IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TONOPAH SOLAR ENERGY, LLC,[1] Debtor.	Chapter 11 Case No. 26-10060 (JKS) **Response Deadline: May 4, 2026, at 4:00 p.m. (ET)** **Hearing Date: TBD**

DEBTOR'S FIRST (SUBSTANTIVE)
OMNIBUS OBJECTION TO PROOFS OF
CLAIM FILED BY CMB INFRA. INVESTMENT GROUP IX, LP;
CMB INFRA. INVESTMENT GROUP XI, LP; AND CMB EXPORT, LLC

PARTIES RECEIVING THIS OBJECTION SHOULD REVIEW THIS OBJECTION AND THE EXHIBITS AND SCHEDULE ATTACHED HERETO TO DETERMINE WHETHER RECEIVING THIS OBJECTION AFFECTS THEIR CLAIMS.

PARTIES RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON SCHEDULE 1 TO EXHIBIT A ATTACHED HERETO

IF YOUR CLAIM IS SUBJECT TO THIS OBJECTION, YOUR SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND ANY FURTHER OBJECTION THAT MAY BE FILED

The above-captioned debtor and debtor in possession (the "Debtor"), by and through its undersigned counsel, hereby files this omnibus objection (the "Objection") and respectfully states as follows.[2]

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] A detailed description of the Debtor and its business, including the facts and circumstances giving rise to the Debtor's chapter 11 case, is set forth in the *Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition and First Day Motions* [D.I. 12] (the "First Day Declaration"). Capitalized terms used but not otherwise defined in this Objection have the meaning given to them in the First Day Declaration or the *Debtor's Motion Under Section 362(d) of the Bankruptcy code to Lift the Automatic Stay Solely with Respect to Pending CMB Litigation* [D.I. 14] (the "Lift Stay Motion").

PRELIMINARY STATEMENT[3]

1. As CMB has demonstrated to this Court multiple times in this case alone, CMB is on a scorched earth mission as it pertains to the Debtor. The reality is there is no merit to CMB's claims whatsoever. Rather, the asserted claims are CMB's attempt to relitigate claims that have already been adjudicated and rejected, to resuscitate claims the United States government itself moved to dismiss, and to commandeer causes of action that belong—if they even exist at all—to the Debtor's estate. The extensive record speaks for itself. CMB has been unsuccessfully litigating against the Debtor and its affiliates since 2020, pursuing a constellation of contract, tort, and statutory claims in connection with the funding of the Debtor's Power Plant almost 15 years ago. Every court or tribunal to consider CMB's claims on the merits has ruled against CMB. The ICC rejected Counts 1 through 5 in their entirety and awarded the Defendants (including the Debtor) over $2.4 million in attorneys' fees and costs. The Nevada District Court confirmed that Award, and CMB paid it only after the Defendants obtained a Judgment from the Nevada District Court and initiated actions to enforce the Judgment. Meanwhile, CMB's *Qui Tam* Action was dismissed at the request of the DOJ itself, the real party in interest.

2. Undeterred by this unbroken string of defeats, CMB now seeks to use the Debtor's claims reconciliation process as yet another bite at the apple—filing identical proofs of claim that courts and arbitrators have already considered and denied. This latest gambit is a transparent continuation of CMB's scorched earth litigation strategy, designed not to vindicate any legitimate claim but to burden the Debtor and its estate with yet more meritless litigation. Worse still, CMB's filing appears calculated to manufacture a pretext for obtaining discovery that it cannot obtain in the ICC Arbitration—where the tribunal has already limited the scope of discovery—and to which

[3] Capitalized terms used but not otherwise defined in this Preliminary Statement have the meaning given to them in the Objection.

it is not entitled in this chapter 11 case. CMB's effort, however, fails as a matter of law. The Disputed Claims, to the extent they rest on the *Qui Tam* Action and Counts 1 through 5 of the Amended Complaint in the Nevada District Court Action, are precluded and must be disallowed.

3. The Debtor seeks disallowance of all components of the Disputed Claims, other than Counts 7 through 10. Those narrow claims will proceed as scheduled to arbitration and are treated as Unimpaired under the Debtor's Plan—fully secured by a $6 million letter of credit that was deemed sufficient under the 2020 Plan to cover the entirety of CMB's litigation claims. Nothing has changed since 2020, other than CMB's string of litigation losses. And the so-called "Potential Fraudulent Transfer Claims" are nothing more than a recitation of legal theories untethered to any identified transaction, transfer, or factual predicate. What is more, any hypothetical transfers that CMB targets appear to include to be causes of action belonging to the Debtor's estate—claims that a creditor has no standing to assert through a proof of claim and that, in any event, do not exist. Nor did CMB file a motion seeking standing by the Challenge deadline[4] to pursue these figurative claims. The Disputed Claims (and CMB's subsequent motion to appoint a trustee)[5] represent a transparent effort to leverage the bankruptcy process to extract value on claims that have been rejected, dismissed, or fabricated in other forums. The Court should disallow the Disputed Claims, other than with respect to Counts 7 through 10 of the Amended Complaint, which will be addressed in the proper forum through the arbitration.

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[4] *See Final Order (I) Authorizing the Debtor to (A) Obtain Postposition Financing and (B) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Lender; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* [D.I, 110] (the "Final DIP Order") at ¶35(c)(i).

[5] *See [Amended] Motion of CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC for Entry of an Order Appointing a Chapter 11 Trustee* [D.I. 221] (the "Trustee Motion"). CMB amended its initial trustee appointment motion [D.I. 220] to address misstatements of fact regarding the Debtor's corporate governance structure.

RELIEF REQUESTED

4. By this Objection, the Debtor seeks entry of an order, substantially in the form attached to this Objection as **Exhibit A** (the "Proposed Order"), disallowing all claims asserted in proofs of claim 10000, 10001, and 10002 (collectively, the "Disputed Claims") filed by CMB Infrastructure Investment Group IX, LP ("CMB Group IX"), CMB Infrastructure Investment Group XI, LP ("CMB Group XI"), and CMB Export, LLC ("CMBE" and, together with CMB Group IX and CMB Group XI, "CMB"), other than claims related to Counts 7 through 10 of the Amended Complaint which will be arbitrated and then litigated outside of this chapter 11 case, and granting such other and further relief as the Court deems just and proper.

5. In support of this Objection, the Debtor submits the Declaration of Yale Scott Bogen in Support of the *Debtor's First (Substantive) Omnibus Objection to Proofs of Claim filed by CMB Infra. Investment Group IX, LP; CMB Infra. Investment Group XI, LP; and CMB Export, LLC* (the "Bogen Declaration"), attached hereto as Exhibit B.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b).

7. Under rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtor consents to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments in connection with this Objection consistent with article III of the United States Constitution.

8. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested in this Objection are sections 105 and 502 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), as well as rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 3007-1. This Objection complies in all respects with Local Rule 3007-1.

BACKGROUND

A. General Background

10. On January 21, 2026 (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and manage its properties as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

11. Additional factual background regarding the Debtor's business operations, corporate and capital structures, and restructuring efforts is described in greater detail in the First Day Declaration.

B. The Disputed Claims

12. As described more fully in the First Day Declaration and the Lift Stay Motion, the Debtor was formed in February 2008 by SolarReserve, Inc. ("SolarReserve") to develop a solar energy power plant in the Nevada desert that would utilize a molten salt receiver to generate power (the "Power Plant"). In connection with the funding of certain equity commitments for the development and construction of the Power Plant, CMB extended loans to an indirect subsidiary of SolarReserve and to Cobra Energy Investment Finance, LLC ("Cobra Finance"), as follows:

a. CMB Group XI loaned $80 million to Cobra Finance to fund CEI's equity interest in TSE. Cobra Instalaciones y Servicios S.A. ("Cobra Instalaciones") guaranteed the loan, which was fully repaid in April 2018.

b. CMB Group IX loaned $90 million to SolarReserve CSP Finance LLC ("SolarReserve Finance"), to fund SolarReserve CSP Holdings, LLC's ("Solar Reserve CSP

Holdings") equity interest in TSE (the "SolarReserve Loan"). SolarReserve Finance allegedly failed to repay a significant portion of the $90 million SolarReserve Loan.

13. SolarReserve ultimately initiated a liquidation process in late 2019, through which it assigned certain assets and legal causes of action to its creditors, including CMB Group IX.

14. Despite the fact that CMB was not in privity with the Debtor, and indeed had no direct relationship with the Debtor at all, CMB has been litigating[6] with the Debtor and certain of the Debtor's affiliates since 2019 regarding SolarReserve's purported "interest" in the Debtor and the initial funding of the Power Plant. CMB pursued multiple claims against the Debtor and other co-defendants, under a variety of legal theories, seeking to recover CMB's losses on loans made to SolarReserve Finance to fund its investment in an indirect parent of the Debtor. A brief summary of the actions relevant here[7] is as follows:

I. The Nevada District Court Action & ICC Arbitration

15. On May 19, 2020, CMB filed a complaint in Clark County, Nevada against the Debtor and certain of its affiliates asserting a variety of contract and tort claims, with the goal of recovering the $90 million debt that SolarReserve allegedly failed to repay to CMB Group IX.

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[6] CMB initiated its actions against (a) Cobra Energy Investment Finance, LLC ("Cobra Finance"), Cobra Energy Investment, LLC ("CEI"), Cobra Industrial Services, Inc. ("CIS"), Cobra Thermosolar Plants, Inc. ("CPI") and Cobra Instalaciones y Servicios S.A. ("Cobra Instalaciones") (collectively, the "Cobra Defendants"); (b) ACS Servicios Comunicaciones y Energia, S.A. ("ACSSCE"); (c) the Debtor; and (d) Banco Santander, S.A. ("Santander") (ACSSCE, TSE, and the Cobra Defendants are referred to collectively as the "Defendants"). Santander was later dismissed from the Nevada District Court Action, the only litigation to which it was a party, so the Debtor does not refer to it as among the "Defendants" for purposes of this Objection.

[7] For the avoidance of doubt, the below summary does not include the additional "equitable dissolution" and books and records actions, as they are not specifically referenced in the Disputed Claims. In October 2019, SolarReserve CSP Holdings (under the direction of CMB) sued the Debtor and the U.S. Department of Energy in the Delaware Court of Chancery and brought a claim for the Debtor's "equitable dissolution." *See SolarReserve CSP Holdings, LLC v. Tonopah Solar Energy, LLC*, C.A. No. 2019-0791-JRS, ECF No. 1 (Verified Compl.) (Del. Ch. Oct. 2, 2019). In March 2020, the Court of Chancery refused to equitably dissolve TSE and dismissed the case. *See SolarReserve CSP Holdings, LLC v. Tonopah Solar Energy, LLC*, 2020 WL 1291638, at *3 (Del. Ch. Mar. 18, 2020). Before that case was dismissed, SolarReserve CSP Holdings (again, under the direction of CMB) commenced a separate books and records action against Debtor in the Court of Chancery. In July 2020, the Court of Chancery resolved that action in the Debtor's favor as well, calling CMB's claims "déjà vu all over again." *See SolarReserve CSP Holdings, LLC v. Tonopah Solar Energy, LLC*, 2020 WL 4251968, at *1 (Del. Ch. July 24, 2020).

CMB then filed an amended complaint (the "Amended Complaint") on September 1, 2020, which alleged ten causes of action. Following removal of the state court litigation to the Nevada District Court (the "Nevada District Court Action"), the Nevada District Court dismissed Count 6 of the Amended Complaint and stayed the rest of the Nevada District Court Action pending arbitration (except for certain jurisdictional discovery not pertinent to these proofs of claim).

16. On February 4, 2022, CMB initiated an arbitration (the "ICC Arbitration") with the International Chamber of Commerce International Court of Arbitration (the "ICC"). On January 12, 2024, the ICC issued an award that rejected all remaining claims CMB brought on its own behalf (*i.e.*, Counts 1 through 5). The ICC determined it did not have jurisdiction to decide the claims CMB brought as SolarReserve's purported assignee (*i.e.*, Counts 7 through 10), so it did not decide those claims. The ICC also awarded the Defendants $2,437,221 in attorneys' fees and costs, payable jointly and severally by CMB (the "Award").

17. On October 15, 2024, the Nevada District Court (i) confirmed the Award (denying CMB's motion to vacate the Award); (ii) awarded pre- and post- judgment interest on the Award; and (iii) granted the Defendants' motion to compel arbitration of Counts 7-10.

18. On June 17, 2025, the Nevada District Court entered judgment (the "Judgment") in favor of the Defendants against CMB with respect to Counts 1 through 5 of the Amended Complaint in the amount of $2,437,221 as awarded by the ICC, plus $80,025.52 in prejudgment interest, and post-judgment interest computed daily from October 15, 2024, to the date of payment at a rate of 4.22%, compounded annually. CMB paid the Judgment on October 31, 2025.

19. CMB is currently appealing the Judgment to the United States Court of Appeals for the Ninth Circuit.

20. On July 11, 2025, nearly nine months after the Nevada District Court compelled arbitration, CMBE and CMB Group IX submitted a request for arbitration of Counts 7-10 to the ICC. Following entry of the order lifting the automatic stay with respect to the CMB Litigation [D.I. 116], the arbitration is proceeding and in its initial stages.

II. The *Qui Tam* Action

21. On January 28, 2020, CMBE, as relator, filed a *qui tam* action in the Nevada District Court (the "*Qui Tam* Action") alleging violations of the False Claims Act in connection with cash grants from the U.S. Department of the Treasury made available to the Debtor under Section 1603 of the American Recovery and Reinvestment Tax Act. On June 1, 2023, the U.S. Department of Justice (the "DOJ") declined to intervene. On November 7, 2024, the DOJ filed a motion to intervene in the *Qui Tam* Action and to dismiss the action under 31 U.S.C. § 3730(c)(2)(A), which allows for intervention for purposes of dismissal by the government.

22. On July 18, 2025, the Nevada District Court granted the DOJ's motion to dismiss the *Qui Tam* Action.

23. CMBE is currently appealing that dismissal to the Ninth Circuit. Notably, in a recent brief filed in the Ninth Circuit appeal, attached hereto as **Exhibit C**, the DOJ emphasized that alleged *Qui Tam* Action claims (if any) belong to the government. As such, the government can move to dismiss the action notwithstanding the objections of the CMB—as a private relator—CMB does not and cannot speak for the United States in determining whether this litigation should proceed.

III. Proofs of Claim

24. On March 23, 2026, CMB filed the Disputed Claims, each in the amount of $90,000,000. CMB references the pending appeals to the Ninth Circuit, yet fails to explain why

those appeals are pending—i.e., that all of CMB's claims that have been litigated to date have been denied on the merits or dismissed.

25. The Disputed Claims are based on three categories of claims: (i*) Qui Tam* Action claims; (ii) Nevada District Court Action & ICC Arbitration claims; and (iii) vague claims on account of alleged fraudulent transfers.

26. The Disputed Claims are at odds with longstanding principles of res judicata, lack evidentiary support, and are improperly asserted via proofs of claim, and should be disallowed in their entirety, other than with respect to Counts 7 through 10 of the Amended Complaint, which will be adjudicated in arbitration and, thereafter, liquidated in Nevada District Court.

BASIS FOR RELIEF

27. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Once an objection to a claim is filed, the Court, after notice and hearing, shall determine the allowed amount of the claim. 11 U.S.C. § 502(b). A claim may not be allowed to the extent that it "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1).

28. When asserting a claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *See In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *see also In re Int'l Match Corp.,* 69 F.2d 73, 76 (2d Cir. 1934) (finding that a proof of claim should at least allege facts from which legal liability can be seen to exist); *In re F-Squared Inv. Mgmt., LLC,* 546 B.R. 538, 543–44 (Bankr. D. Del. 2016) ("[C]ourts and commentators . . . require that a proof of claim 'allege facts sufficient to support

the claim'" and "establish the necessary elements of a claim.") (citation omitted). A claim is afforded prima facie validity only where the claimant alleges sufficient facts to support such claim. *See Allegheny,* 954 F.2d at 173; *see also In re Seegrid Corp.,* 560 B.R. 93, 96 (Bankr. D. Del 2016) (in discussing a proof of claim involving clearly identified parties and undisputed factual conduct, the court stated that, to enjoy prima facie validity, a proof of claim must be "executed and filed in accordance with the rules of procedure, *i.e.*, includes the facts and documents necessary to support the claim."). If a claimant alleges sufficient facts to support its claim, then an objecting party must produce evidence in sufficient force to negate the claim's prima facie validity. *Allegheny,* 954 F.2d at 173. Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* at 174. The burden of persuasion with respect to the claim is always on the claimant. *Id.*

29. Section 502(b)(1) of the Bankruptcy Code provides that a claim may not be allowed to the extent that it "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1); *Travelers Casualty & Surety Co. of Am. v. Pacific Gas and Electric Co.*, 549 U.S. 443, 450 (2007). Under section 502(b)(1), "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy" because "entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying of contrary provisions of the Bankruptcy Code." *Id*.

30. The addendum attached to each Disputed Claim as "supporting" documentation (the "<u>Addendum</u>") asserts that the Disputed Claims are based on (i) the *Qui Tam* Action; (ii) the Nevada District Court Action and ICC Arbitration; and (ii) alleged fraudulent transfers against the Debtor as well as alleged causes of action held ***by*** the Debtor. For the reasons set forth in this

Objection, the Disputed Claims are not enforceable against the Debtor and must be disallowed and expunged in their entirety.

ARGUMENT

A. **Because the *Qui Tam* Action was dismissed and Counts 1 through 5 of the Amended Complaint have been litigated and lost, principles of res judicata necessitate that these claims should be disallowed**.

31. Res judicata is a judicial doctrine that precludes a party from relitigating claims that were or could have been asserted in an earlier action. *See, e.g. Equal Employment Opportunity Comm'n v. United States Steel Corp.*, 921 F.2d 489, 493 (3d Cir. 1990). The doctrine of res judicata, or claim preclusion, bars a subsequent suit where there has been "(1) a final judgment on the merits in a prior suit involving (2) the same claim and (3) the same parties or their privies." *Id.; see also Board of Trustees of Trucking Employees of North Jersey Welfare Fund, Inc.—Pension Fund v. Centra,* 983 F.2d 495, 505 (3d Cir. 1992). Res judicata prevents parties from relitigating issues that were or could have been raised in a prior action. *Id.*

32. Under federal law, "judicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State ... from which they are taken." *See* 28 U.S.C. § 1738. As such, section 1738 requires federal courts to give res judicata effect to a state court judgment to the extent the state would give its own prior judgment such effect. Accordingly, whether res judicata applies depends upon the state law of the court that issued the judgment. *See Davis v. U.S. Steel Supply,* 688 F.2d 166, 170 (3d Cir. 1982) (en banc), *cert. denied*, 460 U.S. 1014, 103 S. Ct. 1256, 75 L.Ed.2d 484 (1983).

33. Each element is plainly established here. The Nevada District Court has dismissed the *Qui Tam* Action[8] and entered the Judgment in favor of the Defendants with respect to Counts 1 through 5 of the Amended Complaint; therefore, the State of Nevada's standards for res judicata apply for both actions. Three elements must be present for res judicata to apply: (i) the parties or their privies are the same; (ii) the final judgment is valid; and (iii) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. *See Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364-65 (2020). Each of these elements is present here.

34. First, the parties are the same. Second, the Nevada District Court's dismissal of both the *Qui Tam* Action and Judgment on account of Counts 1 through 5 of the Amended Complaint is valid. It is well settled that the preclusive effect of a judgment is immediate, notwithstanding the pendency of an appeal. *See Coleman v. Tollefson*, 135 S.Ct. 1759, 1764, 191 L.Ed.2d 803 (2015) ("[A] judgment's preclusive effect is generally immediate, notwithstanding any appeal."); *accord Petrella v. Siegel*, 843 F.2d 87, 90 (2d Cir. 1988) (judgment pending appeal entitled to preclusive effect); 18A Charles Alan Wright *et al.*, Federal Practice and Procedure § 4433 (2002) ("The bare act of taking an appeal is no more effective to defeat preclusion than a failure to appeal.").

35. These principles apply equally in the bankruptcy context. For example, the district court in *In re Kaiser Aluminum Corp.* affirmed the bankruptcy court's order applying res judicata to disallow proofs of claim where a Federal Energy Regulatory Commission ("FERC") ruling was

[8] Here, the government itself moved to dismiss the action, and has just recently confirmed that position by filing a brief opposing CMB's appeal in the Ninth Circuit. The government also has not yet filed a proof of claim in this chapter 11 case. Where the real party in interest — the government — has affirmatively sought dismissal, CMB lacks an independent basis to assert the claim as its own in the bankruptcy proceeding, and the Disputed Claims should be disallowed for this reason as well.

the subject of a pending appeal. 365 B.R. 447 (D. Del. 2007). In *Kaiser*, the claimant challenged the finality prong of res judicata, arguing that FERC's decision was not final because it was the subject of a pending appeal before the Ninth Circuit. The court held, citing *Cohen v. Superior Oil Corp.*, 90 F.2d 810 (3d Cir. 1937), that the pendency of an appeal does not preclude a judgment from being res judicata.

36. CMB's appeal to the Ninth Circuit here likewise does not invalidate the preclusive effect of the Nevada District Court's dismissal of the *Qui Tam* Action or Judgment on Counts 1 through 5 of the Amended Complaint.

37. Finally, the Disputed Claims are based, in part, on the same claims (which have been dismissed) as those brought in both actions. Accordingly, these claims are subject to disallowance and expungement.

B. Counts 7 through 10 will be liquidated in Nevada.[9]

38. Because the Debtor already obtained stay relief, Counts 7 through 10 of the Amended Complaint will proceed to and be liquidated through arbitration.[10] To the extent those proceedings result in any amount being owed by the Debtor, such claims are fully secured by the CMB Letter of Credit. In connection with the Debtor's 2020 Plan, an affiliate of the Debtor issued that certain letter of credit (the "CMB Letter of Credit") in the aggregate face amount of $6 million in favor of CMB Export, LLC, as beneficiary, in its capacity as agent for each of CMB Export, LLC, CMB Infrastructure Investment Group IX, LP, and Solar Reserve CSP Holdings, LLC, all as further described in section 7.14 of the 2020 Plan. Judge Owens already determined, in confirming the 2020 Plan, that the CMB Letter of Credit was likely sufficient to support *all* of

[9] Capitalized terms used but not otherwise defined in this Section have the meaning given to them in the Plan.

[10] *See* D.I. 116.

CMB's then-asserted claims against the Debtor (*i.e.*, Counts 1 through 5 *and* Counts 7 through 10). The only thing to occur since then is that judgment was entered *against CMB* rejecting Counts 1 through 5. Accordingly, the CMB Letter of Credit, which remains in place in the amount of $6 million is, in the Debtor's judgement, likely more than sufficient to secure only Counts 7 through 10. For avoidance of doubt, the Debtor believes Counts 7 through 10 are entirely meritless and, given the procedural history of the ICC Arbitration to date, is confident that arbitration of those claims will similarly result in a judgment rejecting CMB's claims.

39. Concurrent with the filing of this Objection, the Debtor filed the *Combined Disclosure Statement and Chapter 11 Plan* (the "Plan"). The Plan classifies CMB's claims in the Nevada District Court Action and the ICC Arbitration as Class 4 CMB Secured Claims. To the extent any portion of those claims become allowed claims, i.e., as a result of the adjudication of those claims in arbitration, then the Plan provides that CMB's recovery for such claims will be paid from the CMB Letter of Credit.

C. The remaining claims alleged in the Disputed Claims lack supporting evidence and are not properly asserted by CMB.

40. The Disputed Claims allege that CMB holds "Potential Fraudulent Transfer Claims" against the Debtor in an unliquidated amount, consisting of:

> … direct and derivative claims based on (i) avoidance actions associated with actual and constructive fraudulent transfer claims under federal and applicable state law including transfers made by the debtor within two years prior to the filing date (a) with actual intent to hinder, delay, or defraud a creditor, or (b) if made for less than reasonably equivalent value at a time when the debtor was insolvent, had unreasonably small capital, or believed it would incur debts upon its ability to pay; (ii) state-law claims such as (x) fraud, illegality, breach of fiduciary, aiding and abetting fiduciary breach, or other legally recognized duties, among others, (y) undercapitalization of the debtor, and (z) control or use of the debtor as a mere instrumentality or alter ego to benefit another, as against TSE, and the Cobra Defendants and related entities, and other insiders including the Crescent Dunes Parties, all of which

> must be preserved for the benefit of creditors holding unsecured claims.

See Addendum at ¶ 38.

41. The Disputed Claims, however, are entirely devoid of any factual or evidentiary basis for the purported "Potential Fraudulent Transfers." They do not identify any specific transfers allegedly made to the Debtor, do not identify the transferor, and do not establish CMB's standing to seek to avoid any such alleged transfers. The Disputed Claims state no facts in support of the purported "Potential Fraudulent Transfer," and such claims should be disallowed.

42. In addition, the purported "Potential Fraudulent Transfers" also appear to assert alleged claims ***held by the Debtor*** against other parties, including insiders.[11] *Id.*; *see also* Addendum at ¶ 39.

43. CMB fails to, and cannot identify any actual, viable claims because no such claims exist. The Debtor, after reasonable inquiry, including a robust investigation by a special committee comprised solely of the Debtor's fully independent managers, is satisfied that its estate does not have any viable claims or causes of action against insiders. The special committee examined all material financial transactions between the Debtor and Crescent Dunes Finance, Inc. and Cobra,[12] and their respective successor and/or affiliates and confirmed that there were no improper insider transactions. Moreover, even if such claims existed, they are claims owned by the Debtor, not CMB.

[11] CMB's assertion of estate-owned causes of action in the Disputed Claims constitutes an unauthorized exercise of control over property of the estate in violation of section 362(a)(3) of the Bankruptcy Code and, to the extent such claims were discharged by the confirmation order entered by Judge Owens, a violation of the discharge injunction entered by the Bankruptcy Court in connection with confirmation of the 2020 Plan.

[12] As used in this Objection Cobra means collectively, (i) ACS Servicios Comunicaciones y Energía S.L.1, (ii) Cobra Thermosolar Plants, Inc., and (iii) Cobra Energy Investment, LLC.

44. Significantly, neither CMB nor any other party in interest sought standing to pursue any challenge with respect to the Prepetition Liens or the adequate protection granted to the prepetition lender by April 8, 2026—the Challenge Period Termination Date (as defined in the Final DIP Order). The Debtor's Stipulations, which are now binding on the estate and all parties in interest, include broad, unconditional and irrevocable releases to the Prepetition Lender, the DIP Lender, and their respective affiliates and related parties from all claims arising in connection with DIP Facility, the DIP Loan Documents, the Prepetition Loan Documents and the transactions contemplated under those documents. *See* Final DIP Order at ¶ E. The Final DIP Order forecloses any claims related to the Prepetition Lender or the related loan that CMB purports to assert in the Disputed Claims.

45. Accordingly, the Debtor's stipulations with respect to the Prepetition Lender and the Prepetition Liens are now binding on the Debtor's estate, and the adequate protection granted under the Final DIP Order is no longer subject to challenge. Rather, that same day CMB filed the Trustee Motion. A motion seeking standing to assert a challenge under the Final DIP Order is distinct from one seeking appointment of a trustee; the Trustee Motion does not request or provide any legal basis to support a standing motion. By failing to seek standing to challenge the Prepetition Liens or Prepetition Obligations by the Challenge Period Termination Date, CMB is now barred from doing so.

46. A proof of claim is the mechanism by which a creditor asserts a right to payment from the debtor's estate—**it is not a vehicle for a creditor to assert causes of action that belong to a debtor's estate, especially when that creditor has not sought standing to assert such claims and when the automatic stay has not been modified to permit that creditor to exercise**

control over the estate's property. For the foregoing reasons, the Debtor submits that the Disputed Claims must be disallowed and expunged in their entirety.

<u>RESPONSES TO THIS OBJECTION</u>

47. To contest the relief requested in this Objection, a claimant must file and serve a written response to this Objection so that it is received no later than **May 4, 2026 at 4:00 p.m. (ET)** (the "<u>Response Deadline</u>"). Any response to this Objection must be filed with the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware: 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon counsel to the Debtor.

48. Each response to this Objection must, at a minimum, contain the following information:

a. a caption setting forth the name of the Court, the name of the Debtor, the above captioned case number, and the title of the Objection to which the Response is directed;

b. the name of the claimant, the claim number, and a description of the basis for the amount of the claim;

c. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;

d. all documentation and other evidence, to the extent it was not included with the proof of claim previously filed with the clerk or Verita, upon which the claimant will rely to support the basis for and amounts asserted in the proof of claim and in opposing this Objection; and

e. the name, address, telephone number, fax number or email address of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtors should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the applicable Disputed Claims on behalf of the claimant

49. If a response is filed and served by the Response Deadline, the Debtor will present to the Court an appropriate order substantially in the form of the Proposed Order without further notice or, potentially, a hearing.

50. The Debtor reserves the right to seek an adjournment of any hearing with respect to this Objection, which adjournment will be noted on the notice of agenda for the hearing.

SEPARATE CONTESTED MATTERS

51. To the extent a response is filed regarding any claim affected by this Objection and the Debtor is unable to resolve the response, the Debtor's objection to such claim constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in this Objection will be deemed a separate order with respect to each applicable claim.

COMPLIANCE WITH LOCAL RULE 3007-1

52. To the best of the Debtor's knowledge and belief, this Objection and related exhibits comply with Local Rule 3007-1. To the extent that this Objection does not comply in all respects with the requirements of Local Rule 3007-1, the undersigned believes such deviations are not material and respectfully requests that any such requirement be waived.

RESERVATION OF RIGHTS

53. The Debtor expressly reserves the right to amend, modify, or supplement this Objection, and to file additional objections to any other claims (filed or not) that may be asserted against the Debtor and its estate. Should one or more of the grounds of objection stated in this Objection be dismissed or overruled, the Debtor reserves the right to object to each of the Disputed Claims or any other proofs of claim on any other grounds that the Debtor discovers or elects to pursue.

54. Nothing contained in this Objection (i) is intended or may be deemed to constitute an assumption of any agreement under section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (ii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to the validity, priority, or

amount of any claim against the Debtor and its estate; (iii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to any and all claims or causes of action against any third party; or (iv) may be construed as a promise to pay a claim. Likewise, if the Court grants the relief sought in this Objection, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity, priority, or amount of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

55. Notice of this Objection will be provided to: (a) the U.S. Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) counsel to the Prepetition Lender and DIP Lender; (d) the Internal Revenue Service; (e) the attorneys general for the States of Delaware and Nevada; (f) the Bureau of Land Management; (g) counsel to CMB; and (h) any party that has requested notice under Bankruptcy Rule 2002. The Debtor respectfully submits that such notice is sufficient, and no other further notice of this Objection is required.

NO PREVIOUS REQUEST

56. No previous request of the relief sought herein has been by the Debtor to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtor respectfully requests entry of the Proposed Order, substantially in the form attached as **Exhibit A**, (i) disallowing the Disputed Claims, other than with respect to Counts 7 through 10 of the Amended Complaint and (ii) granting such other and further relief to the Debtor as the Court may deem just and proper.

Dated: April 13, 2026
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Aaron S. Applebaum

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Co-Counsel to the Debtor

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TONOPAH SOLAR ENERGY, LLC,[1]	Case No. 26-10060 (JKS)
Debtor.	**Related D.I.: [__]**

ORDER SUSTAINING THE
DEBTOR'S FIRST (SUBSTANTIVE) OMNIBUS OBJECTION TO
PROOFS OF CLAIM FILED BY CMB INFRA. INVESTMENT GROUP IX, LP;
CMB INFRA. GROUP XI, LP; AND CMB EXPORT, LLC

Upon consideration of the objection (the "Objection")[2] of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order disallowing and expunging the Disputed Claims, all as more fully set forth in the Objection; and upon consideration of the Objection and all filings related thereto; and due and proper notice of the Objection having been given; and having determined that no other or further notice of the Objection is required; and having determined that this Court has jurisdiction to consider the Objection in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and having determined that this is a core proceeding under 28 U.S.C. § 157(b)(2); and having determined that venue of this proceeding and the Objection is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having found and determined that the relief sought in this Objection is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having reviewed the Objection and having heard statements in support of the relief requested therein at a hearing before

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Objection.

this Court (the "Hearing"), if applicable; and this Court having determined that the legal and factual bases set forth in the Objection and at the Hearing establish just cause for the relief granted in this Order; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Objection is SUSTAINED, as set forth in this Order.

2. Any response to the Objection not otherwise withdrawn, resolved, or adjourned is overruled on the merits.

3. Each Disputed Claim, listed on **Schedule 1** attached hereto, is disallowed, other than with respect to Counts 7 through 10 of the Amended Complaint.

4. The Debtor, Epiq, and the Clerk of this Court are authorized to take all steps they deem necessary or appropriate to carry out this Order, including, without limitations, modifying the Claims Register to comport with the relief granted in this Order.

5. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SCHEDULE 1

Disputed Claims

Claim No.	Claim Date Filed	Name	Total Amount Asserted
10000	03/23/2026	CMB Infra. Investment Group IX, LP	$90,000,000.00
10001	03/23/2026	CMB Infra. Investment Group XI, LP	$90,000,000.00
10002	03/23/2026	CMB Export, LLC	$90,000,000.00

EXHIBIT B

Bogen Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TONOPAH SOLAR ENERGY, LLC,[1] Debtor.	Chapter 11 Case No. 26-10060 (JKS)

DECLARATION OF YALE SCOTT BOGEN IN SUPPORT OF DEBTOR'S FIRST (SUBSTANTIVE) OMNIBUS OBJECTION TO PROOFS OF CLAIM FILED BY CMB INFRA. INVESTMENT GROUP IX, LP; CMB INFRA. INVESTMENT GROUP XI, LP; AND CMB EXPORT, LLC

I, Yale Scott Bogen, hereby declare, under penalty of perjury, that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Restructuring Officer of Tonopah Solar Energy, LLC, the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case.

2. I submit this declaration (this "Declaration") in support of the *Debtor's First (Substantive) Omnibus Objection to Proofs of Claim filed by CMB Infra. Investment Group IX, LP; CMB Infra. Investment Group XI, LP; and CMB Export, LLC* (the "Objection").[2]

3. All statements in this Declaration are based upon my personal knowledge, my review (or the review of others under my supervision) of (a) business books and records kept by the Debtor in the ordinary course of business, (b) the relevant proofs of claim, and (c) the official claims register filed in the Debtor's chapter 11 case.

4. The Disputed Claims were carefully reviewed and analyzed in good faith using due diligence by, among others, the Debtor's management, advisors, counsel, agents, or other

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] Capitalized terms used but not described in this Declaration shall have the meaning given to them in the Objection.

representatives. I believe that each of the Disputed Claim listed on Schedule 1 to Exhibit A of the Objection, fails to provide, and I am not otherwise aware of, any facts to support the claims.

5. If the Disputed Claims are not disallowed (other than with respect to claims related to Counts 7 through 10 of the Amended Complaint, which will be addressed in pending arbitration), the claimants may receive recoveries in excess of what they are actually entitled to receive. In addition, I believe that sustaining the Objection will enable the Debtor to maintain a more accurate claims register.

6. Based on the foregoing, and to the best of my knowledge, information and belief, the information contained in the Objection and the exhibits and schedules attached to the Objection is true and accurate.

7. Accordingly, the Debtor requests that the Court sustain the Objection and disallow all components of the Disputed Claims listed on Schedule 1 to Exhibit A to the Objection, other than Counts 7 through 10 of the Amended Complaint, which will be addressed in pending arbitration.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: April 13, 2026

Tonopah Solar Energy, LLC,
Debtor and Debtor in Possession

By: */s/ Yale Scott Bogen*
Yale Scott Bogen
Chief Restructuring Officer

EXHIBIT C

Brief for the United States of America

No. 25-5835

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CMB EXPORT, LLC,

Plaintiff-Appellant,

and

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TONOPAH SOLAR ENERGY, LLC, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Nevada

BRIEF FOR THE UNITED STATES OF AMERICA

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STATEMENT OF JURISDICTION

Relator invoked the jurisdiction of the district court under 28 U.S.C. § 1331 and 31 U.S.C. § 3732. 3-ER-280. On July 18, 2025, the district court issued an opinion and order dismissing the complaint without prejudice to refiling by the United States. 1-ER-5. On September 12, 2025, relator timely appealed. 3-ER-398; *see* Fed. R. App. P. 4(a)(1)(B).

This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Because claims under the False Claims Act belong to the United States, Congress has authorized the United States to intervene in and seek the dismissal of *qui tam* actions even over the objections of the relators who bring those claims. 31 U.S.C. § 3730(c)(2)(A), (c)(3). Ultimate control over litigation allows the government to ensure that *qui tam* actions vindicate the government's interest. Here, relator sued defendant on behalf of the United States under the False Claims Act. Before defendant answered the complaint or moved for summary judgment, the United States invoked its statutory right to intervene and seek dismissal.

The question presented is whether the district court acted within its discretion when it granted the government's motion to dismiss under 31 U.S.C. § 3730(c)(2)(A).

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

The False Claims Act, 31 U.S.C. § 3729 *et seq.*, imposes civil liability for a variety of deceptive practices involving government funds and property. Among other things, the Act imposes liability on any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." *Id.* § 3729(a)(1)(A). A person who violates the Act is liable to the United States for civil penalties and three times the amount of the government's damages. *Id.* § 3729(a)(1).

The False Claims Act allows a private person (known as a relator) to file a *qui tam* action on behalf of the United States against any person who knowingly submits a false claim to the government. 31 U.S.C. §§ 3729(a), 3730(b)(1). The relator initially files the complaint under seal and does not serve it on the defendant. *Id.* § 3730(b)(2). Instead, the relator discloses to the government his complaint and material evidence. *Id.* The government then has at least 60 days—extendable for good cause—to investigate the allegations in the complaint. *Id.* § 3730(b)(2)-(3). Before the end of the seal period, the government may intervene and litigate the action on its own behalf or may "notify the court that it declines to take over the action, in which case the [relator] shall have the right to conduct the action." *Id.* § 3730(b)(4), (c)(1), (c)(3). In either event, the relator receives a share of any proceeds from the action or settlement of the claims he alleges in the litigation. *Id.* § 3730(d).

Even if the government initially declines to intervene, the False Claims Act provides a variety of mechanisms to facilitate governmental control over the suit brought in the United States' name. For example, the government may intervene later "upon a showing of good cause." 31 U.S.C. § 3730(c)(3). The government may also "settle the action with the defendant notwithstanding the objections" of a relator "if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances." *Id.*

§ 3730(c)(2)(B). And the government may prevent a relator from settling or voluntarily dismissing the action. *Id.* § 3730(b)(1). Finally, as relevant here, the government has authority to "dismiss the action notwithstanding the objections of the [relator] if the [relator] has been notified by the Government of the filing of the motion and the court has provided the [relator] with an opportunity for a hearing on the motion." *Id.* § 3730(c)(2)(A).

B. Factual Background and Prior Proceedings

In 2020, relator CMB Export filed a *qui tam* action on behalf of the United States under the False Claims Act. 1-ER-2. CMB's second amended complaint alleged that defendants submitted fraudulent claims to the Department of Treasury and received a $275 million grant to fund the construction of a solar thermal power plant as a result of the false claims. *Id.*

After initially declining to intervene, 3-ER-327, the United States intervened and moved to dismiss this case under 31 U.S.C. § 3730(c)(2)(A). 2-ER-243–250. The government explained that it had good cause to intervene because it sought to dismiss the action. 2-ER-247 (citing *United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 429 n.2 (2023)). The government further explained that "after investigating Relator's claims, the United States has determined that dismissal is commensurate with the public interest and that the matter does not warrant the continued expenditure of government resources." 2-ER-248. The government noted that "[t]he anticipated discovery and litigation obligations associated with the continued litigation of this case will impose an undue burden on the Treasury, the U.S. Department of Energy, and the U.S. Department of Justice." *Id.*

Relator opposed the government's motion. 2-ER-17–28. Relator argued that the United States "fail[ed] to present any evidence or elucidation on how it arrived at its determination that this case should be dismissed." 2-ER-19. Relator also argued that it was entitled to an evidentiary hearing on the government's motion to dismiss. *Id.*; *see also* 2-ER-27. Relator did not raise any constitutional claims or arguments.

The district court granted the United States' motion to dismiss. 1-ER-2–5. Relying on the Supreme Court's decision in *Polansky*, the district court explained that the Supreme Court "advises district courts to 'think several times over before denying [the government's] motion to dismiss' in a qui tam suit." 1-ER-3 (alteration in original) (quoting

Polansky, 599 U.S. at 438). "If the government reasonably concludes that the costs of litigation outweigh its benefits, the court should grant dismissal, even if the relator disagrees." *Id*. (citing *Polansky,* 599 U.S. at 438). The district court emphasized that "[t]he 'government's views are entitled to substantial deference' because a qui tam suit is designed to 'vindicate the government's interests' as 'the suit alleges injury to the government alone.'" *Id*. (quoting *Polansky*, 599 U.S. at 437–38).

The district court also explained that "[s]howing good cause is neither a burdensome nor unfamiliar obligation, but instead a uniquely flexible and capacious concept, meaning 'simply a legally sufficient reason.'" 1-ER-3 (quoting *Polansky*, 599 U.S. at 429 n.2). "In applying this standard, the Third Circuit held that the government's rationale for dismissal, standing alone, was sufficient to establish good cause for intervention." *Id.* (quoting *Polansky v. Executive Health Res. Inc.*, 17 F.4th 376, 392–93 (3d Cir. 2021), *aff'd sub nom.*, *Polansky*, 599 U.S. 419).

The district court concluded that "[t]he government's assertions are sufficient to establish good cause because they reflect a reasoned determination that continued litigation would impose undue burdens on the Treasury and Department of Energy." 1-ER-4. The court rejected relator's argument, explaining that "[t]he government need not provide a detailed evidentiary record to justify its decision, as its explanation that dismissal serves the public interest and conserves resources is a legally sufficient basis for both intervention and dismissal under § 3730(c)(2)(A)." *Id.*

The court also concluded that a live hearing was not warranted. 1-ER-4. The court explained that "[t]he Supreme Court held that when the government moves to dismiss under Rule 41(a)(1) before the filing of an answer or motion for summary judgment, the district court has 'no adjudicatory role' unless constitutional concerns are implicated." 1-ER-5 (quoting *Polansky*, 599 U.S. at 436 n.4). The court noted that relator did not raise any "plausible constitutional concerns, such as violations of due process or equal protection, that would warrant judicial inquiry beyond the written record." *Id.*

SUMMARY OF ARGUMENT

In a *qui tam* action under the False Claims Act, the claims—and ultimate control over the litigation—belong to the government. Under 31 U.S.C. § 3730(c)(2)(A), the United States may step in and dismiss a *qui tam* action "in all but the most exceptional cases." *United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 437 (2023). When the government moves to dismiss a *qui tam* suit before the defendant has filed an answer or a motion for summary judgment, the court has "no adjudicatory role" to play in granting the motion. *Id.* at 436 n.4. Unless the relator credibly alleges that dismissal would violate his substantive constitutional rights, the court is required to dismiss the claims, as the district court properly did here.

The district court correctly granted the government's pre-answer motion to dismiss relator's claims in this case. The False Claims Act permits courts to resolve (c)(2)(A) motions based on written filings alone, and the court reviewed the parties' written briefs in this case. The government explained that "dismissal is commensurate with the public interest and that the matter does not warrant the continued expenditure of government resources," 2-ER-248, and that explanation was more than sufficient to support dismissal, particularly in the context of a pre-answer motion where "the district court has no adjudicatory role," *id.* (citing *Polansky*, 599 U.S. at 436 n.4). Relator raised no constitutional objection to the government's dismissal decision at any point; it simply objected to the government's assessment of the strength of its claims and the burdens that this litigation would impose. The district court acted well within its discretion in rejecting relator's contentions and granting the government's motion to dismiss.

STANDARD OF REVIEW

Courts of appeals review for abuse of discretion the grant of a motion for voluntary dismissal.[1] *See United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 438 (2023) ("A district court's Rule 41 order is generally reviewable under an abuse-of-discretion standard . . . .").

ARGUMENT

THE DISTRICT COURT PROPERLY GRANTED THE UNITED STATES' MOTION TO DISMISS.

In a *qui tam* action under the False Claims Act, the relator brings claims on behalf of the United States. *United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 424–25 (2023). The government has the predominant interest in the litigation—"typically to

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[1] *But see United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 161 (4th Cir. 2024) (assuming without deciding that review of a pre-answer (c)(2)(A) motion is de novo).

redress injuries against the Government[] through a suit brought in the Government's name." *Id.* at 434 (cleaned up). And as a real party in interest, the United States may invoke special procedural rights designed to protect its interests. *See id.* at 425–26.

The government may intervene in a *qui tam* action at any time and may move to dismiss the case under 31 U.S.C. § 3730(c)(2)(A) "whenever (whether during the seal period or later) it has intervened." *Polansky*, 599 U.S. at 430. Once the government notifies the relator of its motion and "the court has provided the [relator] with an opportunity for a hearing on the motion," 31 U.S.C. § 3730(c)(2)(A), then the court evaluates a (c)(2)(A) motion under Federal Rule of Civil Procedure 41, *Polansky*, 599 U.S. at 435.

Where, as here, the government moves to dismiss a *qui tam* action before the defendant has filed an answer or a motion for summary judgment, courts have no adjudicatory role to play absent credible allegations that the dismissal would be unconstitutional. Because relator did not credibly allege that dismissal would violate his substantive constitutional rights, the district court lacked discretion to deny the government's motion.

A. The district court was required to dismiss relator's *qui tam* claims because it has no adjudicatory role in disposing of a pre-answer (c)(2)(A) motion.

In *Polansky*, the Supreme Court clarified the standard for reviewing (c)(2)(A) motions, holding that Federal Rule of Civil Procedure 41(a), which governs voluntary dismissals in federal civil litigation, provides the applicable standard. 599 U.S. at 435–39. As the Court explained, prior to the filing of an answer or defendant's summary judgment motion, "Rule 41 entitles the movant to a dismissal; the district court has no adjudicatory role." *Id.* at 436 n.4. In that posture, unless a relator credibly alleges that dismissal would violate "bedrock constitutional constraints on Government action," a district court must grant a (c)(2)(A) motion. *See id.* at 436 & n.4 (quotation marks omitted); *see also Vanderlan v. United States*, 135 F.4th 257, 267 (5th Cir. 2025) (agreeing with the government that "under Rule 41(a)(1), [the court] ha[s] no adjudicatory role in disposing of a pre-answer (c)(2)(A) motion and no discretion to deny dismissal absent a claim that the Constitution forbids it"); *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 161 (4th Cir. 2024) (recognizing that courts have "no adjudicatory role" in resolving pre-answer (c)(2)(A) motions (quotation marks omitted)).

The Supreme Court further held that even where the government seeks dismissal after an answer has been filed, (c)(2)(A) motions "will satisfy Rule 41 in all but the most exceptional cases," and "the Government's views are entitled to substantial deference." *Polansky*, 599 U.S. at 437. Given that *qui tam* actions are brought "on behalf of and in the name of the Government" and allege injury solely to the government, and that following intervention, the government "assumes primary responsibility for the action," the Court emphasized that a district court "should think several times over before denying a motion to dismiss." *Id.* at 437–38.

Here, relator did not raise any constitutional claims or arguments in opposing the government's motion to dismiss. *See* 2-ER-17–28. Relator simply argued that the government "failed to offer any evidence substantiating its stated reasons for seeking dismissal" and that this "unsubstantiated request to dismiss this action is the epitome of arbitrary and irrational prosecutorial action, in violation of due process." 2-ER-26–27. On appeal, relator repeats the same argument.

See, e.g., Br. 29 (asserting that the government failed to offer "any reasoned, case-specific justification for dismissal"). But this is not the sort of bedrock constitutional claim that the *Polansky* Court acknowledged might pose a barrier to dismissal. In *Polansky*, the Supreme Court accepted that there are "bedrock constitutional constraints on Government action," which courts must enforce before granting a Rule 41 dismissal. 599 U.S. at 436 n.4 (quotation marks omitted). The Court also held that "in all but the most exceptional cases," district courts should grant (c)(2)(A) motions. *Id.* at 437. Relator's due process theory—which is nothing more than a repackaged version of his argument that the government must provide evidence substantiating its reasons for seeking dismissal—is incompatible with *Polansky*'s affirmation of the considerable discretion that courts must give to decisions by the United States to dismiss claims brought in its name.

Relator has not raised the sort of substantive constitutional allegations that *Polansky* contemplated would warrant closer judicial scrutiny of the government's (c)(2)(A) motion. Relator does not allege, for example, that the government's motion to dismiss was animated by any improper motive or purpose, but instead simply insists that the government failed to adequately explain its decision. Indeed, relator's sole argument on appeal is that the government did not substantively support its grounds for dismissal by "enumerate[ing] the significant costs of future discovery, identify[ing] any concrete litigation burdens, or explain[ing] why continued prosecution would fail to vindicate the Government's interests." Br. 29. But that sort of challenge to the sufficiency of the government's explanation for its decision to dismiss is available in virtually every case because relators can always allege that additional reasons or evidence should be required. That sort of run-of-the-mill challenge to the government's dismissal decision is not the type of "bedrock" constitutional claim that *Polansky* contemplated might give courts some adjudicatory role.

Because relator did not raise a credible argument that dismissal would violate his substantive constitutional rights, the district court properly granted the government's motion to dismiss this action. Indeed, the district court had no discretion to deny the motion. *See Polansky*, 599 U.S. at 436 n.4 (explaining that district courts have "no adjudicatory role" with respect to pre-answer dismissal motions).

B. The district court correctly concluded that the government adequately justified its decision to dismiss.

The False Claims Act requires only that a relator be given notice of the government's motion to dismiss and "an opportunity for a hearing on the motion." 31 U.S.C. § 3730(c)(2)(A). As every court of appeals to apply *Polansky* has concluded, the term "hearing" in subparagraph (c)(2)(A) encompasses a hearing on written papers. *See Vanderlan*, 135 F.4th at 266; *Credit Suisse*, 117 F.4th at 162; *United States ex rel. USN4U, LLC*, No. 24-3022, 2025 WL 1009012, at *8 (6th Cir. Mar. 31, 2025); *Brutus Trading, LLC v. Standard Chartered Bank*, No. 20-2578, 2023 WL 5344973, at *2–3 (2d Cir. Aug. 21, 2023).

Here, the district court satisfied these requirements in dismissing relator's claims on the government's (c)(2)(A) motion. The court considered the parties written briefs and concluded that "[t]he government need not provide a detailed evidentiary record to justify its decision, as its explanation that dismissal serves the public interest and conserves resources is a legally sufficient basis for both intervention and dismissal under § 3730(c)(2)(A)." 1-ER-4.

On appeal, relator argues that the district court abused its discretion in declining to require the government to "enumerate the significant costs of future discovery, identify any concrete litigation burdens, or explain why continued prosecution would fail to vindicate the Government's interests." Br. 29. This argument has no merit.

In moving to dismiss the case prior to the filing of an answer, the government explained that "after investigating Relator's claims, the United States has determined that dismissal is commensurate with the public interest and that the matter does not warrant the continued expenditure of government resources." 2-ER-248. The government noted that "[t]he anticipated discovery and litigation obligations associated with the continued litigation of this case will impose an undue burden on the Treasury, the U.S. Department of Energy, and the U.S. Department of Justice." *Id.* Relator may disagree with the government's judgments about the pros and cons of allowing relator's claims to move forward, but the Supreme Court made clear in *Polansky* that a relator's "competing assessment" of his claims cannot "outweigh the Government's reasonable view of the suit's costs and benefits." *Polansky*, 599 U.S. at 438.

Relator was not entitled to any further explanation of the government's decision to dismiss this *qui tam* suit. Relator contends that the government "did not raise a problem of a special nature such as the disclosure of privileged documents, nor did it explain how—or even whether—its assessment of the merits of the case impacted its request to dismiss the case," and suggests that it is thus "unclear whether [the government] made any investigation into the merits of the *qui tam* action." Br. 30. As the district court recognized, however, those arguments rest on a misunderstanding of the level of granularity required for the government to obtain the dismissal of claims (brought in its name and on its behalf) that it has concluded are not in the government's interests. As the Supreme Court summarized in *Polansky*, the government need only give "good grounds for thinking that this suit would not do what all *qui tam* actions are supposed to do: vindicate the Government's interests." *Polansky*, 599 U.S. at 438. The United States easily satisfied that lenient standard.

To the extent relator suggests that the government failed to conduct an adequate investigation into the merits of the claims here, *see* Br. 30, that argument is both factually wrong and not a proper subject for judicial review. As the Supreme Court has repeatedly made clear, absent extraordinary circumstances not presented here, the government's discretionary enforcement decisions are not subject to judicial review. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *see also United States v. Armstrong*, 517 U.S. 456, 464 (1996) (explaining that under the "presumption of regularity," "in the absence of clear evidence to the contrary, courts presume that [public officials] have properly discharged their official duties"). When Congress vests the Executive Branch with discretion to decide whether to enforce federal law, "whether through civil or criminal process," it leaves no role for courts to play. *Heckler*, 470 U.S. at 831. In the False Claims Act, Congress authorized civil actions for fraud against the United States. The United States may pursue those actions directly, 31 U.S.C. § 3730(a), or a relator may pursue those actions subject to the government's right to intervene and dismiss, *id.* § 3730(b), (c)(2)(A). In either case, the government has discretion to pursue the claims or not. A court cannot second-guess those kinds of discretionary decisions by the Executive Branch.

Relator also argues that *Polansky* requires the district court to "tak[e] into account the interest of the relator." Br. 26. But relator considerably overstates what this means. Even for post-answer motions to dismiss, *Polansky* made clear that "[c](2)(A) motions will satisfy Rule 41 in all but the most exceptional cases," as "the Government's views are entitled to substantial deference." 599 U.S. at 437. "If the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits, the court should grant the motion." *Id.* at 438. "And that is so even if the relator presents a credible assessment to the contrary." *Id.* That logic applies with even greater force to cases like this one, where the government filed a pre-answer motion to dismiss. *Credit Suisse*, 117 F.4th at 161 (holding government is entitled to "even greater deference" when it makes a pre-answer motion to dismiss under Rule 41(a)(1)).

Finally, relator relies on the Second Circuit's unpublished decision in *Brutus Trading*, 2023 WL 5344973, to argue that even in the pre-answer context, "a district court must exercise some degree of scrutiny in evaluating the government's motion to dismiss." Br. 27 (emphasis and quotation marks omitted). But that statement by the Second

Circuit was merely explaining that "a district court might inquire as to whether a Rule 41(a)(1) dismissal would violate the relator's constitutional rights." *Brutus Trading*, 2023 WL 5344973, at *2. Here, because relator made no allegation that dismissal would violate his substantive constitutional rights, the district court lacked discretion to deny the government's motion.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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April 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,695 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ Ashley C. Honold
Ashley C. Honold

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

/s/ Ashley C. Honold
Ashley C. Honold

ADDENDUM

TABLE OF CONTENTS

31 U.S.C. § 3729

§ 3729. False claims.

(a) LIABILITY FOR CERTAIN ACTS.

(1) IN GENERAL.

Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note;

Public Law 104-410*), plus 3 times the amount of damages which the Government sustains because of the act of that person.

* So in original. Probably should be “101–410”.

31 U.S.C. § 3730

§ 3730. Civil actions for false claims.

***

(b) ACTIONS BY PRIVATE PERSONS.

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4)* of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

* So in original. Probably should be a reference to Rule 4(i).

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or

conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government* Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of

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* So in original. Probably should be "General".

the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TONOPAH SOLAR ENERGY, LLC,[1] Debtor.	Chapter 11 Case No. 26-10060 (JKS) **Response Deadline: May 4, 2026, at 4:00 p.m. (ET)** **Hearing Date: TBD**

NOTICE OF DEBTOR'S FIRST (SUBSTANTIVE) OMNIBUS OBJECTION

PARTIES RECEIVING THIS OBJECTION SHOULD REVIEW THIS OBJECTION AND THE EXHIBITS AND SCHEDULE ATTACHED HERETO TO DETERMINE WHETHER RECEIVING THIS OBJECTION AFFECTS THEIR CLAIMS.

PARTIES RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON SCHEDULE 1 TO EXHIBIT A ATTACHED HERETO

IF YOUR CLAIM IS SUBJECT TO THIS OBJECTION, YOUR SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND ANY FURTHER OBJECTION THAT MAY BE FILED

PLEASE TAKE NOTICE, that on April 13, 2026, the above-captioned debtor and debtor in possession (the "Debtor"), filed the *Debtor's First (Substantive) Omnibus Objection to Proofs of Claim filed by CMB Infra. Investment Group IX, LP; CMB Infra. Investment Group XI, LP; and CMB Export, LLC* (the "Objection")[2] with the United States Bankruptcy Court for the District of Delaware (the "Court"). **Your claim(s) may be disallowed and/or expunged as a result of the Objection. Therefore, you should read the attached Objection carefully.**

PLEASE TAKE FURTHER NOTICE THAT YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION AND BY ANY FURTHER CLAIM OBJECTION THAT MAY BE FILED BY THE DEBTOR OR OTHERWISE. THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE DEBTOR'S RIGHT TO PURSUE FURTHER OBJECTIONS AGAINST YOUR CLAIM(S) SUBJECT TO THE OBJECTION IN ACCORDANCE WITH APPLICABLE LAW AND APPLICABLE ORDERS OF THE COURT.

PLEASE TAKE FURTHER NOTICE that any responses to the Objection must be in writing, filed with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor,

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] Capitalized terms used but not otherwise defined herein have the meaning given to them in the Objection.

Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtor on or before **May 4, 2026, at 4:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that if any responses to the Objection are received, the Objection and any such responses shall be considered at a hearing to take place at a date and time to be determined before The Honorable Judge J. Kate Stickles at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that responses to the Objection must contain, at minimum, the following: (a) a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the Objection to which the response is directed; (b) the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim; (c) the specific factual basis and supporting legal argument upon which the party will rely in opposing the Objection; (d) any supporting documentation, to the extent that it was not included with the proof of claim previously filed with the clerk or Claims Agent, upon which the party will rely to support the basis for and amounts asserted in the respective proof of claim; and (e) the name, address, telephone number, fax number and/or email address of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the response and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

PLEASE TAKE FURTHER NOTICE IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING

[*Remainder of page intentionally left blank*]

Dated: April 13, 2026
Wilmington, Delaware

Respectfully submitted,

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