

Scott L. Alberino (*admitted pro hac vice*)
Alexander F. Antypas (VSB No. 92083)
AKIN GUMP STRAUSS HAUER & FELD LLP
Robert S. Strauss Tower
2001 K Street, N.W.
Washington, DC 20006-1037
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

Ira S. Dizengoff (*admitted pro hac vice*)
Abid Qureshi (*admitted pro hac vice*)
Jason P. Rubin (*admitted pro hac vice*)
Avi E. Luft (*admitted pro hac vice*)
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

Lawrence A. Katz (VSB No. 47664)
Kristen E. Burgers (VSB No. 67997)
Allison P. Klena (VSB No. 96400)
HIRSCHLER FLEISCHER, P.C.
1676 International Drive, Suite 1350
Tysons, Virginia 22102
Telephone: (703) 584-8900
Facsimile: (703) 584-8901

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., *et al.*,) Case No. 24-10453 (BFK)
))
Debtors.¹) (Jointly Administered)
_____)

**MOTION FOR EXPEDITED HEARING ON (I) MOTION *IN LIMINE*
AND (II) MOTIONS TO SEAL, AND MEMORANDUM IN SUPPORT THEREOF**

The Official Committee of Unsecured Creditors (the “Committee”) of Enviva Inc., *et al.* (collectively, the “Debtors”), by counsel, hereby moves (the “Motion”), pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 9013-1(N) and (O) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”), for the entry of an Order setting an expedited hearing to be held on May 1, 2024, at 10:00 a.m. on:

1. The *Motion in Limine to Exclude Debtors’ Board Minutes and Materials as Evidence of Debtors’ Business Judgment* [Docket No. 400] (the “Motion in Limine”);

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.



2. The *Motion for Authority to File Under Seal (I) Portions of the Supplemental Objection; (II) Portions of the Declaration of Mike Genereux; and (III) Certain Exhibits Submitted in Support of the Supplemental Objection Under Seal* [Docket No. 392] (the “Motion to Seal Supplemental Objection”); and
3. The *Motion for Authority to File Under Seal (I) Motion in Limine and (II) Exhibits in Support of Motion in Limine* [Docket No. 402] (the “Motion to Seal Motion in Limine,” and together with the Motion to Seal Supplemental Objection, the “Motions to Seal”).

In support of the Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) has jurisdiction over this Motion to Seal pursuant to 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are Bankruptcy Code section 105(a), Bankruptcy Rule 9006(c), and Local Bankruptcy Rules 9013-1(N) and (O).

BACKGROUND

4. On March 12, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request has been made for the appointment of a trustee or an examiner.
5. On March 25, 2024, the Office of the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”) appointed the Committee pursuant to Bankruptcy Code section 1102 [Docket No. 172].

6. On March 13, 2024, the Debtors filed a *Motion of Debtors 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* (the “DIP Motion”) [Docket No. 24].

7. The DIP Motion is scheduled to be heard by this Court on May 1, 2024 at 10:00 a.m. [Docket No. 379].

8. On April 29, 2024, the Committee filed its *Supplemental Objection of the Official Committee of Unsecured Creditors to Debtors 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. 390] (the “Supplemental Objection”), and filed the Motion to Seal Supplemental Objection in connection therewith.

9. On April 30, 2024, the Committee filed the Motion *in Limine*, requesting that this Court exclude certain evidence in its consideration of the DIP Motion, as well as the Motion to Seal Motion *in Limine*.

RELIEF REQUESTED

10. By this Motion, the Committee requests entry of an order, substantially in the form of the order attached hereto as **Exhibit A**, pursuant to section 105(a) of the Bankruptcy Code and Rule 9006(c) of the Bankruptcy Rules, setting an expedited hearing the Motion *in Limine* and Motions to Seal for May 1, 2024, at 10:00 a.m.

BASIS FOR RELIEF

11. Local Bankruptcy Rule 9013-1 allows the setting of a hearing on an expedited basis as requested herein. Attached hereto as **Exhibit B** is the certification required under Local Rule 9013-1(N).

12. Bankruptcy Code section 105(a) permits this Court to “issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

13. Under Bankruptcy Rule 9006(c), “the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c)(1).

14. An expedited hearing on the Motion *in Limine* and the Motions to Seal is appropriate under the circumstances because the Motion *in Limine* raises issues that are properly considered by this Court in connection with the May 1, 2024 hearing on the DIP Motion. Further, the Motions to Seal have been filed in conjunction with the Committee’s Supplemental Objection to the DIP Motion and the Motion *in Limine*, respectively, and are therefore also properly considered at the May 1, 2024 hearing. Finally, shortening the notice period will not prejudice any parties in interest as most, if not all, receive notice by electronic means.

15. The Committee therefore submits that it is necessary and appropriate for the Court to allow the Motion *in Limine* and the Motions to Seal to be heard on May 1, 2024, at 10:00 a.m.

WHEREFORE, the Committee requests that the Court (a) enter an order, substantially in the form annexed hereto as **Exhibit A**, granting an expedited hearing on the Motion *in Limine* and the Motions to Seal, and (b) provide the Committee with such other and further relief as the Court may deem just, proper and equitable.

Dated: April 30, 2024

Respectfully submitted,

The Official Committee of Unsecured
Creditors of Enviva Inc., *et al.*

By: /s/ Allison P. Klena

Lawrence A. Katz (VSB No. 47664)

Kristen E. Burgers (VSB No. 67997)

Allison P. Klena (VSB No. 96400)

HIRSCHLER FLEISCHER, P.C.

1676 International Drive, Suite 1350

Tysons, Virginia 22102

Telephone: (703) 584-8900

Facsimile: (703) 584-8901

Email: lkatz@hirschlerlaw.com

kburgers@hirschlerlaw.com

aklena@hirschlerlaw.com

*Proposed Local Counsel to the Official
Committee of Unsecured Creditors*

Scott L. Alberino (*admitted pro hac vice*)

Alexander F. Antypas (VSB No. 92083)

AKIN GUMP STRAUSS HAUER & FELD LLP

Robert S. Strauss Tower

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Washington, DC 20006-1037

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Jason P. Rubin (*admitted pro hac vice*)

Avi E. Luft (*admitted pro hac vice*)

AKIN GUMP STRAUSS HAUER & FELD LLP

One Bryant Park

New York, New York 10036

Telephone: (212) 872-1000

Facsimile: (212) 872-1002

*Proposed Counsel to the Official Committee
of Unsecured Creditors*

CERTIFICATE OF SERVICE

I hereby certify that, on April 30, 2024, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Allison P. Klena

Lawrence A. Katz (VSB No. 47664)
Kristen E. Burgers (VSB No. 67997)
Allison P. Klena (VSB No. 96400)
HIRSCHLER FLEISCHER, P.C.
1676 International Drive, Suite 1350
Tysons, Virginia 22102
Telephone: (703) 584-8900
Facsimile: (703) 584-8901
Email: lkatz@hirschlerlaw.com
kburgers@hirschlerlaw.com
aklena@hirschlerlaw.com

*Proposed Local Counsel to the Official
Committee of Unsecured Creditors*

Scott L. Alberino (*admitted pro hac vice*)
Alexander F. Antypas (VSB No. 92083)
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One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

*Proposed Counsel to the Official Committee
of Unsecured Creditors*

EXHIBIT A

[Proposed Order]

Scott L. Alberino (*admitted pro hac vice*)
 Alexander F. Antypas (VSB No. 92083)
AKIN GUMP STRAUSS HAUER & FELD LLP
 Robert S. Strauss Tower
 2001 K Street, N.W.
 Washington, DC 20006-1037
 Telephone: (202) 887-4000
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 1676 International Drive, Suite 1350
 Tysons, Virginia 22102
 Telephone: (703) 584-8900
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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)

**ORDER SETTING AN EXPEDITED HEARING ON (I) MOTION IN LIMINE
 AND (II) MOTIONS TO SEAL, AND GRANTING RELATED RELIEF**

Upon the *Motion for Expedited Hearing On (I) Motion in Limine and (II) Motions to Seal, and Memorandum in Support Thereof* (the “Motion”) filed by the Official Committee of Unsecured Creditors (the “Committee”) of Enviva Inc., *et al.* (collectively, the “Debtors”), by counsel, for entry of an order, pursuant to section 105(a) of the Bankruptcy Code, Rule 9006(c) of the Bankruptcy Rules, and Rules 9013-1(N) and (O) of the Local Bankruptcy Rules, setting an expedited hearing on the *Motion in Limine*² and the Motions to Seal for May 1, 2024, at 10:00 a.m.; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and requested relief being a core proceeding under 28 U.S.C. §157(b); and venue being proper before this Court pursuant to

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² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion

28 U.S.C §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion to establish just cause for the relief granted herein; and the Court having determined that immediate relief is appropriate; upon all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby **GRANTED**;
2. A hearing shall be held on May 1, 2024, at 10:00 a.m. (prevailing Eastern time) to hear and consider the Motion *in Limine* and the Motions to Seal;
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and
4. This Court shall retain exclusive jurisdiction over any and all matters arising from and/or related to the implementation and/or interpretation of this Order.

Enter: / /

Brian F. Kenney, Judge
United States Bankruptcy Court for the Eastern
District of Virginia

WE ASK FOR THIS:

/s/ Allison P. Klena
Lawrence A. Katz (VSB No. 47664)
Kristen E. Burgers (VSB No. 67997)
Allison P. Klena (VSB No. 96400)
HIRSCHLER FLEISCHER, P.C.
1676 International Drive, Suite 1350
Tysons, Virginia 22102
Telephone: (703) 584-8900

Facsimile: (703) 584-8901

*Proposed Local Counsel to the Official Committee of
Unsecured Creditors*

and

Scott L. Alberino (*admitted pro hac vice*)
Alexander F. Antypas (VSB No. 92083)
AKIN GUMP STRAUSS HAUER & FELD LLP
Robert S. Strauss Tower
2001 K Street, N.W.
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Jason P. Rubin (*admitted pro hac vice*)
Avi E. Luft (*pro hac vice pending*)
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

*Proposed Lead Counsel to the Official
Committee of Unsecured Creditors*

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

I hereby certify that the foregoing Order has been endorsed by and/or served on all necessary parties.

/s/ Allison P. Klena
Counsel

EXHIBIT B

[Certification of Counsel]

Scott L. Alberino (*admitted pro hac vice*)
 Alexander F. Antypas (VSB No. 92083)
AKIN GUMP STRAUSS HAUER & FELD LLP
 Robert S. Strauss Tower
 2001 K Street, N.W.
 Washington, DC 20006-1037
 Telephone: (202) 887-4000
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**IN THE UNITED STATES BANKRUPTCY COURT
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 ALEXANDRIA DIVISION**

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

CERTIFICATION PURSUANT TO LOCAL RULE 9013-1 (N)

Pursuant to Local Rule 9013-1(N), the undersigned hereby certifies:

- (i) I have carefully examined the matter and concluded that there is a true need for an expedited hearing;
- (ii) I have not created the emergency through any lack of due diligence; and
- (iii) I have made a *bona fide* effort to resolve the matter without a hearing.

Dated: April 30, 2024

Respectfully submitted,

The Official Committee of Unsecured Creditors of Enviva Inc., *et al.*

By: /s/ Allison P. Klena
 Lawrence A. Katz (VSB No. 47664)
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HIRSCHLER FLEISCHER, P.C.

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