdings. On April 3, 2015, Suntech Holdings and Solyndra entered into a settlement agreement pursuant to which Solyndra will receive an allowed claim in the Cayman Proceeding.⁴

⁴ The settlement with Suntech Power Holdings is not public and is subject to confidentiality restrictions.

ii. The Suntech America Settlement

23. On January 12, 2015, Suntech America – Suntech Holdings’ operating subsidiary – filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

24. On October 30, 2015, Suntech America and Solyndra, along with other parties, entered into a plan term sheet (the “Plan Term Sheet”) that, among other things, resolves the Anti-Trust Litigation as it relates to Suntech America.

25. Pursuant to the Plan Term Sheet (and related chapter 11 plan), Solyndra’s claim will be allowed on a full and final basis in the amount of \$216,265,149.62. In addition, Solyndra will receive, in full and complete satisfaction of its claim, \$6,062,500 of Suntech America’s approximate \$10 million of cash on hand.

iii. The Trina Settlement

26. Trina was founded in 1997 and is a publicly traded global manufacturer of solar modules. Trina shipped 1,703.2 megawatts of solar modules in the third quarter of 2015 and generated net revenues of \$792.6 million in the same period.

27. On November 17, 2015, Trina and Solyndra entered into a settlement agreement whereby Trina agreed to pay Solyndra \$45 million no later than December 31, 2015. Trina timely made the settlement payment.

D. The Yingli Settlement Agreement

28. Subject to the Court’s approval, Yingli and Solyndra desire to consensually resolve the Anti-Trust Litigation, as set forth in the Settlement Agreement. As part of the Settlement Agreement, Solyndra will dismiss with prejudice Yingli from the Anti-Trust Litigation after payment in full of the Initial Settlement Payment (defined below). Moreover, as

a condition to releasing Yingli from the Anti-Trust Litigation, Yingli is providing an affidavit of a duly-authorized and appointed officer of Yingli, acceptable in form and substance to Solyndra in its sole discretion, as to the financial wherewithal of Yingli.⁵

29. A summary of the key terms of the Settlement Agreement is as follows:⁶

- a. Initial Settlement Payment. In full and complete satisfaction and discharge of the Anti-Trust Litigation, Yingli shall make an initial payment to Solyndra in the amount of \$7.5 million within one day after the date upon which the Bankruptcy Court order approving the Settlement Agreement becomes a final order.
- b. Supplemental Settlement Payment. In addition to payment of the Initial Settlement Payment, Yingli shall be obligated to pay to Solyndra additional cash in the amount of \$10 million within forty-five (45) calendar days of the date upon which either of the following conditions have been satisfied:
 - (1) The Sale (defined below) of at least 800 megawatts of solar modules by Yingli or any of their respective affiliates⁷ in North America⁸ during any one of the twelve-month calendar year periods ending December 31, 2016, December 31, 2017 or December 31, 2018 (each, a "Measurement Period") (for purposes of the Settlement Agreement, a "Sale" shall mean sale as used in common parlance and includes, without limitation (1) the transfer of ownership of product or incurrence of an obligation to transfer such ownership, irrespective of whether and when such transfer is recognized as revenue for accounting purposes, and irrespective of timing or ultimate collection of consideration from customer and (2) the installation of

⁵ A true and correct copy of the officer affidavit is annexed hereto as Exhibit B.

⁶ The summary of the Settlement Agreement provided is not intended to be a comprehensive recitation of all of the terms of the Settlement Agreement. The summary is qualified in its entirety by the actual terms of the Settlement Agreement, and to the extent that there is any inconsistency between the summary provided herein and the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Agreement.

⁷ The terms affiliate and affiliates as used in the Settlement Agreement shall be broadly construed under applicable law and shall include all current and future affiliates. The definition of affiliate under section 101 of the Bankruptcy Code shall be instructive but not limiting.

⁸ North America shall include the United States of America and Canada., and any of their respective territories or districts.

product on any project owned by Yingli or any of its affiliates; or

- (2) The reporting or publishing, including in any electronic or print media or other means, including as part of financial or operational audits, public or governmental filings or communications with creditors and investors or potential creditors and investors, by Yingli or any of their affiliates of the Sale of at least 800 megawatts of solar modules by Yingli or any affiliates in North America at any time during a Measurement Period

c. Audit Rights.

- (1) An officer of Yingli, acceptable to Solyndra, shall certify in an affidavit under penalty of perjury in substantially the form of Annex C to the Settlement Agreement no later than each of March 31, 2017, March 31, 2018, and March 31, 2019 that the conditions above have or have not occurred during the prior Measurement Period and certifying the number of megawatts sold during such period. Without limiting the foregoing, and in addition thereto, Solyndra may request at any time prior to and including April 30, 2019 (but not more than two times) that such an officer of Yingli make a certification in the form of Annex C to the Settlement Agreement.
- (2) Yingli shall provide annual, audited financial statements at the time it publishes its annual report that include the total number of Sales of megawatts in each year during the Measurement Period. The provision and receipt of such documents (or any certification) shall be subject to the confidentiality provisions contained in Section 6 to the Settlement Agreement.
- (3) Upon 15 days written notice, Yingli shall provide Solyndra with reasonable access to its books and records, subject to the confidentiality provisions of the Settlement Agreement, in order to permit Solyndra to audit and verify Yingli's compliance with the Settlement Agreement, including, without limitation, any certification provided by Yingli.

d. Releases and Dismissal.

- (1) Effective upon and subject in all respects to occurrence of the Release Conditions, to the fullest extent permissible under applicable law, each of the Releasing Parties on

behalf of itself and each of its Related Parties, hereby does and is deemed to conclusively and absolutely release and discharge each of the other Releasing Parties and their respective Related Parties from and with respect to its respective Released Claims. Solyndra has provided to counsel to Yingli a stipulation of dismissal and letter of instructions (as set forth in Annex B to the Settlement Agreement, with such instructions fully incorporated and made a part of the Settlement Agreement by reference as though set forth in full herein) to dismiss with prejudice Yingli from the Anti-Trust Litigation, with each Party being responsible for its own costs and expenses, provided that the Parties shall not file the documentation with the Court until the Initial Settlement Payment has been made and received by Solyndra as more fully set forth in the letter of instructions. For avoidance of doubt, Solyndra shall take such actions as are necessary and reasonable to effectuate dismissal of Yingli with prejudice from the Anti-Trust Litigation, provided that such dismissal shall occur only after payment in full of the Initial Settlement Payment. If dismissal of Yingli with prejudice from the Anti-Trust Litigation does not occur for any reason, Solyndra shall return the full Initial Settlement Payment and any Supplemental Settlement Payment, if paid, to Yingli. For avoidance of doubt, this paragraph is without prejudice to the continuation of the Anti-Trust Litigation with respect to defendants other than Yingli therein.

e. Definitions.

- (1) “Causes of Action” means any and all claims (including any equitable remedy for breach of performance if such breach gives rise to a right to payment), actions, causes of action, choses in action, suits, debts, set-offs, dues, damages, demands, rights, rights of recovery, rights of payment, contractual rights, judgments, third-party claims, counterclaims, cross-claims and any and all other liabilities and obligations (including, but not limited to, all such matters arising under state, federal, foreign, and other applicable law) whether based in law, contract or equity, whether direct, indirect, or derivative, known or unknown, secured or unsecured, legal or equitable, foreseen or not foreseen, accrued or accruing, fixed or contingent, liquidated or unliquidated, matured or unmatured, or disputed or undisputed, for any injury, damage, or loss of any kind whatsoever, including, but not limited to,

compensatory damages, consequential damages, incidental damages, statutory liquidated damages, exemplary damages, punitive damages, costs, expenses, interest, and attorneys' fees. The "Causes of Action" shall include the Anti-Trust Litigation, but shall not include the Preserved Matters.

- (2) "Preserved Matters" means, collectively, (a) the obligations of any Party under the Settlement Agreement, including any action for specific performance of the Settlement Agreement, which obligations shall survive the execution thereof; (b) without limiting the generality of the preceding clause 2.3.2(a) of the Settlement Agreement, the obligation to timely make the Supplemental Settlement Payment if the conditions in Section 1.1.2 are satisfied, and (c) any other Causes of Action held by Solyndra against any other defendant in the Anti-Trust Litigation that is not a Party hereto, Releasing Party, or Releasing Party's Related Party. For the avoidance of doubt, notwithstanding any other provision of the Settlement Agreement (including but not limited to Section 2.3.3) the term "Preserved Matters" shall include any and all Causes of Action of Solyndra against Trina Solar Limited and Trina Solar (U.S.), Inc., Suntech Power Holdings Co., Ltd., and/or Suntech America, Inc., or their respective Related Parties, all of which Causes of Action are hereby expressly preserved against the foregoing entities and not released hereunder.
- (3) "Related Parties" means with respect to any person or entity any and all of such person's or entity's current and former officers, managers, directors, authorized agents and trustees, employees, attorneys, advisors, accountants, experts, consultants, other professionals, and authorized representatives.
- (4) "Release Conditions" shall mean full and final satisfaction of the following conditions: (a) satisfaction of the conditions to effectiveness of the Settlement Agreement as set forth in Section 7 of the Settlement Agreement; (b) non-revocable payment and receipt, in full, of the Settlement Payment (including the Supplement Settlement Payment only to the extent such payment becomes due), in accordance with the terms and conditions set forth in Section 1 of the Settlement Agreement, and (c) receipt of an affidavit of a duly-authorized and appointed officer of Yingli, designated by Yingli and acceptable to Solyndra.

- (5) “Released Claims” means, collectively, any and all Causes of Action held by the Releasing Parties and their Related Parties (other than the Preserved Matters) from the beginning of time through and including the full execution hereof including, without limitation, any Causes of Action that are based in whole or in part on any act, omission, transaction, agreement, event or other occurrence taking place before the full execution hereof or in any way relating to the Anti-Trust Litigation.
- (6) “Releasing Parties” means (i) The Solyndra Residual Trust, (ii) Yingli Green Energy Holdings Co., Ltd., and (iii) Yingli Green Energy Americas, Inc.

RELIEF REQUESTED

30. By this Motion, the Solyndra Residual Trustee seeks the entry of an order, substantially in the form attached hereto, pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement. As set forth in detail below, the relief requested herein is in the best interest of Solyndra’s estate and its creditors and other parties in interest.

BASIS FOR RELIEF

A. The Settlement Agreement Should be Approved Pursuant to Bankruptcy Rule 9019(a)

31. Bankruptcy Rule 9019, which governs the approval of compromises and settlements by a debtor, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019. Further, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

32. A starting point in analyzing any proposed settlement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91

F.3d 389, 394 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that such settlement is in the best interest of a debtor's estate. *Law Debenture Trust Co. of New York v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95–96 (D. Del. 2006).

In addition, a court must:

assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors.

Id. at 96 (quoting *Martin*, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court's ultimate inquiry is whether a settlement is fair, reasonable, and in the best interest of a debtor's estate. *In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (quoting *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

33. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible, rather “[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

34. In the Solyndra Residual Trustee's business judgment, the resolution embodied in the Settlement Agreement is reasonable and in the best interest of Solyndra's estate and creditors. The proposed settlement provides for a fair and practical resolution of the Anti-

Trust Litigation. Among other things, the agreement reflects the fact that Yingli's financial condition strongly supports the settlement discussed herein, as set forth above, and in the Yingli affidavit submitted herewith. Accordingly, any judgment Solyndra may receive against Yingli in excess of \$7.5 million may prove difficult to collect and would necessarily involve enforcing a foreign judgment in China.

35. The Settlement Agreement was the product of significant and lengthy discussions and negotiations among the Parties following several court-ordered mediation sessions, culminating in a settlement that falls well within the range of reasonable litigation outcomes as to each of the issues encompassed by the Settlement Agreement. The Settlement Agreement represents a complete resolution of the Anti-Trust Litigation as Yingli is the final defendant to settle.

36. As discussed below, the applicable *Martin* factors weigh in favor of approving the Settlement Agreement.

B. The Probability of Success in Anti-Trust Litigation and Difficulties with Collection

37. The Solyndra Residual Trustee believes that if the Parties had failed to reach a consensual resolution, the Solyndra Residual Trustee would have continued the Anti-Trust Litigation and Solyndra would have prevailed on the motions for summary judgment and at trial. However, as set forth above, collectability would remain a significant issue. If Yingli were to commence foreign insolvency proceedings, as Suntech did, they would likely include proceedings in China, the Cayman Islands, and elsewhere. For the Solyndra Residual Trust to effectively participate in these potential foreign insolvency proceedings, it would be time-consuming, expensive, and create uncertainty. By contrast, the terms of the Settlement Agreement will, among other things, guarantee an additional recovery of at least \$7.5 million

with a potential further recovery of \$10 million if Yingli meets certain sales milestones in North America over a calendar three year period. The Settlement Agreement provides much-needed certainty with respect to the conclusion of the Anti-Trust Litigation. Moreover, the Solyndra Residual Trustee acknowledges that, under the circumstances, a guaranteed \$7.5 million recovery is appropriate given the uncertainty regarding collecting any judgement against Yingli.

38. In light of the foregoing, the first two *Martin* factors weigh significantly in favor of approving the Settlement Agreement.

C. The Complexity of the Anti-Trust Litigation Involved

39. Prosecuting antitrust claims is complex and involves extensive discovery, expert testimony, and litigation. Although the Parties are nearing trial in the Anti-Trust Litigation, any such trial would be costly to Solyndra both in terms of economic costs and resources. Accordingly, the third *Martin* factor weighs in favor of approving the Settlement Agreement.

D. The Paramount Interest of Creditors

40. Here, the paramount interest of creditors will be best served by approving the Settlement Agreement and continuing to efficiently conclude these cases. Approval of the Settlement Agreement will avoid potentially costly and time-consuming litigation with Yingli, the outcome of which would be uncertain, while providing, an immediate benefit to Solyndra's creditors in the form of \$7.5 million to be distributed pursuant to the Plan.

41. Therefore, the Court's approval of the Settlement Agreement is beneficial to Solyndra and its creditors and is in the best interests of all parties in interest. Accordingly, the fourth *Martin* factor weighs in favor of approving the Settlement Agreement.

CONCLUSION

42. A review of the relevant *Martin* factors, to the extent they are applicable, clearly demonstrates that approval of the Settlement Agreement is in the best interests of all parties in interest in these cases. The compromise embodied in the Settlement Agreement is the product of extensive and good faith arm's length negotiations among the Parties. The Settlement Agreement provides for a fair and practical resolution of the various issues among the Parties and, if approved, will create value for, among others, general unsecured creditors.

43. For the reasons set forth herein, the Solyndra Residual Trustee submits that the Settlement Agreement (i) is fair, equitable, and in the best interests of Solyndra, its estate and creditors, and other parties in interest in these cases; (ii) represents an exercise of the Solyndra Residual Trustee's sound business judgment; and (iii) should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

NOTICE

44. Notice of this Motion has been or will be given to the following parties or to their counsel, if known: (i) the Office of the United States Trustee; (ii) the Debtors' prepetition lenders; (iii) Yingli; (iv) members of the Solyndra Residual Trust Committee; (v) members of the Solyndra Settlement Trust Committee; (vi) the DOE; and (vii) those persons who have requested notice pursuant to Bankruptcy Rule 2002. The Solyndra Residual Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, the Solyndra Residual Trustee respectfully requests that the Court enter an order (i) granting the Motion and approving the Settlement Agreement and (ii) granting such other and further relief as the Court may deem proper.

Dated: February 26, 2016

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