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Proposed Counsel to the Official Committee of Unsecured Creditors

Proposed Local Counsel to the Official Committee of Unsecured Creditors

**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 SUBPOENA

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 45(a)(4), made applicable pursuant to Federal Rule of Bankruptcy Procedure 9016, the Official Committee of General Unsecured Creditors intends to serve a *Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding)* in the form attached hereto on Lazard Freres & Co. on April 16, 2024 or as soon thereafter as service may be effectuated.

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' proposed claims and noticing agent at <https://kccllc.net/enviva>. The location of the Debtors' service address is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



Dated: April 16, 2024

Respectfully submitted,

/s/ Kristen E. Burgers

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*Proposed Counsel for the Official Committee of
Unsecured Creditors*

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing to all counsel of record registered with the CM/ECF system.

/s/ Kristen E. Burgers
Kristen E. Burgers

UNITED STATES BANKRUPTCY COURT

Eastern

District of Virginia

In re Enviva, Inc., et al.

Debtor

Case No. 24-10453 (BFK)

(Complete if issued in an adversary proceeding)

Chapter _____

Plaintiff

v.

Adv. Proc. No. _____

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Lazard Freres & Co.
(Name of person to whom the subpoena is directed)

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Exhibit A

PLACE	Akin Gump Strauss Hauer & Feld LLP One Bryant Park, 44th Floor New York, NY 10036	DATE AND TIME	April 22, 2024 at 10:00 A.M. ET
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The deposition will be recorded by this method:
Stenographically or by other means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: April 16, 2024

CLERK OF COURT

OR /s/ Abid Qureshi

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Abid Qureshi, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, 44th Floor, New York, NY 10036

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit A

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

In re:

ENVIVA INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24–10453 (BFK)

(Jointly Administered)

**SUBPOENA FOR TESTIMONY PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure made applicable to these proceedings by Rules 7026, 7030, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Federal Bankruptcy Rules”) and the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, the Official Committee of Unsecured Creditors (the “Committee”) appointed in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors” and together with their non-debtor affiliates, “Enviva”), will take the deposition upon oral examination of corporative representatives of Lazard Frères & Co. (“Lazard”) on **April 22, 2024** beginning at **10:00 a.m.** Eastern Standard Time at the offices of Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036.

Pursuant to Rule 30(b)(6), Lazard shall designate the persons authorized to testify on Lazard’s behalf concerning each of the matters set forth in Exhibit 1 hereto.

¹ 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.

Dated: April 16, 2024

/s/ *Abid Qureshi*

AKIN GUMP STRAUSS HAUER & FELD LLP

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*Proposed Counsel for the Official Committee of
Unsecured Creditors*

EXHIBIT 1

TOPICS^{2,3}

1. Consideration of the entire fairness of the DIP Facility and the RSA, including discussions, deliberations, any information considered by, and decision-making of the Board related to the DIP Facility and RSA, as well as (i) any communications between Lazard and the Board, the Debtors' management, the Debtors' other advisors, creditors, or equity holders regarding this issue; (ii) any analysis by Lazard regarding this issue, including any information considered by Lazard in its analysis and the source of that information; and (iii) any request to Lazard by the Board or the Debtors to analyze the entire fairness of the DIP Facility and the RSA.

2. The exercise of the Debtors' business judgment in connection with the DIP Facility and the RSA, including discussions, deliberations, any information considered by, and decision-making of the Board related to the DIP Facility and RSA, and (i) any communications with the Board, the Debtors' management, the Debtors' other advisors, creditors, or equity holders regarding this issue; (ii) any analysis by Lazard regarding this issue, including any information considered by Lazard in its analysis and the source of that information; and (iii) any request to Lazard by the Board or the Debtors to analyze issues relating to the Debtors' business judgment in connection with the DIP Facility and the RSA.

3. The DIP Facility, including the negotiations thereof, the rationale for the inclusion and reasonableness of the terms of the DIP Facility (including but not limited to any backstop, upfront, exit, undrawn commitment, administration, fronting, and early repayment fees), the

² Unless and except noted otherwise, all capitalized terms used herein shall have the same meaning given to them in the Committee's April 10, 2024 requests for production of documents to the Debtors (the "Document Requests") in connection with the Debtors' motion for DIP financing. Additionally, as relevant, all Instructions set forth in the Document Requests are applicable here.

³ The Committee reserves all rights to supplement these Topics based on its review of documents and other information produced to it by the Debtors or the Ad Hoc Group.

exclusion or rejection of any alternative terms or conditions, the Debtors' or Lazard's internal and external communications regarding the DIP Facility or any analysis of the DIP Facility.

4. All efforts undertaken by the Debtors or Lazard to address financing for the Chapter 11 Cases, including without limitation (i) the Debtors' or Lazard's marketing efforts for DIP financing, including responses or proposals received from potential lenders and all communications with potential lenders; (ii) the Debtors' or Lazard's consideration of, and negotiations surrounding, DIP financing proposals from the Ad Hoc Group, any DIP Creditor, or any other potential lender; (iii) the Debtors' or Lazard's efforts to obtain DIP financing on terms other than those set forth in the DIP Facility, including without encumbering the Unencumbered Property or without including the Tranche A Participation Election; (iv) the Debtors' or Lazard's efforts to obtain postpetition financing other than through the DIP Facility, including without limitation any discussions concerning the use of cash collateral or otherwise restricted cash as opposed to obtaining DIP Financing; (v) the Debtors' or Lazard's efforts in connection with any proposed or contemplated out-of-court restructuring; and (vi) the Debtors' or Lazard's analysis of all options and proposals considered for postpetition financing.

5. The Debtors' need for postpetition financing and the amount of such financing needed, and analyses related thereto, including without limitation (i) business plans and budget forecasts related to the operation of the Debtors during the Chapter 11 Cases; (ii) the Debtors' projected cash flows, earnings, and income during the Chapter 11 Cases; and (iii) the use of any such financing, including any analysis or consideration of whether such financing is necessary during the Chapter 11 Cases, and if any uses of the financing may be deferred until after the Chapter 11 Cases, and the impact of any such deferral.

6. The decision of the Board on January 15, 2024 to forego making a required semi-

annual interest payment due under the 2026 Notes, including all discussion, analysis, and consideration of (i) the Debtors' need to forego the interest payment or (ii) any impact of the missed interest payment on the terms of any potential restructuring of the Debtors.

7. The Debtors' prepetition unencumbered assets, including but not limited to the Unencumbered Property, including without limitation any appraisal, assessment, evaluation, consideration, or analysis of the Debtors' prepetition unencumbered assets, the impact of the DIP Motion on these prepetition unencumbered assets, and the treatment of the prepetition unencumbered assets under the DIP Facility and the RSA.

8. The Ad Hoc Group's involvement in the DIP Facility and RSA, including any analysis, negotiation, or diligence related to the Ad Hoc Group's involvement in the DIP Facility and RSA.

9. The role of any equity holders, including but not limited to the Riverstone Entities, in connection with the DIP Facility, the Tranche A Participation Election, the Syndication, the Syndication Procedures, the Equity Participation Election,⁴ the Company Allocated Portion, the RSA as it relates to the DIP Facility, and any alternatives to the DIP Facility.

10. The Tranche A Participation Election, including the origin of the Tranche A Participation Election, negotiation thereof, the purported necessity of including the Tranche A Participation Election (or lack thereof) in obtaining the DIP Facility, and any contemplated or proposed alternatives to the Tranche A Participation Election or any of its terms.

11. The RSA or the RSA Term Sheet as they relate to the DIP Facility, including the Tranche A Participation Election or any other contemplated or anticipated equitization of any portion or component of the DIP Facility.

⁴ "Equity Participation Election" is described in paragraph 31 of the Interim DIP Order.

12. The Syndication and Syndication Procedures, including the origin of the Syndication and the Syndication Procedures, the negotiation thereof, the persons eligible to participate in the Syndication, the persons who subscribed to the Syndication, the actual participants in the Syndication, and any contemplated or proposed alternatives to the Syndication or any of its terms.

13. The Equity Participation Election or the Company Allocated Portion, including any negotiation thereof.

14. The potential participation of unsecured creditors in the DIP Facility or the Equity Participation Election.

15. The effect of the DIP Facility on distributions to the Debtors' creditors in the Chapter 11 Cases.

16. The potential impact of the DIP Facility on terms or conditions of any potential plan, distributions, or reorganization of the Debtors, including any alternatives that may be foreclosed due to any term of the DIP Facility.

17. The Debtors' efforts to seek bridge financing, as discussed in paragraph 117 of the Nunziata Declaration.