Docket #0705 Date Filed: 06/12/2024

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

In re ENVIVA, INC., *et al.*,[1] Debtors.	Case No. 24-10453 (BFK) Chapter 11 (Jointly Administered)

U.S. TRUSTEE'S OBJECTION TO DEBTOR'S MOTION UNDER BANKRUPTCY RULES 9023 AND 9024 REQUESTING RECONSIDERATION OF MEMORANDUM OPINION AND ORDER DENYING DEBTORS' APPLICATION TO EMPLOY VINSON & ELKINS LLP AND MEMORANDUM IN SUPPORT

Gerard R. Vetter, Acting United States Trustee for Region Four ("U.S. Trustee"), by counsel, objects to the Debtors' Motion Under Bankruptcy Rules 9023 and 9024 Requesting Reconsideration of Memorandum Opinion and Order Denying Debtors' Application to Employ Vinson & Elkins LLP ("V&E"). *See* ECF No. 663. In support of his objection, the U.S. Trustee states:

JURISDICTION AND VENUE

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 157(a) and the Order of Reference of the U.S. District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue of this proceeding is proper under 28 U.S.C. §§ 1408 and 1409.

[1] A complete list of the Debtors in these jointly administered chapter 11 cases and the last four digits of their federal tax identification numbers is available 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.

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FACTUAL BACKGROUND

2. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned cases on March 12, 2024, and March 13, 2024. *See* ECF No. 1.

3. The Debtors continue to operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

4. The U.S. Trustee appointed an official committee of unsecured creditors on March 25, 2024. *See* ECF No. 173.

5. The Debtors filed an application to employ V&E as counsel on March 27, 2024 (“Employment Application”). *See* ECF No. 183.

6. V&E filed a Declaration of David S. Meyer and a copy of a January 23, 2024 retainer agreement in support of its Employment Application. *Id*.

7. V&E disclosed that it “currently represents, and in the past has represented, Riverstone Investment Group LLC and its affiliates (“Riverstone”) in a variety of other matters[.]” *See Id*. at ¶ 20.

8. V&E’s representation of Riverstone “accounted for 0.8% of V&E’s billings and 1.4% of V&E’s collections for V&E’s fiscal year ended December 31, 2023.” *Id*.

9. On April 3, 2024, this Court entered an order continuing the hearing on the Employment Application from April 11, 2024 to May 9, 2024, highlighting “two possible issues concerning V&E’s disinterestedness” and establishing a briefing schedule. *See* Order Continuing Hearing, ECF No. 224.

10. Specifically, this Court’s April 3, 2024 Order stated:

> The Application discloses two possible issues concerning V&E’s disinterestedness under Bankruptcy Code Sections

> 327(a) and 101(14): (a) V&E represents the Debtor's officers and directors in pending shareholder and derivative litigation; and (b) V&E represents a substantial equity security holder in the Debtor, Riverstone Investment Group, LLC, and its affiliates, in unrelated matters. Docket No. 183, Myer Declaration, pp. 9-11. There does not appear to be any reference to a wall of separation in the Myer Declaration.

See Order Continuing Hearing, ECF No. 224.

11. The U.S. Trustee and the Debtors each filed briefs in support of their respective positions on May 2, 2024. *See* ECF Nos. 440, 441.

12. On May 8, 2024, the Debtors filed a second declaration of David Meyer. *See* ECF No. 481.

13. The hearing on the Employment Application was held at 2:00 PM on May 9, 2024. A full transcript of the hearing is available on the docket at ECF No. 532.

14. The U.S. Trustee and Debtors stipulated to the admission of U.S. Trustee Exhibits 101-119, and the Debtors' Exhibits 1-20. *See* ECF Nos. 479, 503; *see also* Hrg. Tr. 5:1-7, ECF No. 532

15. At the conclusion of the hearing, the Court took the Employment Application and all responses to it under advisement.

16. On May 30, 2024, this Court entered its Order and Memorandum Opinion Denying the Employment Application. *See* ECF No. 653.

17. In its Opinion, the Court cites at least four important bases for its conclusion that V&E cannot be disinterested, as required by 11 U.S.C. § 327(a): "(a) Riverstone owns 43% of the Debtors' equity; (b) Riverstone has two of the Debtors' thirteen directors; (c) Riverstone is a $14,000,000 a year client of V&E; and (d) no ethical walls have been imposed, and no ethical

walls can be constructed because V&E attorneys continue to represent the Debtors and Riverstone simultaneously…." *See* Memorandum Opinion, 16, ECF No. 653.

18. At no time prior to the issuance of the Memorandum Opinion did V&E disclose the existence of, or agree to the creation of, an ethical wall addressing the firm's representation of both the Debtors and Riverstone.

19. V&E and the Debtors did inform the Court of the potential harm they believe would flow from the denial of the Employment Application. *See* Hrg. Tr. 27:18-28:6, ECF No. 532; *see also* Debtors' Reply Brief ¶ 1, ECF No. 441.

20. At the hearing, V&E and the Debtors explained that V&E had intentionally not implemented a wall of separateness between V&E professionals working on matters for both the Debtors and Riverstone because it believed such a wall to be unnecessary and "incredibly harmful to Enviva at this critical phase of its restructuring efforts." Hrg. Tr. 13:2-11, ECF No. 532.

21. The Debtors filed the Motion to Reconsider on June 3, 2024. *See* ECF No. 663.

22. In support of their Motion to Reconsider, the Debtors do not assert any changes in law or newly discovered evidence unavailable to them prior to the hearing; rather, the Debtors propose that V&E implement an ethical wall it previously argued was unnecessary and indeed detrimental to its clients.

23. Following the issuance of this Court's Opinion and Order, V&E now proposes, for the first time, a partial ethical wall to separate some, but not all, of the V&E attorneys who have worked for both Riverstone and the Debtor.

24. V&E's proposed partial ethical wall expressly excludes "the two leading V&E finance attorneys for the Debtors," so that "they would be able to continue their representation."

Mot. to Recons. ¶ 1(a), n.4, ECF No. 663 (explaining that the proposed ethical wall does not apply to attorneys who billed less than 12.5 hours to Riverstone).

25. Riverstone remains a $14,000,000 a year client of V&E.

26. Riverstone still has two of the debtors' thirteen directors.

27. Riverstone still holds 43% of the debtors' equity.

28. V&E has imposed no ethical walls with regard to the debtors and Riverstone.

29. There has been no change in controlling law since the issuance of the Memorandum Opinion and Order.

30. There are no new controlling facts that were unavailable to the Debtors or V&E at the hearing on their Employment Application.

31. This Court was under no misapprehension about the relevant facts and circumstances relevant to the Employment Application.

32. The Court entered an order setting a hearing on the Motion for June 14, 2024 and establishing June 12, 2024 at 5:00 p.m. ET as the objection deadline on June 3, 2024. *See* ECF No. 668.

33. This objection is timely.

MEMORANDUM IN SUPPORT

The Debtors seek reconsideration of this Court's Order under both Rule 59(e) and Rule 60 of the Federal Rules of Civil Procedure, made applicable to these cases by Fed. R. Bankr. P. 9023 and 9024, respectively. The Debtors cannot meet the standard of either rule, and the Motion to Reconsider should be denied. Even if the Court were to reconsider its ruling in light of V&E's newly proposed partial ethical wall, it should again find that V&E is unable to meet the disinterestedness requirement of 11 U.S.C. §327(a) and deny the Motion.

I. **The Debtors cannot establish grounds for reconsideration of the Court's Memorandum Opinion and Order.**

"The Fourth Circuit has recognized motions to reconsider as 'extraordinary' and 'only to be invoked upon a showing of exceptional circumstances.'" *Lang v Patients Out of Time*, No. 20-cv-00055, 2023 WL 3899013, at *1 (W.D.Va. June 8, 2023) (quoting *Compton v. Alton S.S. Co., Inc.*, 608 F.2d 96, 102 (4th Cir. 1979)); *see also In re DeMatteo*, No. 20-12626-BFK, 2022 WL 7206174, at *5 n.5 (Bankr. E.D.Va. Oct. 12, 2022) (citations omitted). The mere disagreement with the result of a properly considered judgment does not warrant reconsideration. *See, e.g.*, *Above the Belt, Inc. v. Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983) ("Plaintiff improperly used the motion to reconsider to ask the Court to rethink what the Court had already thought through—rightly or wrongly."). Nor is a 59(e) motion an opportunity for a party to "complete presenting [their] case after the court has ruled against [them]." *In re Reese,* 91 F.3d 37, 39 (7th Cir. 1996).

Rule 59(e) permits a Court to alter or amend a judgment in three circumstances, none of which are present here.

Rule 59 permits this court to amend its judgment in three circumstances, "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *E.E.O.C. v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993); *see also In re McCain*, 353 B.R. 452, 461 (Bankr. E.D.Va. 2006). The Debtors do not assert that there has been a change in controlling case law. Therefore, relief under this prong is unavailable. *In re Circuit City Stores, Inc*., No. 08-35653, 2010 WL 2425957, at*2 (Bankr. E.D.Va. June 9, 2010). The Debtors contend that "new evidence" of V&E's offer to

erect a partial ethical wall warrants reconsideration and that the denial of V&E's Employment Application resulted in "manifest injustice."[2] Both arguments should be rejected by this Court.

V&E's proposal of a partial ethical wall is not "new evidence" because V&E was able to implement it prior to this Court's ruling.

The debtors urge this Court to consider what they allege is new evidence: "two newly proposed safeguards" that V&E has offered in response to this Court's clear and articulate denial of their Employment Application. V&E's offer to negotiate with this Court about its compliance with the requirements of the Bankruptcy Code is not evidence that was unavailable to the Debtors at the hearing on the Employment Application. It should not be considered by this Court.

The "new evidence" prong of the Rule 59(e) analysis articulated by the Fourth Circuit requires new evidence "not available at trial" *E.E.O.C.*, 116 F.2d at 112; *Hutchinson*, 994 F.2d. at 1081. The moving party bears the burden to establish that the purported "new evidence" was not discoverable "prior to judgment by the exercise of reasonable due diligence." *JTH Tax, Inc., v. Aime*, 984 F.3d 284, 292 (4th Cir. 2021) (citations omitted). It is reversible error for a trial court to grant reconsideration under this prong absent a showing that the moving party exercised due diligence and the "new evidence" was not discoverable prior to judgment. *Id.*

V&E argued the Employment Application and presented all of the evidence it wished to present in support. At no time prior to this Court's Memorandum Opinion did V&E propose to erect the sort of ethical wall this Court initially inquired about. *See* Order Continuing Hearing, ECF No. 224. V&E instead argued that such a wall was unnecessary and would be detrimental if

[2] The Debtors do not explicitly argue that this Court committed a "clear error of law," either. As in *Hutchinson*, this Court's decision is "Far from being clear error," and "was factually supported and legally justified." *Hutchinson*, 994 F.2d at 1081. While the Debtors disagree with how this Court applied the Bankruptcy Code's disinterestedness standard, "mere disagreement does not support a Rule 59(e) motion." *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D.Miss.1990).

implemented. Only now that it has reviewed this Court's Memorandum Opinion has V&E created a new proposal to renegotiate its Employment Application with this Court in the form of a Motion to Reconsider. "This they cannot do." *Roop v. DeSousa*, 660 F.Supp.3d 477, 499 (E.D.Va. 2023) (citations omitted); *see also In re Volkswagen AG*, No. 22-cv-00045, 2024 WL 646344, at *2 (E.D.Va. Feb. 15, 2024) (citations omitted).

V&E failed to establish that it exercised due diligence and that the alleged "new evidence" was undiscoverable prior to the hearing on its Employment Application. Accordingly, relief under the "newly discovered evidence" prong is unavailable as a matter of law. *Ingle v. Yelton*, 439 F.3d 191, 197-98 (4th Cir. 2006).

The denial of the Employment Application is not a "manifest injustice."

"In the context of a motion to reconsider, manifest injustice is defined as 'an error by the court that is direct, obvious, and observable." *Smith v. Waverly Partners, LLC*, No. 10-cv-00028, 2011 WL 3564427, at *3 (W.D.N.C. Aug. 12, 2011) (quoting *Register v. Cameron & Barkley Co.*, 481 F.Supp.2d 479, 480 n.1 (D.S.C. 2007)); *Saunders v. Riverside Regional Jail*, No. 10-cv-00258, 2012 WL 2192262 at *2 (E.D.Va. June 14, 2012). Perhaps more relevant here is this footnote from the Fourth Circuit:

> While federal courts have yet to provide a concrete definition of "manifest injustice," they have set out guidelines that aid us here. In *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 408–09 (4th Cir. 2010), we cited with *approval Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1296 (D.C. Cir. 2004), which affirmed a district court's denial of a Rule 59(e) motion when "the dismissal of the [ ] suit might have been avoided through the exercise of due diligence." And the D.C. Circuit held in another case that "[m]anifest injustice does not exist where ... a party could have easily avoided the outcome, but instead elected not to act until after a final order had been entered." *Ciralsky v. C.I.A.*, 355 F.3d 661, 673 (D.C. Cir. 2004) (cleaned up).

Arvon v. Liberty Mut. Ins. Co., No. 20-1249, 2021 WL 3401258, at *3 n.2 (4th Cir. Aug. 4, 2021). Shortly after the Employment Application was filed, this Court, *sua sponte*, entered an Order establishing a briefing schedule, and highlighting an issue of concern for the Debtors and V&E to address:

> The Application discloses two possible issues concerning V&E's disinterestedness under Bankruptcy Code Sections 327(a) and 101(14): (a) V&E represents the Debtor's officers and directors in pending shareholder and derivative litigation; and (b) V&E represents a substantial equity security holder in the Debtor, Riverstone Investment Group, LLC, and its affiliates, in unrelated matters. Docket No. 183, Myer Declaration, pp. 9-11. There does not appear to be any reference to a wall of separation in the Myer Declaration.

See Order Continuing Hearing, ECF No. 224. V&E and the Debtors were on notice of this Court's concerns about its disinterestedness as early as April 3, 2024. They had ample opportunity to present the evidence of V&E's willingness to attempt to satisfy this Court's expressed concerns. The Debtors and V&E proceeded with the Employment Application at a full hearing, during which the Court admitted and considered all evidence presented. In support of the Employment Application, the Debtors argued that its denial would, among other things, "be value-destructive" and "create chaos for the debtors, thereby threatening the debtors' reorganization…." Hrg. Tr. 27:18-28:6, ECF. No. 532. "However, once the hearing was adjourned and the matter taken under advisement, it became the province of the court to interpret the facts as it found them." *In re El-Amin*, 252 B.R. 652, 656-57 (Bankr. E.D.Va. 2000).

This Court carefully considered that potential harm, and addressed it in its Memorandum Opinion: "Finally, the Court understands that this is a setback for the Debtors, though, hopefully not a 'value destructive' one, as V&E suggests." Memorandum Opinion, 16, ECF No. 653. Additionally, the Court was aware of, and addressed, the potential for its ruling to affect the

various milestones established by and deadlines established in the various restructuring support agreements and DIP Facility. The potential increased risk of default brought about by V&E's failure to satisfy the disinterestedness standard of 11 U.S.C § 327(a) is not a "manifest injustice." *In re De Coro, Ltd.*, No. 09-10369, 2010 WL 5140440, at *5 (Bankr. M.D.N.C. Dec. 13, 2010) (Manifest injustice cannot be grounded in "unsupported supposition[s].").

It was not until after this Court's considered ruling that V&E proposed to modify the terms of its employment proposal to avoid the result it had already achieved. As the Fourth Circuit noted in *Arvon,* the denial of a motion to reconsider under Rule 59(e) is appropriate when the "manifest injustice" alleged is an outcome that the movant "could have easily avoided … but elected not to act until after a final order [was] entered." *Arvon*, *supra*.; *see also In re Pella Corp. Architect & Design Series Windows Mktg., Sales Practices & Prod. Liab. Litig*., 269 F.Supp.3d 685, 696 n.5 (D.S.C. 2017) ("[I]t is not manifest injustice to require a party to provide whatever information the court needs to decide an issue when the issue is actually pending before the court. Allowing plaintiffs to come back and provide additional 'clarification' of this sort on a motion to alter or amend would wreak havoc on the judicial system."). The Court's denial of an application to employ debtors' preferred counsel upon a finding that they are not disinterested does not rise to the level of "manifest injustice" necessary to warrant reconsideration. The Motion to Reconsider, insofar as it seeks relief under Fed. R. Civ. P. 59(e), should be denied.

The Debtors are unable to meet the more stringent standard required by Rule 60.

Fed. R. Civ. P. 60, applied to this case by Fed. R. Bankr. P. 9024, permits parties to seek relief from otherwise final and unappealable orders for a period of one year after their entry, albeit in extremely limited circumstances. In support of their Motion, the Debtors rely on Rule 60(b)(5) and (6), claiming that "applying [this Court's ruling] is no longer equitable," and for

"any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5), (6). "The remedy provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances." *Compton v Alton Steamship Co.,* 608 F.2d 96, 102 (4th Cir. 1979) (citing *Ackermann v. United States,* 340 U.S. 193, 202 (1950)). Relief under Rule 60 may be permitted when,

> the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court.

Above the Belt, Inc. v. Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D.Va. 1983). As the District Court reiterated, "Such problems rarely arise and the motion to reconsider should be equally rare." *Id.* Importantly, the applicable provision asserted by the Debtors under Rule 60(b)(5) provides no relief from orders or judgments that have no prospective application. *See Schwartz v. United States*, 976 F.2d 213, 218 (4th Cir. 1992) *cert. denied,* 507 U.S. 919, (1993); *see also Twelve John Does v. Dist. Of Columbia*, 841 F.2d 1133, 1138 (D.C.Cir. 1988).

The "standard to be applied in determining whether an order or judgment has prospective application within the meaning of Rule 60(b)(5) is whether it is 'executory' or involves 'the supervision of changing conduct or conditions[.]" *DeWeerth v. Baldinger*, 38 F.3d 1266, 1275 (2d Cir. 1994) (citations omitted); *see also Perry-bey v. City of Norfolk, Va*., 678 F.Supp.2d 348, 388 (E.D.Va. 2009). The "prospective application" standard is not satisfied merely because an order or judgment has continuing consequences. *In re Heritage Real Estate Investment, Inc*., APN 20-00029, 2020 WL 9258338, at *7 (Bankr. S.D.Miss. Oct. 23, 2020) (citations omitted). This Court's order denying the Employment Application is neither "executory" nor does it require further court supervision to permit relief under Rule 60(b)(5). *See In re Gluth Bros.*

Const. Inc., 426 B.R. 771, 780-81 (Bankr. N.D.Ill. 2010); *In re Northwest Airlines, Corp*., 366 B.R. 270, 273 (Bankr. S.D.N.Y. 2007). Consequently, the Debtors cannot prevail under Rule 60(b)(5).

Turning to the 60(b)(6) argument, the Debtors concede that "[b]ecause Rule 60 is an exception to the general policy favoring finality of judgments, relief is granted only to prevent what would otherwise be a clear miscarriage of justice." Mot. to Recons. ¶ 23, ECF No. 663. There has been no "miscarriage of justice" here. The Debtors offer only conclusory statements of the law without any analysis. Undeveloped conclusory arguments, however, do not provide a basis for relief "under any provision of Rule 60(b)." *PNC National Association v. El Tovar Inc*., No. 13-cv-01073, 2014 WL 562648, at *5 (E.D.Mo. Feb. 13, 2014).

The Court carefully considered the facts and arguments of the parties. There is no indication that its ruling was based on facts not in the record or on an "error not of reasoning but of apprehension." *Above the Belt*, *supra*. The Court correctly found that V&E is not disinterested based on the evidentiary record and oral arguments presented by V&E and the Debtors. Though the Debtors contend that the Court was mistaken in its conclusion that an ethical wall at V&E is impossible, as discussed below in greater detail, this conclusion was correct at the time and remains correct. Even if it was incorrect, the Court's ruling did not hinge on that single fact, and therefore cannot be said to be a "clear miscarriage of justice." Relief under Rule 60 is inappropriate here. The Motion should be denied.

II. V&E's proposal is insufficient to render it disinterested.

The Court correctly found that an ethical wall is impossible here.

The Debtors argue that this Court was under the misapprehension that an ethical wall is impossible in this case and that V&E may have inadvertently led the Court to this incorrect

assumption. Mot. to Recons. ¶ 8, ECF No. 663. However, this Court was correct in this finding. At no time, from the filing of this case to the ruling on its Employment Application, did V&E attempt to create an internal ethical wall, even after this Court highlighted its concern in its Order of April 3, 2024.[3] At the time of the hearing, the Court had before it an applicant that had failed to erect a wall because it believed that doing so was unnecessary and harmful to the Debtors. It chose not to. Accordingly, the Court correctly found that the Employment Application should be denied.

In addition, the Court's findings about the impossibility of a complete ethics wall in this case is made even more apparent from a cursory review of the partial ethical wall now proposed by V&E for the first time in the Motion to Reconsider. Even now, V&E proposes to wall off only some of the attorneys working for both clients. Notably, V&E maintains it cannot (or will not) wall off attorneys with fewer than 12.5 hours on Riverstone matters because doing so would prohibit "the two leading V&E finance attorneys for the Debtors" from continuing their representation of the Debtors. Mot. to Recons. ¶1(a) n. 4, ECF No. 663. This half-measure is nowhere near sufficient to render V&E disinterested. Moreover, an ethical wall cannot eliminate a "conflict arising from concurrent adverse client relationships." *See In re Trust Am. Serv. Corp.*, 175 B.R. 413, 421 (Bankr. M.D.Fla. 1994). V&E is not a disinterested person as required by 11 U.S.C. § 327(a). Its Employment Application was properly denied.

III. <u>Granting the Motion to Reconsider would be contrary to public policy and encourage costly and time-consuming motions practice.</u>

Once a "court enters judgment, the public gains a strong interest in protecting the finality of judgments." *Nelson v. City of Albuquerque*, 921 F.3d 925, 929 (10th Cir. 2019) (citations omitted). This Motion represents, at its core, an effort to renegotiate the proposed terms of

[3] It still hasn't.

V&E's employment after the denial of their Employment Application by this Court. V&E appears to appeal to this Court's equitable powers. The bankruptcy court's equitable powers are vast but not limitless. *See Law v. Siegel*, 571 U.S. 415 (2014). After all, equity follows the law. *See East Tennessee Natural Gas Co. v. Sage*, 361 F.3d. 808, 823 (4th Cir. 2004) (citing *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893)). This Court recognized this axiom of law in holding that a "[c]ourt cannot substitute even a very good return to the creditors for the requirements of the Bankruptcy Rules themselves." *In re Perdomo*, No. 19-10812-BFK, 2020 WL 7133546, at *5 (Bankr. E.D.Va. Nov. 25, 2020). Consequently, the Debtors' "monetary harm" argument is unavailing and cannot override the plain language of section 327(a). *See In re Madera Roofing, Inc.,* No. 13-16954, 2014 WL 4796758, at *11 (Bankr. E.D.Cal. Sept. 25, 2014); *see also In re Roger Au & Son, Inc.,* 65 B.R. 322, 334 (Bankr. N.D.Ohio 1984).

If this Court were to reward that effort, in the absence of the "exceptional circumstances" required by the established caselaw, it would be creating a precedent that encourages parties to return to the Court for multiple "bites at the apple" each time a ruling did not go their way. In complex and expensive chapter 11 reorganizations, these successive trips to Court, with their related briefing, discovery, and argument schedules, and multiple teams of professionals[4], would ultimately drain even the largest estates, leaving even less potential return for all creditors. Such costly and time-consuming litigation will harm the bankruptcy estate far more than the loss of their preferred counsel. This Court should deny the Motion to Reconsider in the best interests of all creditors and the estate.

[4] Although V&E alone anticipated just one month ago that "45 attorneys and two paraprofessionals will be working on the Debtors' chapter 11 cases," that number has apparently ballooned to "82 V&E timekeepers who have billed time to the Debtors," per the Declaration of David S. Meyer filed in support of the Motion to Reconsider. Compare, *Supplemental Declaration of David S. Meyer*, ¶ 37, ECF No. 442, and *Declaration of David S. Meyer*, ¶ 6, ECF No. 665.

CONCLUSION

WHEREFORE, the U.S. Trustee respectfully requests that the Debtors' Motion to Reconsider be denied. Additionally, the U.S. Trustee seeks such other and further relief as the Court may find appropriate and just.

Respectfully submitted,

Gerard R. Vetter, Acting United States
Trustee for Region Four

By: /s/ Kenneth N. Whitehurst, III

Kenneth N. Whitehurst, III
Assistant United States Trustee

Nicholas S. Herron
Trial Attorney

CERTIFICATE OF SERVICE

I certify that on **June 12, 2024** service on all attorney Users in this case was accomplished through the Notice of Electronic Filing, pursuant to CM/ECF Policy 9 of the United States Bankruptcy Court for the Eastern District of Virginia, Case Management/Electronic Case Files (CM/ECF) Policy Statement, Version 05/02/2023. A copy of this Objection was mailed on the same date by First Class U.S. Mail, postage prepaid addressed as follows: Enviva Inc., 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814 (Debtor); Michael A. Condyles, Peter J. Barrett and Jeremy S. Williams, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, VA 23219-4071 (Debtors' Counsel); Ira S. Dizengoff, Abid Qureshi and Jason P. Rubin, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Counsel for Unecured Creditor Committee); Scott L. Alberino and Alexander F. Antypas, Akin Gump Strauss Hauer & Feld LLP, 2001 K Street, N.W., Washington, DC 20006 (Counsel for Unecured Creditor Committee).

/s/ Kenneth N. Whitehurst, III