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*Proposed counsel to the Debtors and Debtors in Possession**

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

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

**SECOND OMNIBUS MOTION OF DEBTORS FOR ENTRY OF AN
ORDER (I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN
EXECUTORY CONTRACTS AND (II) GRANTING RELATED RELIEF**

THIS MOTION SEEKS TO REJECT CERTAIN UNEXPIRED EXECUTORY CONTRACTS. PARTIES RECEIVING THIS MOTION SHOULD REVIEW THE MOTION TO SEE IF THEIR NAME(S) AND/OR CONTRACT(S) ARE SET FORTH IN THE MOTION AND/OR SCHEDULE 1 TO EXHIBIT A ATTACHED THERETO TO DETERMINE WHETHER THE MOTION AFFECTS THEIR CONTRACT(S).

* Subject to pending proceedings pursuant to 11 U.S.C. § 327.

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.veritaglobal.net/enviva. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), file this *Second Omnibus Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting Related Relief* (the “**Motion**”) and in support respectfully submit the following:

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 105(a) and 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6006 and 9014, and rules 6007-1 and 9013-1 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 through long-term, take-or-pay offtake contracts with the Company.

5. On March 12, 2024 (the “*Petition Date*”), the Debtors each 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*”) which was filed on the Petition Date, and the *Declaration of Mark Rajcevich in Support of the Second Omnibus Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting Related Relief* (the “*Rajcevich Declaration*”), filed contemporaneously

herewith. The First Day Declaration and the Rajceovich Declaration are incorporated herein by reference.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 reject those certain executory contracts listed on **Schedule 1** to Exhibit A (collectively, the “**Rejected Contracts**” and each, a “**Rejected Contract**”), effective as of the entry of the Order, and (b) granting related relief.

CONTRACTS TO BE REJECTED

A. The “Raise the Bridge” Initiative

8. Beginning in fall 2023, a subset of the Debtors’ management team and advisors (the “**RTB Team**”) set out to aggressively re-negotiate, or “raise the bridge” (“**RTB**”) on, the terms of the existing long-term contracts to make the profitability metrics sufficiently sustainable for the Debtors. The RTB Team has devoted significant time and energy over the course of the past eight months to implement the initiative.

9. First, the RTB Team conducted a systematic review of existing contracts with key customers in Europe and Asia to highlight and identify terms and features that could feasibly be renegotiated and boost the profitability of the arrangement. Based on that review, the RTB Team then developed customized strategies to guide its engagement and deliverables in negotiations with each individual counterparty and contract. Beginning in early November 2023, with a strategy in hand, the RTB Team then proceeded to initiate contract negotiations with customers it had identified. The negotiations have involved multiple rounds of proposals and counterproposals,

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration or the Rajceovich Declaration, as applicable.

numerous remote discussions, and multiple trips from the United States to various destinations in Asia and Europe to engage with customer representatives in person.

10. The RTB Team was able to make substantial headway; its efforts yielded numerous working proposals and counterproposals, some of which have materialized into firm commitments to long-term price increases across a large portion of the Debtors' portfolio. Over the past few months, the RTB Team has continued to work tirelessly to renegotiate mutually agreeable terms with the remaining contract counterparties.

11. In cases where the Debtors' attempts to renegotiate out-of-the-money contracts have not been fruitful or where necessary uplift appears unlikely to be realized, the Debtors submit that rejection of such contract sooner rather than later is in the best interest of the Debtors and their estates to, among other things, avoid potentially incurring additional costs or claims under such contracts.

B. The Sumitomo (Sendai) Contract

12. The Sumitomo (Sendai) Contract³ is one of the Debtors' long-term offtake contracts in its Japanese portfolio and Sumitomo Corporation's ("*Sumitomo*") longest tenured contract (through 2045) with the Debtors. Although Sumitomo is the contractual counterparty to the Sumitomo (Sendai) Contract, Sumitomo has contracted with the Debtors as a broker on behalf of several end users, including Sendai-ko Biomass Power GK ("*Sendai*"). Sendai is the end user of the purchased pellets under the Sumitomo (Sendai) Contract.

13. The RTB Team analyzed the Sumitomo (Sendai) Contract in connection with the RTB process and determined that the existing contractual pricing will yield negative operating

³ "*Sumitomo (Sendai) Contract*" means that certain *CFR Biomass Fuel Supply Agreement*, dated July 31, 2019, as between Sumitomo Corporation and Enviva Inc. (together with any and all related exhibits, confirmations, agreements, amendments, or modifications thereto).

margins over the life of the contract with a negative net present value on the operating margin. Therefore, as part of the RTB initiative, the Debtors engaged directly with Sumitomo and Sendai in an attempt to modify the existing contract terms to structure a mutually agreeable go-forward contract. The good-faith negotiations between the parties did not yield a mutually beneficial structure, and the Debtors are left with an uneconomical, negative net present value contract which does not benefit the Debtors' estates. Accordingly, the Debtors determined, in their sound business judgment, that the Sumitomo (Sendai) Contract is no longer of value to the Debtors going forward and is overly burdensome to the Debtors' estates and should, therefore, be rejected. The Debtors estimate that rejection of the Sumitomo (Sendai) Contract will provide significant total savings over the term of the Sumitomo (Sendai) Contract.

C. The Engie Contract

14. The Engie Contract⁴ is one of the Debtors' long-term offtake contracts with the European counterparty, Engie Energy Management SCRL ("**Engie**"). The RTB Team analyzed the Engie Contract in connection with the RTB process and determined that the existing contractual pricing will yield negative operating margins over the life of the contract with a negative net present value on the operating margin. The Debtors engaged in multiple rounds of good-faith price and tenor negotiations with Engie, but the parties ultimately could not structure a mutually agreeable go-forward contract. Accordingly, the Debtors determined, in their sound business judgment, that the Engie Contract is no longer of value to the Debtors going forward and is overly burdensome to the Debtors' estates and should, therefore, be rejected. The Debtors

⁴ "**Engie Contract**" means that certain *2021 to 2035 Wood Pellet Purchase Option Agreement*, dated March 16, 2018, between Engie Energy Management SCRL and Enviva, LP (together with any and all related exhibits, confirmations, agreements, amendments, or modifications thereto).

estimate that rejection of the Engie Contract will provide substantial total savings over the remaining term of the Engie Contract.

BASIS FOR RELIEF REQUESTED

A. Rejection of the Rejected Contracts Is an Appropriate Exercise of the Debtors’ Business Judgment.

15. Section 365(a) of the Bankruptcy Code provides that a debtor may, with court approval, assume or reject an executory contract or unexpired lease. 11 U.S.C. § 365(a). In determining whether to approve a debtor’s request to assume or reject an executory contract or unexpired lease, courts generally defer to the debtor’s business judgment. *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046 (4th Cir. 1985); *In re Alpha Natural Resources, Inc.*, 555 B.R. 520, 529–30 (Bankr. E.D. Va. 2016) (“[A] court should not second-guess a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion.”); *see also In re NLRB v. Bildisco & Bildisco (In re Bildisco)*, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of “business judgment”).

16. In applying the business judgment standard, courts have held that rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the debtor’s estate. *See In re Shangra-La, Inc.*, 167 F.3d 843, 849 (4th Cir. 1999) (“[T]he authority to reject an executory contract is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.”) (quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. at 528) (alteration in original). Upon finding that a debtor exercised sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court

should approve the rejection under section 365(a) of the Bankruptcy Code. *See In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849 (Bankr. W.D. Pa. 1987) (“Accordingly, the court should not interfere with or second guess the debtor’s sound business judgment unless and until evidence is presented that establishes that the debtor’s decision was one taken in bad faith or in gross abuse of its retained business discretion.”) (citing *Lubrizol*, 756 F.2d. at 1047); *see also In re Extraction Oil & Gas*, 622 B.R. 608, 615 (Bankr. D. Del. 2020) (“Courts generally will not second-guess a debtor’s business judgment concerning the rejection of an executory contract or lease.”).

17. As noted in the Rajceovich Declaration, the Debtors are conducting an extensive analysis of all of their executory contracts and unexpired leases. In this process, the Debtors have identified the Rejected Contracts as executory contracts that impose obligations on the Debtors and their estates that constitute an unnecessary drain on the Debtors’ resources compared to any potential benefits associated with continued performance. Promptly rejecting such contracts further benefits the Debtors by allowing the Debtors to allocate resources more efficiently, which is crucial to their ability to continue the operational restructuring contemplated by these chapter 11 cases. Accordingly, now that the Debtors have determined that the Rejected Contracts will not be part of their long-term business plan, the Debtors should be entitled to reject such contracts as soon as possible to maximize value for the Debtors’ estates. Rejecting the Rejected Contracts will relieve the Debtors of unnecessary burdens and strains and, thus, is in the best interest of the Debtors’ estates and stakeholders and, therefore, constitutes an exercise of the Debtors’ sound business judgment.

18. Courts in this district have authorized the relief requested herein. *See, e.g., In re Nordic Aviation Capital Designated Activity Company*, No. 21-33693 (KRH) (Bankr. E.D. Va. Apr. 6. 2022) (authorizing the debtors to reject certain unexpired aircraft leases); *In re Ascena*

Retail Group, Inc., No. 20-33113 (KRH) (Bankr. E.D. Va. Oct. 27, 2020) (authorizing the debtors to reject certain executory contracts); *In re Gemstone Solutions Group, Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va. Feb. 4, 2020) (same); *In re Alpha Natural Resources, Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 3, 2015) (same).

RESERVATION OF RIGHTS

19. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing in this Motion is intended to be, nor should it be construed as (a) an implication or admission as to the validity or priority of any claim or lien against the Debtors, (b) an impairment or waiver of the Debtors' or any other party in interest's rights to contest or dispute any such claim or lien, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any proposed order, (e) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (f) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

COMPLIANCE WITH BANKRUPTCY RULE 6006(f)

20. Bankruptcy Rule 6006(f) establishes requirements for a motion to reject multiple contracts that are not between the same parties. It requires, in relevant part, that such a motion:

- a. state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. list parties alphabetically and identify the corresponding contract or lease;
- c. be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- d. be limited to no more than 100 executory contracts or unexpired leases.

Fed. R. Bankr. P. 6006(f). The Debtors have satisfied these requirements.

NOTICE

21. 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) Akin Gump Strauss Hauer & Feld LLP as co-counsel to the Committee; (c) Hirschler Fleischer PC as co-counsel to the Committee; (d) Davis Polk & Wardwell LLP as co-counsel to the Ad Hoc Group; (e) McGuireWoods LLP as co-counsel to the Ad Hoc Group; (f) McDermott Will & Emery LLP as counsel to the agent under the DIP Facility; (g) Cahill Gordon & Reindel LLP as counsel to the agent under the Senior Secured Credit Facility; (h) Kilpatrick Townsend & Stockton LLP as counsel to the indenture trustee under the 2026 Notes; (i) Kramer Levin Naftalis & Frankel LLP as counsel to the indenture trustees under the Bond Green Bonds and the Epes Green Bonds; (j) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (k) the United States Attorney's Office for the Eastern District of Virginia; (l) the Securities and Exchange Commission; (m) the Internal Revenue Service; (n) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local Rules; (o) the Committee; and (p) the counterparties to the Rejected Contracts. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

22. 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: June 27, 2024

/s/ Jeremy S. Williams

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*Proposed counsel to the Debtors and Debtors in Possession**

* Subject to pending proceedings pursuant to 11 U.S.C. § 327.

EXHIBIT A

Proposed Order

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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)

SECOND OMNIBUS ORDER (I) AUTHORIZING THE DEBTORS TO REJECT THE REJECTED CONTRACTS 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*”) (i) authorizing the Debtors to reject the Rejected Contracts and (ii) granting related relief, all as more fully set forth in the

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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.veritaglobal.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.

Motion, the First Day Declaration, and the Rajceвич 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 First Day Declaration, and the Rajceвич 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 Rejected Contracts, attached hereto as **Schedule 1**, including, to the extent applicable, any and all related exhibits, confirmations, agreements, amendments, or modifications thereto, are hereby rejected effective as of the entry of the Order.

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

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

Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

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

Dated: _____
Alexandria, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/
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Co-Counsel and Proposed Co-Counsel to the Debtors and Debtors in Possession

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

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

/s/

Schedule 1

Rejected Contracts⁷

⁷ For the avoidance of doubt, all contracts, agreements, or arrangements listed or otherwise referred to in this Schedule 1 are inclusive of any and all amendments, addenda, and exhibits to the same.

Non-Debtor Counterparty	Debtor Counterparty	Description	Non-Debtor Counterparty Notice Address(es)
Sumitomo Corporation	Enviva Inc.	Wood Pellet Supply Contract	Otemachi Place East Tower 2-3-2 Otemachi, Chiyoda-ku, Tokyo, 100-8601 Japan
Engie Energy Management SCRL	Enviva, LP	Wood Pellet Supply Contract	Bvd. Simon Bolivar, 34-36 1000 Brussels, Belgium