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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> ¹ ,)	Case No. 24-10453 (BFK)
)	
Debtors.)	(Jointly Administered)

**ORION CONSTRUCTION, LLC'S LIMITED OBJECTION
TO CONFIRMATION OF THE AMENDED JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF ENVIVA INC. AND ITS DEBTOR AFFILIATES**

Orion Construction, LLC ("Orion"), by and through undersigned counsel, and without waiving any of its rights, hereby files this Limited Objection to confirmation of the *Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and its Debtor Affiliates* dated October 4, 2024 (Docket No. 1201) (the "Plan") and, in support hereof, states as follows:

Background

1. On March 12, 2024, Enviva Pellets Epes, LLC (the "Debtor") and twenty affiliated debtors (collectively, the "Debtors") each filed petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the

¹ Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, 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.kcclcc.net/enviva. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800 Bethesda, MD 20814.



Eastern District of Virginia (Alexandria Division), thereby commencing the above-captioned jointly administered bankruptcy cases.

2. The Debtor is the owner of those certain parcels of property located at 955 Port of Epes Highway, Epes, AL 35470 (Sumter County) (collectively, the “Properties”) with the following legal descriptions:

APN: 14-09-29-0-000-001.001 BEG. 1,010.8' & 2638.1' N OF SW COR. E1/2 OF W1/2, TH; NE 1480', SE 1,111'; SW 1218.2'; N 103.6' W 930.8'; TO POB IN S29. Situated in Sumter County Alabama.

APN: 14-09-29-0-000-001.002 COMM @ SW COR SE1/4 OF SW1/4 S29 T20 R1W THN E 1010.86'; N 2638.12'; NE 1480' TO POB; CONT NE 723.34'; SE'LY 297.73'; SE 168.18'; E 67.84'; SE 223.97'; SW'LY 272.79'; SW'LY 209.59'; SW'LY 294.26'; NE'LY 347.49'; W'LY 430'; SW;'LY 581.19' TO BEG. S29 T20N Situated in Sumter County Alabama.

APN: 14-09-29-0-000-001.004 264.43 AC LYING E OF RR R/W, S OF TOMBIGBEE RIVER, N OF PORT OF EPES HWY & NW OF UNNAMED TRIBUTARY IN SECTIONS 29 * 28 T20N R1W Situated in Sumter County, Alabama

3. Orion and C.S. Beatty Construction, Inc. (“C.S. Beatty”) are party to a Subcontract (the “Subcontract”). Pursuant to the Subcontract, C.S. Beatty and Orion contracted for Orion to perform dredging work on the Properties. Orion’s duties under the Subcontract include furnishing all necessary labor, material, and equipment, and providing competent supervision over the dredging project consistent with the specifications set forth in the Subcontract.

4. On March 19, 2024, Orion recorded a Statement of Mechanics Lien against the Properties, pursuant to Alabama Code § 35-11-213, in the amount of \$929,597.75.

5. On March 22, 2024, Orion recorded another Statement of Mechanics Lien against the Properties, pursuant to Alabama Code § 35-11-213, in the amount of \$1,093,241.63.

6. On May 20, 2024, Orion filed its Notice of Perfection of Mechanics' Lien Pursuant to 11 U.S.C. § 546(b) (Docket No. 597).

7. On May 28, 2024, Orion filed Proof of Claim No. 430 as a secured claim in the amount of \$2,022,839.38 (the "Orion Claim").

The Plan

8. On October 14, 2024, the Debtors filed the Plan.

9. Under the terms of the Plan, the Orion Claim is classified as a Class 2 claim or an "Other Secured Claim." *See* Plan, Art. III.B.2 at p. 38. The Plan treats Class 2 as "unimpaired under the Plan." *See* Plan, Art. III.B.2(c), at p. 39.

10. The Plan also contains an injunction that will arise upon the Effective Date of the Plan that prohibits Orion from taking further action to enforce its mechanics liens. *See* Plan, Art. VIII.G, at p. 88.

Enforcement of Mechanics Liens

11. Under applicable Alabama law, the deadline to file suit to enforce a mechanics lien is six months "after the maturity of the entire indebtedness secured thereby," which date occurred during the pendency of this case. Ala. Code § 35-11-221.

12. Orion's debt matured in late 2023, meaning that Orion had until June 2024 to file a lawsuit in Alabama state court to enforce its lien rights. However, Orion could not file such litigation because of the automatic stay of 11 U.S.C. § 362. Accordingly, because of the stay, the deadline to enforce Orion's mechanics liens is extended to "30 days after notice of the termination or expiration of the stay under section 362." 11 U.S.C. § 108(c)(2).

13. Despite being “unimpaired” by the Plan, Orion will not be able to file any enforcement action regarding the mechanics liens due to the Plan’s injunction language. *See* Plan, Art. VIII.G, at p. 88.

Limited Objection

14. The Plan should not be confirmed because the Plan improperly characterizes Orion’s Class 2 claim as “unimpaired” unless Orion is permitted to file and pursue its mechanics lien enforcement action. *See* Plan, Art. III.B.2(c), at p. 39.

15. Section 1124 of the Bankruptcy Code provides that a class of claims is impaired unless the plan “leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.” 11 U.S.C. § 1124(1).

Impairment is a term of art, extending beyond a worsening of a creditor’s position to include *virtually any alteration of the rights of interested parties* beyond those specifically designated in § 1124 as not affecting impairment. Any impairment, no matter how insignificant, renders the entire claim impaired under the plan.

In re Reuter, 427 B.R. 727, 773-74 (Bankr. W.D. Mo. 2010) (internal citations omitted) (emphasis added).

16. “Section 1124’s broad definition of impairment requires a case-by-case, fact-intensive inquiry in which the Court must determine whether the plan itself, rather than the operation of a provision of the Bankruptcy Code, impairs a creditor’s legal, equitable, or contractual rights.” *In re Tree of Life Church*, 522 B.R. 849, 861 (Bankr. D.S.C. 2015).

17. Here, the Plan injunction language clearly prohibits Orion from seeking to enforce the mechanics liens. *See* Plan, Art. VIII.G, at p. 88.

18. Thus, the Plan does not “leave[] unaltered the legal, equitable, and contractual rights” that Orion is entitled unless Orion is permitted to file its mechanic’s lien enforcement action within the time limits of section 108(c). The Plan should not be confirmed unless the

confirmation order provides that Orion is permitted to take all necessary steps to enforce the mechanics liens in the appropriate forum despite the Plan injunction language.

WHEREFORE, Orion requests that the Court sustain its Limited Objection, deny confirmation of the Plan as it relates to the enforcement of Orion's mechanics liens unless appropriate language is included in the confirmation order that permits Orion to take all necessary steps to enforce the mechanics liens in the appropriate forum, and grant such further relief as is just and proper.

Dated: November 7, 2024

ORION CONSTRUCTION, LLC

/s/ Christopher A. Jones

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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Notice was filed with the Court via the Clerk's CM/ECF electronic filing system on November 7, 2024. I further hereby certify that on November 7, 2024, a true and correct copy of the foregoing Notice was served electronically on all parties registered to receive electronic notice in this case.

/s/ Christopher A. Jones
Counsel