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**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)

**MOTION FOR ENTRY OF AN ORDER
 (I) AUTHORIZING THE DEBTORS TO IMPLEMENT A KEY
 EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) file this *Motion for Entry of an Order (I) Authorizing the Debtors to Implement a Key Employee Incentive Plan and (II) Granting Related Relief* (the “*Motion*”) and in support respectfully submit the following:

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.



JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Virginia (the “*Court*”) has jurisdiction over this matter 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. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 363 and 503 of title 11 of the United States Code (the “*Bankruptcy Code*”), Bankruptcy Rule 6004, and rule 6004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “*Local Rules*”).

BACKGROUND

4. Enviva Inc. and its Debtor and non-Debtor subsidiaries (collectively, the “*Company*”) are the world’s largest producer of industrial wood pellets, a renewable and sustainable energy source produced by aggregating a natural resource—wood fiber—and processing it into a transportable form. The Company owns and operates ten industrial-scale wood pellet production plants located in Virginia, North Carolina, South Carolina, Georgia, Florida, and Mississippi. The Company exports its wood pellets through owned and leased deep-water marine

terminals to customers in the United Kingdom, the European Union, and Japan who purchase the wood pellets primarily through long-term, take-or-pay offtake contracts with the Company.

5. On March 12, 2024 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 14, 2024, the Court entered an order authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). *See* Docket No. 84. On March 25, 2024, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “*Committee*”). *See Appointment of Unsecured Creditors Committee* [Docket No. 172]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

6. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* [Docket No. 27] (the “*First Day Declaration*”).²

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of an order (the “*Order*”), substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to implement a performance-based key employee incentive plan (the “*KEIP*”) for four key employees who perform a variety of critical functions with respect to the operation of the Debtors’ business (collectively, the “*KEIP Participants*”), (b) authorizing the Debtors to make payments to the KEIP Participants under the

² The First Day Declaration is incorporated herein by reference. Capitalized terms used but not otherwise defined in this Motion shall have the meanings set forth in the First Day Declaration.

KEIP, if such payments are earned, (c) granting administrative expense priority status to all payment obligations incurred by the Debtors under the KEIP, and (d) granting related relief. In further support of this Motion, the Debtors submit the *Declaration of Glenn Nunziata in Support of the Debtors' Proposed Key Employee Incentive Plan* (the "**Nunziata Declaration**") and the *Declaration of Vance Yudell in Support of the Debtors' Proposed Key Employee Incentive Plan* (the "**Yudell Declaration**") and together with the Nunziata Declaration, the "**KEIP Declarations**"), each attached hereto as **Exhibits B** and **C**, respectively, and incorporated herein by reference.

DEVELOPMENT OF THE KEIP

8. As part of the Debtors' first-day relief, the Debtors filed the *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 5] (the "**Wages Motion**"), pursuant to which they sought authority, among other things, to continue to maintain, on a post-petition basis, certain ordinary course incentive and bonus programs described therein (collectively, the "**Ordinary Course Incentive Programs**") with respect to the Debtors' non-insider employees, including the KEIP Participants. In connection with the Wages Motion, the United States Trustee for Region 4 (the "**U.S. Trustee**") identified the KEIP Participants as employees that it contends are "insiders" (as that term is defined in section 101(31) of the Bankruptcy Code) and therefore not eligible to participate in the Ordinary Course Incentive Programs. Without conceding that the KEIP Participants should be treated as "insiders", the Debtors agreed to remove the KEIP Participants from the relief sought under the Wages Motion as it relates to the Ordinary Course Incentive Programs to resolve the U.S. Trustee's issues.

9. The KEIP Participants and their extensive industry experience and in-depth knowledge of the Debtors' business operations are critical to both the day-to-day operation of the Debtors' business and to the Debtors' restructuring efforts. Accordingly, it is essential that the KEIP Participants remain properly motivated and incentivized to maintain strong operational and financial performance of the Debtors' business.

10. Recognizing the importance of incentivizing the KEIP Participants under the current circumstances, the Debtors, with the assistance of their advisors, developed the KEIP to incentivize the KEIP Participants during these chapter 11 cases. As discussed below, the KEIP incentivizes the KEIP Participants to achieve specific financial and operational performance metrics, including based on profitability, cost controls, and safety controls, in order to earn any payout thereunder. The Debtors submit that implementation of the proposed KEIP will align the interests of the KEIP Participants with the Debtors' stakeholders and serve to maximize the value of the Debtors' estates.

11. If approved, the KEIP will ensure that the KEIP Participants are given the opportunity to earn awards under the KEIP that are reflective of their performance. Incentive award opportunities are a key part of the KEIP Participants' historic compensation packages and the absence of such opportunities during these chapter 11 cases would likely have a detrimental impact on the Debtors' estates resulting from, among other things, decreased employee motivation. The KEIP Participants' focus over the course of these chapter 11 cases will be crucial to the Debtors' future given the need to maintain and improve business performance.

12. The Debtors believe that the total investment in the KEIP is appropriate under the circumstances, is consistent with general market practice for incentive programs approved in other chapter 11 cases, is designed to incentivize the KEIP Participants to help the Debtors achieve

important operational and financial targets, and is consistent with the awards historically paid to the KEIP Participants under the Ordinary Course Incentive Programs. Further, the total compensation opportunities for the KEIP Participants are reasonable compared to relevant benchmarks in the Debtors' industry.

13. Notably, prior to filing this Motion, the Debtors solicited feedback and input from the Ad Hoc Group regarding the terms of the KEIP, and it does not oppose the relief sought in this Motion. The Debtors also previewed the relief requested in this Motion with the Committee and the U.S. Trustee. Based on the foregoing, and for the reasons set forth below, the Debtors respectfully request that the Motion be granted.

KEY EMPLOYEE INCENTIVE PLAN

A. Selection of the KEIP Participants

14. The positions occupied by the KEIP Participants are the (a) Senior Vice President, Chief Engineer, (b) Vice President, Technical Accounting, (c) Vice President, Information Technology, and (d) Vice President, Environmental, Safety & Quality.

15. It is critical that the KEIP Participants are properly motivated and incentivized because they perform a variety of functions that are vital to the ongoing stability, continuity, and strength of the Debtors' business operations during these chapter 11 cases. Specifically, the KEIP Participants, in their respective roles, are responsible for, among other things: designing, developing, and troubleshooting new and existing plant and port facilities; commissioning newly constructed facilities; expanding existing operations; developing and deploying safety processes for plant and port operations; managing production quality programs, metrics, and targets; maintaining and improving production quality control; limiting plant downtime; managing inventory control; reviewing, evaluating, and approving all material transactions, including operational contracts critical to profitable production and cost management; optimizing and

strengthening security systems; maintaining and improving technology systems that ensure reliability of operations; and leading and managing teams.

16. In order to achieve awards under the KEIP, the performance metrics under the KEIP will require the KEIP Participants to go beyond their ordinary duties and obligations and take on additional responsibilities, all while maintaining their regular day-to-day responsibilities. Notably, the KEIP Participants have devoted and will continue to devote significant time and energy to, among other things, supporting RTB initiatives, completing construction of and beginning operations at the Epes Plant, meeting various chapter 11 reporting obligations, and addressing myriad inbound creditor concerns prompted by the filing of these chapter 11 cases, all on a tight timeline.

17. As set forth above, incentive opportunities have historically been a key part of the compensation package for the KEIP Participants. If the KEIP were not in place, the KEIP Participants' overall compensation would be significantly lower than the historical total compensation paid to the KEIP Participants and compensation paid to other non-insider employees who are entitled to participate in the Ordinary Course Incentive Programs despite the additional demands that each KEIP Participant has been asked to take on in connection with these chapter 11 cases.

18. Notably, none of the Debtors' most senior members of the management team and senior officers are participants in the KEIP.

B. Overview of the KEIP

19. The Debtors have evaluated the need for the KEIP with the benefit of guidance from their advisors, including Alvarez & Marsal North America, LLC ("**A&M**"). The Debtors evaluated various potential KEIP structures and determined that the KEIP is appropriately tailored

to motivate the KEIP Participants. The proposed award opportunities are reasonable and reflect A&M's benchmarking analysis versus the Debtors' industry peers, as well as a review of incentive plans approved in other comparable chapter 11 cases. The award opportunities under the KEIP are in line with the awards the KEIP Participants would have otherwise received under the Ordinary Course Incentive Programs. The award opportunities (and performance targets) are designed to ensure that the opportunities (if achieved) reflect the Debtors' business needs and goals.

20. The proposed KEIP contains the following primary design features:

- ***Eligible Participants.*** The KEIP is limited to the four aforementioned KEIP Participants who are critical to the Debtors' day-to-day business operations and financial performance and who are not participants in the Ordinary Course Incentive Programs approved under the Final Wages Order.³
- ***KEIP Awards.*** Each KEIP Participant will be eligible to earn certain cash awards (to the extent earned based on performance) provided at the end of each performance period set forth below. Potential payments are based on achievement of specified performance metrics for each such performance period and subject to the continued employment of the KEIP Participant on the applicable payment date.
- ***Performance Periods.*** Performance will be measured for each of the remaining performance periods during 2024, representing the second, third, and fourth fiscal quarters of 2024.
- ***Catch-Up Feature.*** In addition to the measurement of performance for each quarterly performance period, performance will be measured on a cumulative basis from the beginning of the second quarterly performance period through the end of each third and fourth quarterly performance periods and a "catch-up" payment will be made to the extent the Debtors' performance at the end of any given quarterly performance period achieves or exceeds the pre-established cumulative performance goals for the respective quarterly performance period.

³ "***Final Wages Order***" means the *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 370].

- **KEIP Payment Timing.** Payments owed to KEIP Participants (if earned) will be paid as soon as practicable, but in any event within 30 days after the end of the applicable quarterly performance period.
- **KEIP Payout Ranges.** If the relevant performance metrics are met, the KEIP will provide for potential payments representing a range from 50 percent of the target payment for threshold performance and up to 200 percent of the target payment for stretch performance. If threshold performance is not achieved, no payments will be made to the applicable KEIP Participant. Straight-line linear interpolation of the KEIP payment will be applied for achievement of certain performance metrics between the threshold, target, and stretch performance goals.
- **Performance Metrics.** As discussed in more detail below, payment under the KEIP is based upon four specific performance metrics: (i) compensation-adjusted EBITDA, (ii) production costs related to wood pellets delivered at port (the “DAP Costs”), (iii) corporate general and administrative (“G&A”) costs (the “Corporate G&A Costs”), and (iv) total recordable incident rate (“TRIR”).⁴ These performance metrics are weighted and tailored to each KEIP Participant’s role and job responsibilities, as set forth in the table below.

Performance Metric	Weighting	
	SVP, Chief Engineer and VP, Environmental, Safety & Quality	VP, Technical Accounting and VP, Information Technology
Compensation-Adjusted EBITDA	40%	45%
DAP Costs	20%	20%
Corporate G&A Costs	20%	20%
TRIR	20%	15%

- **Termination of Employment.** If a KEIP Participant is terminated by the Debtors without “Cause,” resigns for “Good Reason,” or upon death or disability, such KEIP Participant will be entitled to a pro rata portion of the KEIP award that would otherwise have been earned for the applicable quarterly performance periods, based on actual performance during such performance period, and any remaining future KEIP payments will be forfeited. Any KEIP Participant who terminates employment for any other reason or who is terminated with “Cause” prior to the date that such Participant’s KEIP award becomes payable, forfeits the right to receive their KEIP award.

21. If approved, the KEIP would provide the threshold, target, and stretch award opportunities set forth in the table below:

⁴ A TRIR is a safety measure of recordable incidents per 100 full-time workers during a one-year period and is a standard safety metric used across many industries, including the Debtors’.

Cumulative Q2, Q3 & Q4: Individual KEIP Values			
Participant's Title	Threshold Award Opportunity	Target Award Opportunity	Stretch Award Opportunity
Senior Vice President, Chief Engineer	\$127,560	\$255,120	\$510,239
Vice President, Technical Accounting	\$124,773	\$249,546	\$499,092
Vice President, Information Technology	\$99,032	\$198,063	\$396,126
Vice President, Environmental, Safety & Quality	\$96,209	\$192,417	\$384,834
Total Award Values	\$447,573	\$895,146	\$1,790,292

22. The KEIP and its structure represent a reasonable, market-based approach to incentivize the KEIP Participants in accordance with their performance and is justified under the circumstances of these chapter 11 cases. As set forth in the Yudell Declaration, the KEIP awards will result in KEIP Participants receiving total compensation commensurate to the market. As further set forth in the Yudell Declaration, the KEIP's aggregate cost, which ranges from approximately \$447,600 at the threshold level up to approximately \$1.8 million at the stretch level, is reasonable in light of the competitive market practice for companies that operate in the Debtors' industry and the aggregate cost of incentive programs approved in other recent chapter 11 cases of similarly sized companies. Moreover, to the extent the KEIP Participants receive a KEIP award based on achievement of the applicable performance target, the 2024 total direct compensation for all KEIP Participants in aggregate would be at the 50th percentile of compensation for similar positions in the Debtors' comparable peer group and approximately three percent below the total direct compensation paid by the Debtors, in the aggregate, for the same positions in 2023.

C. The Performance Targets

23. As set forth above, the KEIP is designed to incentivize performance and maximize the value of the Debtors' estates through the achievement of specific performance metrics tied to profitability, cost controls, and safety controls. The Debtors carefully developed the performance thresholds to ensure that they are an appropriate "reach" to drive performance, but will not present unrealistic or unattainable goals, which would frustrate the incentivizing nature of the KEIP. The

Debtors believe that the KEIP—which provides a sliding scale of potential KEIP payouts, capped maximum payout, and no guaranteed minimum level of payouts—strikes this balance.

24. The performance metrics are:

- **Quarterly Compensation-Adjusted EBITDA.** Tied to the Debtors’ profitability and measures quarterly compensation-adjusted EBITDA based on status quo financial projections approved by the board of directors of Enviva Inc. (the “**Board**”) in January 2024 (the “**2024 Projections**”), adjusted for certain items, including: certain professional fees; certain restructuring related expenses; RTB initiatives; Epes Plant related production costs; certain bonus expenses; and timing of G&A improvement initiatives.
- **DAP Costs.** Tied to the Debtors’ production cost controls and measures the quarterly DAP costs (per metric ton) based on costs forecasted in the Debtors’ business plan, adjusted to exclude all Epes Plant related production costs and certain bonus expenses.
- **Corporate G&A Costs.** Tied to the Debtors’ cost controls and measures the Debtors’ quarterly expense accruals charged to G&A based on the 2024 Projections, adjusted for certain items, including; certain professional fees; certain restructuring related expenses; and certain bonus expenses.
- **TRIR.** Tied to the Debtors’ safety controls and measures the Debtors’ TRIR against metrics comprised of improvements from historical averages and relative industry averages.

25. The threshold, target, and stretch performance levels across the quarterly performance periods for each of the performance metrics is set forth in the table below:

Performance Metric	Q2 2024 Performance Target			Q3 2024 Performance Target			Q4 2024 Performance Target		
	Threshold	Target	Stretch	Threshold	Target	Stretch	Threshold	Target	Stretch
Comp. Adjusted EBITDA (\$)	\$18.9	\$25.2	\$31.5	\$32.2	\$42.9	\$53.6	\$33.9	\$45.2	\$56.5
Plants DAP Costs (\$/MT)	\$154.9	\$147.5	\$140.2	\$153.5	\$146.2	\$138.9	\$154.0	\$146.6	\$139.3
Corporate G&A Costs	\$18.0	\$16.4	\$14.8	\$14.7	\$13.4	\$12.1	\$14.7	\$13.4	\$12.1
Incidents Control TRIR	1.84	1.47	1.10	1.84	1.47	1.10	1.84	1.47	1.10

26. The cumulative “catch-up” threshold, target, and stretch performance levels across the quarterly performance periods for each of the performance metrics is set forth in the table below:

Performance Metric	Q3 2024 Cumulative			Q4 2024 Cumulative		
	Threshold	Target	Stretch	Threshold	Target	Stretch
Comp. Adjusted EBITDA (\$)	\$51.1	\$68.1	\$85.2	\$85.0	\$113.3	\$141.6
Plants DAP Costs (\$/MT)	\$154.2	\$146.8	\$139.5	\$154.1	\$146.8	\$139.4
Corporate G&A Costs	\$32.8	\$29.8	\$26.8	\$47.5	\$43.2	\$38.9
Incidents Control TRIR	1.84	1.47	1.10	1.84	1.47	1.10

27. As set forth in the KEIP Declarations, the development, design, structure, cost, metrics, and award opportunities available under the KEIP are reasonable and appropriate given the circumstances of these chapter 11 cases. Accordingly, the Debtors seek the Court’s authority to implement the KEIP.

D. The Need for the KEIP

28. The Debtors’ success is directly linked to the ability of their key employees to maintain strong operational performance during the pendency of these chapter 11 cases. In light of the chapter 11 filing, and particularly the KEIP Participants’ exclusion from the Final Wages Order as it related to the Ordinary Course Incentive Programs, it is critical that the Debtors implement the KEIP as soon as practicable to ensure that the KEIP Participants remain incentivized during these chapter 11 cases.

29. In recent months, the KEIP Participants have seen a substantial increase in their workloads without any concomitant increase in their compensation. To the contrary, absent the opportunity to earn awards under the KEIP, the KEIP Participants’ overall 2024 compensation will be approximately 43 percent lower, in the aggregate, than the prior year despite the additional demands and challenges that each has been asked to take on in connection with these chapter 11 cases. The KEIP Participants have met the various challenges and have managed to maintain stability and seamless performance across the Debtors’ business. While the Debtors believe they can continue to meet the challenges that lay ahead, providing incentive opportunities, such as those contemplated by the KEIP, will enable the Debtors to not only achieve, but possibly exceed, their

near-term operational and financial goals, specifically as they relate to profitability, cost controls, and safety controls.

30. The performance targets were carefully developed based on the best available information to require the KEIP Participants to “reach,” without presenting unrealistic or unattainable goals in these uncertain times—which would thwart the incentivizing nature of the program. The KEIP Participants are being asked to achieve goals that require the KEIP Participants to go above and beyond their normal day-to-day responsibilities and tasks. Accordingly, the Debtors do not believe that the KEIP Participants can achieve the performance targets under the KEIP simply by “showing up.”

31. Properly incentivizing and compensating the KEIP Participants at this critical juncture is in the best interests of the Debtors, the Debtors’ estates, and all parties in interest. As outlined in the Nunziata Declaration, achieving even a threshold award opportunity will mean that the KEIP Participants have outperformed their duties despite the challenges of these chapter 11 cases, for the benefit of all stakeholders in these chapter 11 estates.

BASIS FOR RELIEF REQUESTED

A. The KEIP is an Ordinary Course Transaction Pursuant to Section 363(c) of the Bankruptcy Code.

32. Under section 363(c)(1) of the Bankruptcy Code, a debtor in possession may “enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define “ordinary course of business.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in the Fourth Circuit and elsewhere have adopted a vertical dimension and a horizontal dimension test for purposes of determining whether a transaction falls within the ordinary course of a debtor’s business. *See e.g.*,

In re Fairmont Gen. Hosp., Inc., 510 B.R. 783, 787 (Bankr. N.D.W.Va. 2014) (citing *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992)); *In re Ohio Valley Amusement Co.*, 2008 WL 5062464, at *4 (Bankr. N.D.W. Va. Dec. 1, 2008) (citing *In re Southeast Hotel Props. Ltd. P'ship*, 99 F.3d 151, 158 (4th Cir. 1996)); *In re Cowin*, 2014 WL 1168714, at *40 n.55 (Bankr. S.D. Tex. Mar. 21, 2014) (noting that the “horizontal dimension test” is also known as the “comparable businesses” test and the “vertical dimension test” is also known as the “creditor expectation test”); *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (applying the “horizontal” and “vertical” tests); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

33. The horizontal dimension test considers whether the transaction is common to the debtors’ industry. See e.g., *Fairmont Gen. Hosp., Inc.*, 510 B.R. at 787 (“The ‘horizontal dimension’ test considers ‘whether from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry.’”) (citing *Roth Am.*, 975 F.2d at 953); *In re Dant & Russell, Inc.*, 853 F.2d 700, 704 (9th Cir. 1988) (analyzing whether the transaction is one that other businesses in the same industry “would engage in as ordinary business”).

34. The vertical dimension test considers whether a hypothetical creditor would view the transaction as an ordinary business practice consistent with the debtor’s prepetition practices. See e.g., *Fairmont Gen. Hosp., Inc.*, 510 B.R. at 787 (analyzing “whether the economic risk of the transaction is different than those accepted by creditors that extended credit to the debtor prepetition”) (citing *Ohio Valley Amusement Co.*, 2008 WL 5062464 at *4); *In re Nellson Neutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) (“Debtors’ pre-petition business practices and conduct is the primary focus of the vertical analysis.”); *Cowin*, 2014 WL 1168714, at *41.

35. **First**, the KEIP meets the horizontal dimension test because it is consistent with incentive-based compensation plans within the Debtors' industry. *See In re Blitz U.S.A. Inc.*, 475 B.R. 209, 215 (Bankr. D. Del. 2012) (approving incentive program that was substantially similar to the debtor's prepetition plans and was common in the industry). The Debtors and A&M evaluated total direct compensation for individuals in similar positions to the KEIP Participants at comparable companies.⁵ Furthermore, to measure the reasonableness of the total cost of the KEIP, A&M reviewed incentive plans approved in thirteen comparable chapter 11 cases. The total direct compensation available under the KEIP is consistent with the direct compensation available at the Debtors' comparable companies. Further, the proposed performance metrics are similar to those used by the Debtors' comparable companies and in other chapter 11 cases while the total cost of the proposed KEIP is lower.

36. **Second**, the KEIP meets the vertical dimension test because it is a continuation of the Debtors' prepetition compensation practices. *See In re Dana Corp.*, 358 B.R. 567, 580 (Bankr. S.D.N.Y. 2006) (finding that a debtor's postpetition incentive program was a common component of historical compensation practices and therefore within the ordinary course of the debtor's business). The Debtors have historically offered incentive-based cash awards to their employees based on the achievement of certain performance targets, including under the Ordinary Course Incentive Programs. Thus, the KEIP should not change the expectations of a hypothetical creditor. Moreover, the targets for the KEIP represent a continuation of certain prepetition incentive opportunities adjusted for the current situation in which maintaining business operations and

⁵ Specifically, the Debtors and A&M utilized the Willis Towers Watson General Industry Executive Survey Report and the Economic Research Institute Executive Compensation Assessor to evaluate companies based on similar size and industry.

achieving certain near-term operational and financial goals are critical to the Debtors' ability to successfully restructure.

37. The KEIP is consistent with both the Debtors' prepetition practice and industry practice for companies in and out of chapter 11. Thus, the Debtors request that the Court approve the KEIP as an ordinary course transaction pursuant to section 363(c) of the Bankruptcy Code.

B. Implementing the KEIP is an Appropriate Exercise of the Debtors' Business Judgment Pursuant to Section 363(b)(1) of the Bankruptcy Code.

38. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use . . . other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, courts may authorize a debtor to use property of the estate outside the ordinary course of business when such use has a "sound business purpose" that justifies the transaction and when the use of the property is proposed in good faith. *See In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E. D. Va. 1997); *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

39. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983) ("[T]here must be some articulated business justification, other than appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business . . ."); *Institutional Creditors of Continental Air Lines v. Continental Air Lines (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying standard from *Lionel Corp.* in context of proposed "use" of estate property). Once the debtor has articulated a valid business justification, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. *See In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992).

Furthermore, once “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Johns-Manville*, 60 B.R. at 616. The business judgment rule shields a debtor’s management from judicial second-guessing. *See In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under section 363(b) when there is a legitimate business justification); *Integrated Res.*, 147 B.R. at 656 (“The business judgment rule’s presumption shield corporate decision-makers and their decisions from judicial second-guessing . . .”); *Johns-Manville*, 60 B.R. at 615-616 (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1).

40. The KEIP was carefully designed to balance the Debtors’ need to properly motivate the KEIP Participants through appropriate, market-competitive compensation with the need to ensure that the Debtors’ estates receive enhanced value in exchange. Payments under the KEIP are directly linked to value achieved through meeting specific goals related to profitability, cost controls, and safety controls.

41. Courts have found that a debtor’s use of reasonable performance-based payments and other incentives for employees is a valid exercise of a debtor’s business judgment. *See, e.g., In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 363 (Bankr. E.D. Va. 2016) (approving the KEIP as a valid exercise of business judgment); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 783-84 (Bankr. D. Del. 2007 (“The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.”)) (citations omitted); *In re Am. W. Airlines*,

Inc., 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor's business judgment to propose payments for employees who helped propel the debtor successfully through the bankruptcy process); *In re Interco Inc.*, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) (stating that a debtor's business judgment was controlling in the approval of a "performance/retention program").

42. While the Debtors do not concede that the KEIP Participants are insiders, the Debtors nevertheless submit that courts have also approved employee payment programs to insiders as valid exercises of business judgment. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (noting that section 503(c) of the Bankruptcy Code does not "foreclose a chapter 11 debtor from *reasonably* compensating employees, including 'insiders,' for their contribution to the debtors' reorganization"). While predominantly or purely retentive payments to insiders require specific findings and evidence by the terms of section 503(c)(1) of the Bankruptcy Code, incentive payments that may have some retentive effect are not subject to those requirements so long as they motivate key employees "to produce and increase the value of the estate." *Dana Corp.*, 358 B.R. at 571.

43. Here, the Debtors have determined that incentivizing the KEIP Participants pursuant to the KEIP is a proper exercise of the Debtors' sound business judgment and in the best interests of the Debtors' estates and all stakeholders in these chapter 11 cases. The KEIP results from an independent analysis undertaken by the Debtors with the market-based assistance of A&M. The KEIP was further subject to review by the Board, none of whose members are current KEIP Participants or prospective KEIP Participants. The KEIP properly motivates the KEIP Participants who possess the skills, knowledge, and experience critical to the Debtors' ability to operate in the ordinary course during these chapter 11 cases in such a way as to generate value for

the Debtors' creditors through improved profitability, cost controls, and safety controls. The KEIP Participants hold positions that are integral to the success of the Debtors' business operations and will face additional stress and demands inherent in the chapter 11 process.

44. As discussed above, the KEIP sets a threshold award opportunity, a target award opportunity, and a stretch award opportunity that varies for each of the KEIP Participants. If the threshold targets are not achieved, the applicable KEIP Participant will not receive any payments under the KEIP. Thus, the Debtors' proposed metrics will drive performance at all levels where all parties will benefit if achieved. Absent the KEIP, the KEIP Participants will be undercompensated and under-incentivized at a critical juncture for the Debtors' business. The KEIP is reasonable in terms of the objectives it seeks to achieve, as well as its cost and scope. Accordingly, implementation of the KEIP is well within the Debtors' sound business judgment and should be approved.

C. The KEIP is Justified by the Facts and Circumstances of These Chapter 11 Cases Pursuant to Section 503(c)(3) of the Bankruptcy Code.

45. Section 503(c)(3) of the Bankruptcy Code prohibits:

other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c)(3).

46. A majority of courts agree that the "facts and circumstances" requirement is satisfied when a debtor demonstrates a sound exercise of a debtor's business judgment. *See In re Velo Holdings, Inc.*, 472 B.R. at 212; *In re Alpha Nat. Res., Inc.*, 546 B.R. at 356 ("[A] majority of courts . . . agree that the 'facts and circumstances' test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)."); *In re Patriot Coal Corp.*, 492 B.R. 518, 530–31 (Bankr.

E.D. Mo. 2013) (using the business judgment test to analyze an incentive plan under section 503(c)(3)); *Dana Corp.*, 358 B.R. at 576-77 (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the “sound business judgment test” in accordance with section 503(c)(3) of the Bankruptcy Code).

47. When determining whether a compensation plan is an appropriate use of the debtor’s business judgment or justified on the facts of a particular case to permit such a plan under section 503(c)(3) of the Bankruptcy Code, courts consider the following six factors set forth in

Dana:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, *i.e.*, will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, *is the plan calculated to achieve the desired performance?*
- Is the cost of the plan reasonable in the context of the debtor’s assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

Dana Corp., 358 B.R. at 576-77 (emphasis in original). No single factor is dispositive, and a court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See FirstEnergy Sol. Corp.*, 591 B.R. at 697 (finding that the *Dana* factors are “neither exhaustive nor of inherently equal weight”). So long as the interests of the Debtors are sufficiently protected, the total absence of a factor may be permissible. *See In re Borders Grp. Inc.*, 453 B.R. at 477 (Bankr. S.D.N.Y. 2011) (holding that the lack of independent counsel was “not fatal” where

the presence of other factors ensured “that the [d]ebtors’ interests were sufficiently protected”); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 154 (Bankr. E.D.N.Y. 2012) (stating that “the relatively modest size of the proposed bonus payouts made the retention of independent legal counsel economically inefficient”). The Debtors respectfully submit that the KEIP satisfies the *Dana* factors outlined above, each as discussed more fully below.

- a. ***The KEIP is Structured to Achieve the Desired Performance.*** The KEIP is specifically designed to incentivize the KEIP Participants to achieve value-driven operational and financial targets. Achieving the performance targets will require substantial outperformance from the KEIP Participants, which is directly tied to the stability and future success of the Debtors’ business. Importantly, the KEIP Participants will not receive awards under the KEIP for “simply showing up.” Accordingly, the KEIP ensures the Debtors achieve near-term operating and financial performance, affording the Debtors the best opportunity to successfully restructure.
- b. ***The Cost of the KEIP is Reasonable.*** The estimated aggregate payout at target performance levels for all performance periods under the KEIP is \$895,146 for all KEIP Participants, to be earned only if the KEIP Participants meet or exceed target performance metrics. The 2024 target total direct compensation for all KEIP Participants in the aggregate would be at approximately the 50th percentile of the comparable companies in the Debtors’ industry. The total cost of the KEIP is below market when compared with thirteen chapter 11 cases within the last six years with assets and revenues between one-third and three-times the Debtors’ assets and revenues. Given the challenging performance metrics set by the KEIP and the significant benefits to the estate if the performance metrics are achieved, the Debtors submit that the cost of the KEIP is reasonable and within market norms.
- c. ***The Scope of the KEIP is Reasonable.*** The scope of the KEIP is fair, reasonable, and does not discriminate unfairly among the KEIP Participants. As set forth in the Nunziata Declaration, the KEIP Participants are a narrow group of individuals who are critical to ensuring the ongoing stability and strength of the Debtors’ business operations and thus the successful outcome of these chapter 11 cases. The Debtors’ other non-insider employees are entitled to receive cash awards under the Ordinary Course Incentive Programs, thus further ensuring that the KEIP Participants are not benefiting to the detriment of the other non-insider employees.
- d. ***The KEIP is Consistent with Industry Practices.*** As set forth in the Yudell Declaration, to evaluate an appropriate compensation structure for the KEIP Participants, A&M gathered external market compensation data from

several data sources, encompassing a representative database of compensation information for comparable industries and the labor market for similar positions. With the award opportunities, if earned, the KEIP Participants' total direct compensation will be consistent with the Debtors' historical levels and within the appropriate range of total direct compensation for the Debtors' industry, particularly considering the additional duties and challenges faced by the KEIP Participants and the difficult goals necessary to achieve payout under the KEIP.

- e. ***The Debtors Performed Due Diligence in Developing the KEIP.*** As set forth in the KEIP Declarations, the Debtors actively sought guidance and input from A&M in assessing and developing the KEIP, after the collection and analysis of appropriate due diligence. The Debtors have evaluated the KEIP and its metrics based on the input of management and A&M. As a result of these efforts, the Debtors concluded that it was critical to implement the KEIP to ensure the competitiveness of the Debtors' compensation practices. Moreover, based on a review and analysis of the market and peer group data developed by A&M, the KEIP is reasonable and consistent with market practice and industry standards. The Debtors have set KEIP metrics that will be challenging for the KEIP Participants. The performance targets set by the KEIP are appropriately tailored to incentivize high levels of financial and operational performance by the KEIP Participants in relation to profitability, cost controls, and safety controls.
- f. ***The Debtors Received Independent Counsel in Developing the KEIP.*** The Debtors utilized A&M with respect to the evaluation, development and implementation of the KEIP. The active involvement of A&M and the selection of objective targets in developing the KEIP serves to ensure it appropriately and fairly incentivizes the KEIP Participants.

48. Because implementing the KEIP will motivate the KEIP Participants to the ultimate benefit of all parties in interest, the implementation of the KEIP reflects a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases, and therefore satisfies the requirements of section 503(c)(3) of the Bankruptcy Code.

D. The KEIP Does Not Implicate Section 503(c)(1) of the Bankruptcy Code.

49. Section 503(c)(1) of the Bankruptcy Code restricts retention payments made to "insiders" of the Debtors, but section 503(c)(1) does not apply to performance-based payments. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. 201 (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *Borders Grp.*, 453 B.R. at 471 (finding that "the Debtors

[had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”). Courts require that a debtor show that any “incentive” plan, and the awards granted thereunder, is primarily based on performance metrics. *See In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012) (finding that the performance metrics must be “designed to motivate insiders to rise to a challenge” as opposed to “merely report to work”). The focus remains on whether the plan is, on the whole, incentivizing in nature by demanding a “stretch” or a “reach” before an award opportunity is achieved. *Dana Corp.*, 358 B.R. at 581. Even if an incentive plan has a retentive element, the incentive plan is exempt from section 503(c)(1) of the Bankruptcy Code so long as the plan is intended primarily to incentivize performance. *See, e.g., Glob. Home Prods*, 369 B.R. at 786 (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”); *Dana Corp.*, 358 B.R. at 584 (“However, as noted, this Court also opined that incentivizing plans with some components that arguably have a retentive effect do not necessarily violate section 503(c).”).

50. The KEIP is designed to provide award opportunities only if the KEIP Participants satisfy threshold levels of performance, as opposed to simply remaining employed by the Debtors for a certain period of time. The KEIP Participants will not be eligible to obtain any award as a result of merely “showing up,” as evidenced by the fact that there is no guaranteed minimum payout under the KEIP. Instead, the KEIP Participants must go beyond their normal day-to-day responsibilities in the face of a truly challenging environment in order to earn any awards under the KEIP.

51. Even if the KEIP might have some retentive effect, the KEIP is not subject to section 503(c)(1) of the Bankruptcy Code. The KEIP requires more than merely remaining

employed by the Debtors, and there is no guarantee that any awards will be paid under the KEIP. Accordingly, the Debtors submit that the KEIP does not implicate section 503(c)(1) of the Bankruptcy Code.

E. The KEIP is Consistent with Previously Approved Incentive Plans.

52. The KEIP is consistent with other programs of its type that have been approved by courts in cases following the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Courts regularly approve incentive programs that reward participants based on achieving performance thresholds. *See, e.g., In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Oct. 15, 2014) (noting that the debtors' incentive plan based on EBITDA targets "define the gold standard"); *Dana Corp.*, 358 B.R. at 583 (approving an incentive program based on cutting costs and maximizing EBITDAR, despite not reaching past years' EBITDAR levels); *Borders Group, Inc.*, 453 B.R. at 472 (approving an incentive program based on cost reductions, increases in the distribution to unsecured creditors, and speed in exiting bankruptcy); *In re Mesa Air Group, Inc.*, 2010 Bankr. LEXIS 3334, 2-3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving an incentive program based on maintaining flight schedules and improving financial performance).

53. The importance of properly incentivizing key employees has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Paper Source*, No. 21-30660 (KLP) (Bankr. E.D. Va. Apr. 14, 2021) (approving a key employee incentive plan designed to incentivize performance by linking awards to the debtors' generation of net cash flows from operations); *In re Le Tote, Inc.*, No. 20-33332 (KLP) (Bankr. E.D. Va. Sept. 29, 2020); *In re Intelsat S.A.*, No. 20-32299 (KLP) (Bankr. E.D. Va. June 30, 2020) (approving the debtors' key employee incentive plan with payments based on the achievement of performance targets); *In re Gymboree Group Inc.*, No. 19-30258 (KLP)

(Bankr. E.D. Va. Feb. 15, 2019) (approving a key employee incentive plan that involved an event-specific performance target); *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Dec. 8, 2017) (approving the debtors’ key employee incentive plan with payments based on the achievement of performance targets); *In re Alpha Nat. Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Jan. 27, 2016) (same); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. July 29, 2015) (same).

54. In this case, the Debtors’ proposed KEIP has no guaranteed payments to the KEIP Participants. The KEIP Participants are eligible to receive an award only if they meet challenging operational and financial performance metrics. The KEIP is designed to motivate the KEIP Participants during these challenging and uncertain times. Accordingly, the Debtors have a “sound business purpose” for, and have properly exercised their business judgment in developing, the KEIP. In so doing, they have satisfied the standards of section 363(b) and the “facts and circumstances” test set forth in section 503(c)(3) of the Bankruptcy Code.

WAIVER OF BANKRUPTCY RULE 6004(h)

55. To implement the foregoing successfully, the Debtors seek a waiver of the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

56. Notice of this Motion has been provided by delivery to the following parties or their counsel, as applicable: (a) the Assistant United States Trustee for the Eastern District of Virginia; (b) the Debtors’ 30 largest unsecured creditors (on a consolidated basis); (c) Davis Polk & Wardwell LLP as co-counsel to the Ad Hoc Group; (d) McGuireWoods LLP as co-counsel to the Ad Hoc Group; (e) McDermott Will & Emery as counsel to the agent under the DIP Facility; (f) Cahill Gordon & Reindel LLP as counsel to the agent under the Senior Secured Credit Facility; (g) Kilpatrick Townsend & Stockton LLP as counsel to the indenture

trustee under the 2026 Notes; (h) Kramer Levin Naftalis & Frankel LLP as counsel to the indenture trustees under the Bond Green Bonds and the Epes Green Bonds; (i) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (j) the United States Attorney's Office for the Eastern District of Virginia; (k) the Securities and Exchange Commission; (l) the Internal Revenue Service; (m) Akin Gump and Hirschler Fleischer as proposed co-counsel to the Committee; and (n) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local Rules. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

57. No prior motion for the relief requested herein has been made to this Court or any other court.

The Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, and grant them such other and further relief to which the Debtors may be justly entitled.

Richmond, Virginia
Dated: May 23, 2024

/s/ Jeremy S. Williams

KUTAK ROCK LLP

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Co-Counsel and Proposed Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

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Co-Counsel and 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)
)	

**ORDER (I) AUTHORIZING THE DEBTORS TO IMPLEMENT A KEY
 EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Order*”) (a) authorizing the Debtors to implement a performance-based key employee incentive plan (the “*KEIP*”) for four key employees (the “*KEIP Participants*”), (b) authorizing the Debtors to make payments to the KEIP Participants under the KEIP, if such payments are earned, (c) granting administrative expense

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.

priority status to all payment obligations incurred by the Debtors under the KEIP, and (d) granting related relief, all as more fully set forth in the Motion, the KEIP Declarations, and the First Day Declaration; 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, the KEIP Declarations, and the First Day Declaration; 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 Motion is granted as set forth herein.
2. The KEIP is authorized and approved in its entirety.
3. The Debtors are authorized, pursuant to sections 363(b), 363(c), and 503(c) of the Bankruptcy Code, to take all actions necessary to implement the KEIP on the terms and conditions set forth in the Motion, including making any payments that come due pursuant to the terms thereof during these chapter 11 cases and without need for further Court approval.

4. Except as provided in the KEIP, any payments actually made by the Debtors to any KEIP Participant pursuant to the KEIP shall be final and shall not be subject to disgorgement.

5. All amounts earned and payable under the KEIP shall have administrative expense priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

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

7. Notwithstanding the relief granted in this Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to the *Final Order (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. 457] (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 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.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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

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

Dated: _____
[●], 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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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

Nunziata Declaration

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

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

**DECLARATION OF GLENN NUNZIATA IN SUPPORT
 OF THE DEBTORS' PROPOSED KEY EMPLOYEE INCENTIVE PLAN**

I, Glenn Nunziata, declare the following under 28 U.S.C. § 1746:

1. I am the Interim Chief Executive Officer and Chief Financial Officer of Enviva Inc., a corporation organized under Delaware law and one of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”). I submit this declaration (the “*Declaration*”)

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.

in support of the Debtors' *Motion for Entry of an Order (I) Authorizing the Debtors to Implement a Key Employee Incentive Plan and (II) Granting Related Relief* (the "**Motion**").²

2. I joined Enviva in August 2023 as Executive Vice President and Chief Financial Officer. Since November 2023, I have served in my current role as Interim Chief Executive Officer and Chief Financial Officer, and since December 2023, I have served as a director of Enviva, among other Debtors. I hold a Bachelor of Science and a Master's degree in Accounting from James Madison University. I have more than 25 years of experience in finance, strategy, accounting, treasury, and risk management with various organizations. Before joining Enviva, I was the Chief Financial Officer of Smithfield Foods Inc., a vertically integrated food company that generated approximately \$18 billion in global revenue with contributions from over 60,000 employees. Before that, I spent approximately 19 years at Ernst & Young, with my last position as a partner in assurance services.

3. I am familiar with the Debtors' day-to-day operations, business and financial affairs, books and records, and employees. I am familiar with the prepetition structure of the Debtors' compensation programs and the structure of the Debtors' proposed key employee incentive program (the "**KEIP**"). I have reviewed the materials provided to me in connection with the KEIP, including the Motion, which I believe accurately reflects the development of, and justification for, the KEIP.

4. I am authorized to submit this Declaration on behalf of the Debtors. Except as otherwise indicated, all facts and statements set forth in this Declaration are based upon: (a) my knowledge of the Debtors' day-to-day operations, business and financial affairs, books and records, and employees; (b) information I learned from my review of relevant documents;

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

(c) information supplied to me or verified by other members of the Debtors' management team or its advisors; or (d) my experience and knowledge generally, including my knowledge of accounting and other financial matters. I am over the age of twenty-one years, and if called upon to testify, I would testify competently to the facts, opinions, and statements set forth in this Declaration.

5. As described below, I believe the KEIP Participants are key to maintaining the stability of the Debtors' day-to-day operations during these chapter 11 cases and are critical to the Debtors' success. I further believe that the KEIP is sufficiently challenging and will require outperformance by the KEIP Participants. Further, based on my knowledge of the Debtors' prepetition compensation structure, my experience in employee compensation matters over the course of my career, and based on the analyses conducted by A&M, it is my opinion that the KEIP is reasonable, necessary, and appropriate.

KEY EMPLOYEE INCENTIVE PLAN

6. The purpose of the KEIP is to provide competitive incentive opportunities to four employees who perform a variety of functions that are critical to the ongoing stability, continuity, and strength of the Debtors' business operations and to the success of the Debtors' restructuring efforts. The positions occupied by the KEIP Participants are the (a) Senior Vice President, Chief Engineer, (b) Vice President, Technical Accounting, (c) Vice President, Information Technology, and (d) Vice President, Environmental, Safety & Quality.

7. The KEIP Participants, in their respective roles, are responsible for, among other things: designing, developing, and troubleshooting new and existing plant and port facilities; commissioning newly constructed facilities; expanding existing operations; developing and deploying safety processes for plant and port operations; managing production quality programs,

metrics, and targets; maintaining and improving production quality control; limiting plant downtime; managing inventory control; reviewing, evaluating, and approving all material transactions, including operational contracts critical to profitable production and cost management; optimizing and strengthening security systems; maintaining and improving technology systems that ensure reliability of operations; and leading and managing teams. Based on the foregoing and based upon information I received from other members of the Debtors' management team, it is my opinion that the KEIP Participants have extensive industry experience and in-depth knowledge of the Debtors' business, and cannot be replaced without significant delay and cost.

8. In addition to their substantial day-to-day responsibilities, the KEIP Participants have seen a substantial increase in their workloads in recent months. Specifically, the KEIP Participants must devote significant time and energy to, among other things, supporting RTB initiatives, completing construction of and beginning operations at the Epes Plant, meeting various chapter 11 reporting obligations, and addressing myriad inbound creditor concerns prompted by the filing of these chapter 11 cases, all on a tight timeline. I believe the additional challenge these responsibilities pose and will continue to pose should be factored into consideration of the performance metrics contemplated by the KEIP and the importance of properly incentivizing the KEIP Participants.

9. I understand that incentive award opportunities are a key part of the KEIP Participants' historic compensation packages. I further understand that the KEIP Participants have historically participated in certain of the Debtors' Ordinary Course Incentive Programs but were excluded therefrom in response to concerns asserted by the U.S. Trustee. It is my opinion that implementation of the KEIP is critical to ensure that the KEIP Participants remain incentivized

and to ensure the competitiveness of the Debtors' compensation practices for the KEIP Participants. Absent implementation of the KEIP, the KEIP Participants will have fewer incentive objectives and their incentives will not be as strongly aligned with the quarterly financial and operational goals of the Debtors and their stakeholders.

10. As further described in the Motion, the KEIP contains the following performance metrics, which are tied to the Debtors' profitability, costs controls, and safety controls: quarterly compensation-adjusted EBITDA, DAP Costs, Corporate G&A Costs, and TRIR. The KEIP sets threshold, target, and stretch performance levels across the quarterly performance periods for each of the performance metrics on an independent basis and, with respect to the "catch-up" feature, on a cumulative basis. The KEIP also sets a threshold award opportunity, a target award opportunity, and a stretch award opportunity that varies for each of the KEIP Participants.

11. I believe the performance metrics will effectively drive performance at all levels where all parties benefit if achieved. Based on my understanding of the KEIP Participants' roles, it is my opinion that the performance metrics will be challenging and the performance targets are appropriately weighted and tailored to each KEIP Participant to incentivize high levels of financial and operational performance by the KEIP Participants in relation to profitability, costs controls, and safety controls.

12. I believe the performance thresholds are an appropriate "reach" to drive performance without presenting unrealistic or unattainable goals that would frustrate the incentivizing nature of the KEIP. I further believe the performance targets require the KEIP Participants to go above and beyond their normal day-to-day responsibilities and tasks and will require substantial outperformance from the KEIP Participants as opposed to "simply showing

up.” In fact, it is my opinion that achieving even a threshold award opportunity will mean that the KEIP Participants have outperformed their duties despite the challenges of these chapter 11 cases.

13. If approved, the KEIP will ensure that the KEIP Participants are given the opportunity to earn awards under the KEIP that are reflective of their performance, which is directly tied to the stability and future success of the Debtors’ business. I believe that the incentive opportunities provided under the KEIP will enable the Debtors to not only achieve, but possibly exceed, their near-term operational and financial goals, specifically as they relate to profitability, cost controls, and safety controls.

14. As such, I believe that the development, design, structure, cost, metrics, and award opportunities available under the KEIP are reasonable and appropriate given the circumstances of these chapter 11 cases.

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

Executed on May 23, 2024

/s/ Glenn Nunziata

Glenn Nunziata
Interim Chief Executive Officer & Chief Financial Officer
Enviva Inc.

EXHIBIT C

Yudell Declaration

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Co-Counsel and 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)
)	

**DECLARATION OF VANCE YUDELL IN SUPPORT
OF THE DEBTORS' PROPOSED KEY EMPLOYEE INCENTIVE PLAN**

I, Vance Yudell, declare the following under 28 U.S.C. § 1746:

1. I am a Senior Director based in the Dallas office of Alvarez & Marsal Tax, LLC (“*A&M Tax*”). Alvarez & Marsal North America, LLC (together with A&M Tax, “*A&M*”) is the financial advisor for the debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases.

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. I submit this declaration (the “**Declaration**”) in support of the Debtors’ *Motion for Entry of an Order (I) Authorizing the Debtors to Implement a Key Employee Incentive Plan and (II) Granting Related Relief* (the “**Motion**”).²

3. I am authorized on behalf of the Debtors and A&M to make this Declaration. Except as otherwise indicated, all facts and statements in this Declaration are based upon: (a) my personal knowledge, belief, or opinion; (b) information learned from my review of the Debtors’ business and historical compensation practices; (c) information supplied to me or verified by the Debtors’ management team, employees, and other advisors and/or employees of A&M working directly with me; (d) my research into compensation practices for similarly situated companies, my research into the designs of incentive-based plans approved in recent chapter 11 proceedings; and/or (e) my knowledge, skill, education, experience, and/or training concerning compensation matters in financial restructurings. I am over the age of twenty-one years, and if called upon to testify, I would testify competently to the facts, opinions, and statements set forth in this Declaration. I am not being compensated separately for this testimony other than through payments received by A&M as an advisor retained by the Debtors.

QUALIFICATIONS

4. A&M and its affiliates comprise a leading international advisory services firm with approximately 9,000 employees in locations around the world. A&M provides a wide range of debtor advisory services targeted at stabilizing and improving a company’s financial position, including: developing or validating forecasts, business plans, and related assessments of strategic position; monitoring and managing cash, cash flow, and supplier relationships; assessing and

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

recommending cost reduction strategies; and designing and negotiating financial restructuring transactions.

5. I have more than ten years of experience designing compensation plans, including benchmarking and short- and long-term incentive plans. I have primarily advised on compensation issues arising from restructurings and compensation-related matters in M&A transactions. Prior to joining A&M, I worked with Mercer in its Talent Consulting Practice. I hold bachelors' degrees in Finance from the Cox School of Business at Southern Methodist University and Economics from the Dedman School of Humanities and Sciences at Southern Methodist University. I am a Certified Executive Compensation Professional through the WorldatWork organization and a member of the Turnaround Management Association as well as the American Bankruptcy Institute.

6. I have participated in meetings with members of the Debtors' management team to discuss and assess the Debtors' proposed key employee incentive plan (the "**KEIP**"), gathered relevant market data on incentive plans in chapter 11 cases, and analyzed whether the KEIP is consistent with typical market practice. In order to evaluate an appropriate compensation structure, A&M gathered external market compensation data from several data sources, encompassing a representative database of compensation information for comparable industries and the labor market for similar positions.

7. As described below, I believe the cost and structure of the KEIP is reasonable, necessary, and appropriate.

KEY EMPLOYEE INCENTIVE PLAN

8. As set forth below, I believe the overall design and structure of the KEIP is consistent with market practice and reasonable in light of the Debtors' particular facts and circumstances. In assessing the reasonableness of the KEIP, my team and I reviewed and analyzed the competitive market practice for similarly sized companies that operate in the Debtors' industry,

incentive programs approved in other recent chapter 11 cases of similarly sized companies, and the Debtors' historical compensation practices.

9. In determining that the KEIP is reasonable, my team and I compared the proposed KEIP relative to incentive plans approved in thirteen chapter 11 cases within the last six years with assets and revenues between one-third and three-times the Debtors' assets and revenues (the "*Chapter 11 Comparable Cases*"). The thirteen Chapter 11 Comparable Cases are: (a) 24 Hour Fitness Worldwide, Inc., (b) Bristow Group Inc., (c) California Resources Corporation, (d) Claire's Stores Inc., (e) Diamond Offshore Drilling, Inc., (f) FirstEnergy Solutions Corp., (g) Genesis Care Pty Limited, (h) LSC Communications, Inc., (i) NPC International, Inc., (j) PHI, Inc., (k) Purdue Pharma L.P., (l) Stage Stores, Inc., and (m) Wesco Aircraft Holdings, Inc. (Incora). We determined that the KEIP is reasonable because, among other things, it is below general market practice for incentive plans approved in the Chapter 11 Comparable Cases as it relates to the number of participants, total cost on an individual and aggregate basis, and target cost as a percentage of prepetition assets and revenue.

10. Another factor that my team and I analyzed to determine whether the KEIP is reasonable was total direct compensation—an industry standard benchmark that includes the sum of base salary, target annual bonus awards, and long-term incentive grant values—for each KEIP Participant. First, we evaluated the potential market levels of total direct compensation for similar positions at companies of similar size and industry using the Willis Towers Watson General Industry Executive Survey Report and the Economic Research Institute Executive Compensation Assessor. Next, we compared the KEIP Participants' potential 2024 total direct compensation relative to 2023 total direct compensation. Based on our analysis of the survey data and the Debtors' historical compensation practices, to the extent the KEIP Participants receive a KEIP

award based on achievement of the applicable performance target, the 2024 total direct compensation for all KEIP Participants in the aggregate would approximate the 50th percentile of compensation for similar positions in the Debtors' comparable peer group and would be in line with, albeit slightly below, the Debtors' 2023 target total direct compensation levels.

11. In addition, I understand that the Debtors have historically offered cash awards to their employees based on the achievement of certain performance targets, including under the Ordinary Course Incentive Programs. It is my understanding that the targets for the KEIP represent a continuation of such prepetition incentive opportunities adjusted for the current situation in which maintaining business operations and achieving certain near-term operational and financial goals are critical to the Debtors' ability to successfully restructure.

12. Accordingly, it is my opinion that with the award opportunities, if earned, the KEIP Participants' total direct compensation will be consistent with the Debtors' historical levels and within the appropriate range of total direct compensation based on the Debtors' size and industry. Absent the opportunity to earn awards under the KEIP, the KEIP Participants' overall 2024 compensation will be approximately 43 percent lower, in the aggregate, than the prior year's target total direct compensation despite the additional demands and challenges that each has been asked to take on in connection with these chapter 11 cases. I believe that this outcome could significantly undermine the Debtors' ability to properly motivate the KEIP Participants. The KEIP is, in part, designed to reasonably address this shortfall. Without the quarterly incentive opportunities under the KEIP, the KEIP Participants would be under-compensated and under-incentivized as compared to the competitive market, which could have undesired, value destructive effects.

13. My team and I also analyzed the KEIP's performance metrics relative to performance metrics used in incentive plans approved in the Chapter 11 Comparable Cases. Based

on our analysis, we determined that the KEIP's performance metrics are similar to those used in the Chapter 11 Comparable Cases. Linking incentives to quarterly financial and operational goals aligns the incentives of the KEIP Participants with the overall performance of the Debtors, which is appropriate in light of the Debtors' particular circumstances and their restructuring process.

14. For all the foregoing reasons, and based on my experience and analyses described herein, I believe the design, cost, structure, and award opportunities available under the KEIP are fair, reasonable, and consistent with market practice and precedent.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on May 23, 2024

/s/ Vance Yudell

Vance Yudell
Senior Director
Alvarez & Marsal Tax, LLC