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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	Chapter 11
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
Debtors. ¹)	(Jointly Administered)

**NOTICE OF FILING OF
SECOND INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY CRITICAL VENDORS, FOREIGN VENDORS,
LIEN CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR PREPETITION
PAYMENT ARRANGEMENTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE
PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on March 13, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (B) Honor Prepetition Payment Arrangements; (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related*

¹ Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



Relief [Docket No. 10] (the “Motion”) with the United States Bankruptcy Court for the Eastern District of Virginia, which Motion includes a proposed form of a final order.

PLEASE TAKE FURTHER NOTICE that on March 14, 2024, the Court entered the *Interim Order (I) Authorizing the Debtors to (A) Pay Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (B) Honor Prepetition Payment Arrangements; (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* [Docket No. 94] (the “First Interim Order”).

PLEASE TAKE FURTHER NOTICE that the Debtors are hereby filing a proposed *Second Interim Order (I) Authorizing the Debtors to (A) Pay Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (B) Honor Prepetition Payment Arrangements; (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “Proposed Order”), which is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redline of the Proposed Order as compared to the First Interim Order.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, the First Interim Order, the Proposed Order, and all other documents filed in these chapter 11 cases are available free of charge by: (a) visiting the Debtors’ restructuring website at <https://www.kcellc.net/enviva> and/or (b) by calling (888) 249-2695 or (310) 751-2601 if calling from outside the U.S. or Canada. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.vaeb.uscourts.gov> in accordance with the procedures and fees set forth therein.

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Richmond, Virginia
Dated: April 11, 2024

/s/ Adolyn C. Wyatt

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Order

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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 ALEXANDRIA DIVISION**

In re:)	
)	Chapter 11
ENVIVA INC., <i>et al.</i> ,)	
)	Case No. 24-10453 (BFK)
Debtors. ¹)	
)	(Jointly Administered)
)	
)	

**SECOND INTERIM ORDER (I) AUTHORIZING
 THE DEBTORS TO (A) PAY CRITICAL VENDORS, FOREIGN VENDORS,
 LIEN CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR PREPETITION
 PAYMENT ARRANGEMENTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE
 PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Second Interim Order*”) (i) authorizing the Debtors to, in the ordinary course of business, based on their sound business

¹ Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

judgment, (a) pay prepetition amounts owed to Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (b) honor Prepetition Payment Arrangements; (ii) confirming the administrative expense priority status and treatment of the Debtors' outstanding orders; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declarations; and the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the "***Final Hearing***") on the Motion shall be held on _____, 2024, at __:__ .m., prevailing Eastern Time. The official committee of unsecured creditors (the "***Committee***") shall have until 5:00 p.m., prevailing Eastern Time, seven (7) days prior to the Final Hearing to file an objection to the Motion (subject to agreement on any further extensions as may be agreed by the Debtors and the Committee).

2. The Debtors are authorized, subject to this Second Interim Order, to pay the prepetition Vendor Claims described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$78.4 million on an interim basis as set forth in the categories and amounts set forth the following table, subject to the limitations set forth herein, pending entry of the Final Order.

Vendors	Interim Amount
Critical Vendors	\$16.4 million
Foreign Vendors	\$5.0 million
Lien Claimants	\$49.8 million
503(b)(9) Claimants	\$7.2 million

In the event the Debtors expect to exceed the aggregate amounts in any category as detailed in the foregoing table during the interim period, the Debtors shall (i) provide five (5) business days' prior written notice to counsel to the Committee and counsel to the Ad Hoc Group and (ii) file a notice with the Court describing the category and overage amount prior to payment.

3. The Debtors are authorized, subject to this Second Interim Order, to honor Prepetition Payment Arrangements described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$3.7 million on an interim basis as set forth in the Motion, pending entry of the Final Order.

4. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of payee; (b) the amount of the payment; (c) the category or type of payment as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the "**Critical Vendor Matrix**"). The Debtors shall provide a copy of the Critical Vendor Matrix to the U.S. Trustee, counsel to the Ad Hoc Group, counsel to the 2026 Notes Trustee, and counsel to the Committee, (x) for the first eight weeks following commencement of these chapter

11 cases, on a weekly basis, and (y) thereafter, on a bi-weekly basis; *provided* that such recipients shall keep the Critical Vendor Matrix strictly confidential and not disseminate it to other parties absent the consent of the Debtors; *provided, further*, that the rights of the Committee to seek a revision regarding the reporting information and/or schedule are expressly preserved.

5. The Debtors will provide counsel to the Committee and counsel to the Ad Hoc Group with as much advance notice as is reasonably practicable, but in no event less than two (2) business days, of any proposed (i) payment that would exceed \$500,000, individually or in the aggregate, that the Debtors propose to make to a Critical Vendor, the notice of which shall include the identity of the Critical Vendor to be paid and the proposed payment amount, and (ii) the material terms of the settlement, if any, of all or some of the Critical Vendor Claims for less than the face amount of such claims.

6. As a condition to receiving any payment under this Second Interim Order, a Critical Vendor and/or Foreign Vendor must maintain or apply, as applicable, Customary Trade Terms³ during the pendency of these chapter 11 cases. If such Vendor, after receiving a payment under this Second Interim Order, ceases to provide goods or services on Customary Trade Terms, the Debtors may assert and request that the Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to such creditor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate

³ As used herein, “*Customary Trade Terms*” means, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the 12-month period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Vendor.

amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery recharacterization and reapplication of such payment by the Debtors, such creditor's Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the agreement had never been entered into and the payment of the creditor's Vendor Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Court.

7. The form of Vendor Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety. The Debtors are authorized to enter into Vendor Agreements with Critical Vendors and/or Foreign Vendors, in consultation with the Committee and the Ad Hoc Group, in their discretion, so long as such Vendor Agreements comply with the terms of this Second Interim Order.

8. The Debtors are authorized to negotiate, modify, or amend the form of a Vendor Agreement (provided that any such modification or amendment must require the Vendor to provide the Customary Trade Terms and otherwise comply with this Second Interim Order) and to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment; *provided* that the Debtors shall provide the advisors to the Committee and the advisors to the Ad Hoc Group with bi-weekly reporting on any settlements entered into with respect to any Vendor Claims, including the agreed claim amounts, if any, between the Vendors and the Debtors and the amounts to be paid or amounts

agreed to be waived and any other material terms requested by the advisors to the Committee and by the advisors to the Ad Hoc Group.

9. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

10. Any party that accepts payments from the Debtors on account of a Vendor Claim shall be deemed to have agreed to the terms and provisions of this Second Interim Order. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Second Interim Order, the Debtors shall provide such Vendor with a copy of this Second Interim Order (unless previously provided to such Vendor).

11. If any party accepts payment on behalf of a Vendor Claim under this Second Interim Order, and such claim is determined by the Court after notice and hearing (a) in the case of a Lien Claim, not to give rise to a Lien or Interest or (b) in the case of a 503(b)(9) Claim, not to give rise to a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code, the Debtors are authorized to avoid such payment as a postpetition transfer under section 549 of the Bankruptcy Code, and the party who had accepted such payment shall be required to immediately repay to the Debtors any payment made to it on account of its asserted claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of setoff, claims, or otherwise. Upon recovery of such payments by the Debtors, the obligations shall be reinstated as a prepetition claim in the amount so recovered.

12. All undisputed obligations arising from the Outstanding Orders shall receive administrative expense priority, and the Debtors are authorized to pay all undisputed obligations

arising from the Outstanding Orders in their reasonable discretion and in the ordinary course of business consistent with the parties' prepetition customary practices.

13. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

14. Nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of Vendor Claims as set forth in the Motion and herein or any party in interest's right to contest such relief.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Second Interim Order in accordance with the Motion.

16. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Second Interim Order.

17. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Second Interim Order.

18. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Second Interim Order or any payment made pursuant to this Second Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a

waiver of the Debtors', or any party in interest's, including the Committee's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this Second Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

19. Notwithstanding the relief granted in this Second Interim Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 24] (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Second Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

20. Nothing in this Second Interim Order authorizes the Debtors to accelerate payments to Vendors or otherwise pay Vendors on account of Vendor Claims that do not come due during the interim period.

21. Notwithstanding anything to the contrary, nothing in this this Second Interim Order authorizes the Debtors to pay any claims that are addressed in any other order issued by this Court, including but not limited to prepetition employees' claims, and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

22. The requirements of Bankruptcy Rule 6004(a) are waived.

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Second Interim Order shall be immediately effective and enforceable upon entry of this Second Interim Order.

24. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

25. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Second Interim Order.

Dated: _____
Alexandria, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/
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Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
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Proposed Co-Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/

Exhibit B

Redline

judgment, (a) pay prepetition amounts owed to Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (b) honor Prepetition Payment Arrangements; (ii) confirming the administrative expense priority status and treatment of the Debtors' outstanding orders; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declarations; and the Court having ~~found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003~~entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the "*Final Hearing*") on the Motion shall be held on ~~April 11~~11, 2024, at ~~2:00 p.m.~~2:00 p.m., prevailing Eastern Time. ~~Any objections or responses to entry of a final order on the Motion shall be filed on or before~~The official committee

of unsecured creditors (the “Committee”) shall have until 5:00 p.m., prevailing Eastern Time, ~~on April 4, 2024, and shall be served on the Notice Parties~~ seven (7) days prior to the Final Hearing to file an objection to the Motion (subject to agreement on any further extensions as may be agreed by the Debtors and the Committee).

2. The Debtors are authorized, subject to this Second Interim Order, to pay the prepetition Vendor Claims described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed ~~\$63.3~~78.4 million on an interim basis as set forth in the categories and amounts set forth ~~in the Motion.~~ following table, subject to the limitations set forth herein, pending entry of the Final Order.

<u>Vendors</u>	<u>Interim Amount</u>
<u>Critical Vendors</u>	<u>\$16.4 million</u>
<u>Foreign Vendors</u>	<u>\$5.0 million</u>
<u>Lien Claimants</u>	<u>\$49.8 million</u>
<u>503(b)(9) Claimants</u>	<u>\$7.2 million</u>

~~2.~~ In the event the Debtors expect to exceed the aggregate amounts in any category as detailed in the ~~Motion~~ foregoing table during the interim period, the Debtors shall (i) provide five (5) business days’ prior written notice to counsel to the Committee and counsel to the Ad Hoc Group and (ii) file a notice with the Court describing the category and overage amount prior to payment.

3. The Debtors are authorized, subject to this Second Interim Order, to honor ~~the~~ Prepetition Payment Arrangements described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$3.7 million on an interim basis as set forth in the Motion, pending entry of the Final Order.

4. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of payee; (b) the amount of the payment; (c) the category or type of payment as further described and

classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the “*Critical Vendor Matrix*”). The Debtors shall provide a copy of the Critical Vendor Matrix to the U.S. Trustee, counsel to the Ad Hoc Group, ~~and any statutory committee appointed in these chapter 11 cases~~ counsel to the 2026 Notes Trustee, and counsel to the Committee, (x) for the first ~~four~~eight weeks following commencement of these chapter 11 cases, on a weekly basis, and ~~–~~ (y) thereafter, on a ~~monthly~~bi-weekly basis; *provided* that such recipients shall keep the Critical Vendor Matrix strictly confidential and not disseminate it to other parties absent the consent of the Debtors; *provided, further*, that the rights of ~~any statutory committee~~the Committee to seek a revision regarding the reporting ~~scheduled~~information and/or schedule are expressly preserved.

5. The Debtors will provide counsel to the Committee and counsel to the Ad Hoc Group with as much advance notice as is reasonably practicable, but in no event less than two (2) business days, of any proposed (i) payment that would exceed \$500,000, individually or in the aggregate, that the Debtors propose to make to a Critical Vendor, the notice of which shall include the identity of the Critical Vendor to be paid and the proposed payment amount, and (ii) the material terms of the settlement, if any, of all or some of the Critical Vendor Claims for less than the face amount of such claims.

6. ~~5.~~ As a condition to receiving any payment under this Second Interim Order, a Critical Vendor and/or ~~a~~ Foreign Vendor must maintain or apply, as applicable, Customary Trade Terms³ during the pendency of these chapter 11 cases. ~~Further, if~~If such Vendor, after receiving a payment under this Second Interim Order, ceases to provide goods or services on Customary

³ As used herein, “*Customary Trade Terms*” means, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the 12-month period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Vendor.

Trade Terms, the Debtors may assert and request that the Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to such creditor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery recharacterization and reapplication of such payment by the Debtors, such creditor's Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the agreement had never been entered into and the payment of the creditor's Vendor Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Court.

7. ~~6.~~ The form of Vendor Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety. The Debtors are authorized to enter into Vendor Agreements with Critical Vendors and or Foreign Vendors, in consultation with the Committee and the Ad Hoc Group, in their discretion, so long as such Vendor Agreements comply with the terms of this Second Interim Order.

8. ~~7.~~ The Debtors are authorized to negotiate, modify, or amend the form of ~~the~~ Vendor Agreement (provided that any such modification or amendment must require the Vendor to provide the Customary Trade Terms and otherwise comply with this Second Interim Order) and

to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment; provided that the Debtors shall provide the advisors to the Committee and the advisors to the Ad Hoc Group with bi-weekly reporting on any settlements entered into with respect to any Vendor Claims, including the agreed claim amounts, if any, between the Vendors and the Debtors and the amounts to be paid or amounts agreed to be waived and any other material terms requested by the advisors to the Committee and by the advisors to the Ad Hoc Group.

9. ~~8.~~ The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

10. ~~9.~~ Any party that accepts payments from the Debtors on account of a Vendor Claim shall be deemed to have agreed to the terms and provisions of this Second Interim Order. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Second Interim Order, the Debtors shall provide such Vendor with a copy of this Second Interim Order (unless previously provided to such Vendor).

11. ~~10.~~ If any party accepts payment on behalf of a Vendor Claim under this Second Interim Order, and such claim is determined by the Court after notice and hearing (a) in the case of a Lien Claim, not to give rise to a Lien or Interest or (b) in the case of a 503(b)(9) Claim, not to give rise to a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code, the Debtors are authorized to avoid such payment as a postpetition transfer under section 549 of the Bankruptcy Code, and the party who had accepted such payment shall be required to immediately repay to the Debtors any payment made to ~~such party~~it on account of its asserted claim to the extent the

aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of setoff, claims, or otherwise. Upon recovery of such payments by the Debtors, the obligations shall be reinstated as a prepetition claim in the amount so recovered.

12. ~~11.~~ All undisputed obligations arising from the Outstanding Orders shall receive administrative expense priority, and the Debtors are authorized to pay all undisputed obligations arising from the Outstanding Orders in their reasonable discretion and in the ordinary course of business consistent with the parties' prepetition customary practices.

13. ~~12.~~ Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

14. ~~13.~~ Nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of Vendor Claims as set forth in the Motion and herein or any party in interest's right to contest such relief.

15. ~~14.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this [Second Interim](#) Order in accordance with the Motion.

16. ~~15.~~ The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this [Second Interim](#) Order.

17. ~~16.~~ The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

as a consequence of these chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Second Interim Order.

18. ~~17.~~ Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Second Interim Order or any payment made pursuant to this Second Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, including the Committee's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this Second Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

19. ~~18.~~ Notwithstanding the relief granted in this Second Interim Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, ~~filed contemporaneously herewith~~ ([Docket No. 24] (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any

budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this [Second](#) Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

[20.](#) ~~19.~~ Nothing in this [Second](#) Interim Order authorizes the Debtors to accelerate payments to Vendors or otherwise pay Vendors on account of Vendor Claims that do not come due during the interim period.

[21.](#) ~~20.~~ Notwithstanding anything to the contrary, nothing in this [this Second](#) Interim Order authorizes the Debtors to pay any claims that are addressed in any other order issued by this Court, including but not limited to prepetition employees' claims, and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

~~21. Bankruptcy Rule 6003(b) has been satisfied.~~

22. The requirements of Bankruptcy Rule 6004(a) are waived.

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this [Second](#) Interim Order shall be immediately effective and enforceable upon entry of this [Second](#) Interim Order.

24. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

25. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this [Second](#) Interim Order.

Dated: _____
Alexandria, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ *Jeremy S. Williams*

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Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

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Proposed Co-Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ *Jeremy S. Williams*

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