

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
PROTERRA INC, <i>et al.</i> , ¹)	
)	Case No. 23-11120 (BLS)
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF JUSTIN D. PUGH
IN SUPPORT OF DEBTORS’ (I) CASH COLLATERAL
MOTION AND (II) VENDOR CLAIMANTS MOTION**

Pursuant to 28 U.S.C. § 1746, I, Justin D. Pugh, do hereby declare, under penalty:

1. I am a Senior Managing Director of FTI Consulting, Inc. (“FTI”). I am over the age of 18, and I am authorized by each of the Debtors to submit this declaration (the “Declaration”) on behalf of the Debtors in support of the relief requested in the *Debtors’ Motion for Entry of Interim Order (I) Authorizing the Debtors to use Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief* (the “Cash Collateral Motion”) and the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (B) 503(B)(9) Claimants, and (C) Critical Vendors, (II) Authorizing the Debtors to Pay Claims in Respect of Outstanding Orders, and (III) Granting Related Relief* (the “Vendor Claimants Motion”), each filed contemporaneously herewith.²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Proterra Inc (1379); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² Capitalized terms used but not defined herein shall have the meaning given to them in the Cash Collateral Motion and the Vendor Claimants Motion, as applicable.



2. I have more than 12 years of experience in the restructuring industry, which has consisted of a broad range of corporate recovery services and interim management roles. My restructuring experience includes operating and managing businesses in and out of court, conducting and managing sales and liquidations of assets and business interests, advising boards of directors on countless restructuring issues, developing and adjudicating claims, managing and assisting in litigation, negotiating settlements, and administering claims-payment structures in a variety of cases. My industry specializations include power generation, renewable energy, manufacturing, retail, real estate, and financial services.

3. I hold a Bachelor of Science in Finance from Louisiana Tech University, a Master of Science in Finance and Mathematics from Louisiana State University, and a Master of Business Administration in Finance and Corporate Accounting from the University of Rochester. I am also a Chartered Financial Analyst and a Certified Public Accountant (accredited in business valuation), and I hold Series 7, 63, and 79 licenses.

4. I have been one of the principal individuals at FTI's responsible for its engagement by the Debtors, and on August 7, 2023, I was appointed as the Chief Transformation Office of the Company. Except as otherwise indicated herein, all statements and facts set forth in this Declaration are based upon: (a) my personal knowledge of the Debtors' operations and finances based on information provided by the Debtors or their advisors during the course of FTI's engagement with the Debtors; (b) my review of relevant documents, including information provided by other parties; (c) information provided to me by, or discussions with, employees of FTI, in each case based

on the information described in (a), (b), and (d) of this paragraph; (d) information provided to me or other employees of FTI by, or discussions with, the members of the Debtors' management team or its other advisors; and/or (e) my personal involvement in the events at issue.

5. FTI's engagement by the Debtors began on or around June 23, 2023. Pursuant to its current engagement letter (the "FTI Engagement Letter"), FTI has provided restructuring advisory services to the Debtors and its counsel, including in connection with the development of strategic options and contingency planning for a potential chapter 11 case. I have been centrally involved in this engagement from its inception.

6. FTI is a global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal operational, political & regulatory, reputational and transactional. FTI employs 7,600 employees in 31 countries with extensive experience providing multidisciplinary solutions to complex challenges and opportunities. Specifically, the restructuring and turnaround experts at FTI help clients stabilize finances and operations to reassure all parties in interest that proactive steps are being taken to preserve and enhance value. These FTI professionals assist companies with liquidity management, operational improvement, capital solutions, and turnarounds and restructurings, among other services.

7. FTI's personnel have assisted and advised debtors, creditors, bondholders, investors, and other entities in numerous chapter 11 cases, including those of similar size and complexity to the Chapter 11 Cases. FTI's personnel have also worked on numerous chapter 11 cases within this district, including the following recent cases: *In re Boxed, Inc.*, Case No. 23-10397 (BLS) (Bankr. D. Del. Apr. 2, 2023); *In re Reverse*

Mortgage Investment Trust Inc., Case No. 22-11225 (MFW) (Bankr. D. Del. Mar. 20, 2023); *In re RS FIT NW LLC (f/k/a 24 Hour Fitness Worldwide, Inc.)*, Case No. 20-11558 (KBO) (Bankr. D. Del. July 13, 2020); *In re GCX Limited*, Case No. 19-12031 (CSS) (Bankr. D. Del. Nov. 4, 2019); *In re Zohar III, Corp.*, Case No. 18-10512 (Bankr. D. Del. June 11, 2018); *In re SFX Entertainment, Inc.*, Case No. 16-10238 (Bankr. D. Del. Mar. 3, 2016); *In re Fresh & Easy, LLC*, Case No. 15-12220 (Bankr. D. Del. Nov. 20, 2015); *In re Corinthian Colleges, Inc.*, Case No. 15-10952 (Bankr. D. Del. May 27, 2015); *In re Mineral Park, Inc.*, Case No. 14- 11996 (Bankr. D. Del. Sept. 23, 2014); *In re FCC Holdings, Inc.*, Case No. 14-11987 (Bankr. D. Del. Sept. 22, 2014).

CASH COLLATERAL MOTION

8. As part of FTI’s strategic planning services prior to the commencement of these Chapter 11 Cases, FTI, with the assistance of the Debtors and their other advisors, engaged in substantial analysis of the Debtors’ anticipated cash receipts, operating disbursements, other material factors impacting the Debtors’ go-forward cash position, and the liquidation value of key categories of the Prepetition Collateral,³ consisting of the Debtors’ cash, accounts receivable, and inventory. That work has contributed to the preparation of (a) the net cash flow projections attached hereto as **Exhibit B** (the “Cash Flow Projections”) and (b) the analysis of the liquidation value of the Debtors’ cash, accounts receivable, and inventory attached hereto as **Exhibit A** (the “Liquidation Analysis”), in each case over the course of hypothetical six-month chapter 11 cases. The Liquidation Analysis performed at this stage is conservative in two significant

³ Prepetition Collateral means all of Debtors’ assets, excluding certain assets expressly excluded from “Collateral” under the Senior Credit Agreement, such as fee-owned real property, leasehold interests in any real property, and certain related assets.

respects. *First*, the Debtors hold assets in addition to cash, accounts receivable, and inventory (such as intellectual property and equipment), which are included in the Prepetition Collateral but have not been taken into account in the Liquidation Analysis. *Second*, the analysis does not reflect adjustments to the liquidation values to account for the fact that the Debtors are a going-concern. Adjustments to account for these considerations would only increase the liquidation value of the Prepetition Collateral, and therefore increase the equity cushion described below.

9. In summary, as described below, the Liquidation Analysis demonstrates a significant equity cushion in the first four weeks of these Chapter 11 Cases and throughout at least a hypothetical six-month chapter 11 case. The Liquidation Analysis is based on conservative assumptions and certain third-party figures and demonstrates an equity cushion well above what is typically considered necessary to adequately protect a secured party. Additionally, the Cash Flow Projections show that the Debtors' cash balances increase as a result of the commencement of these Chapter 11 Cases due to the tools chapter 11 protection affords the Debtors, such as the automatic stay and ability to reject burdensome contracts. For example, cash is projected to grow by approximately \$9.5 million in the first four weeks of the case compared to decreasing by \$65.8 million under the status-quo out-of-court projections. This difference amounts to an approximately \$75.3 million increase in cash in the first four weeks of the Chapter 11 Cases. Taken together, these analyses demonstrate that the Prepetition Secured Parties are protected by (i) a significant equity cushion and (ii) the positive, stabilizing effects that these Chapter 11 Cases are expected to have on the Debtors' cash balances and overall financial condition.

A. Liquidation Analysis

10. The Liquidation Analysis—which, again, only considers a portion of the collateral base—demonstrates that the liquidation value of the Debtors’ cash, inventory, and accounts receivable alone substantially exceeds the amount of the Prepetition Secured Parties’ claims throughout a hypothetical six month case timeline. The liquidation value of the portion of the Prepetition Collateral used in the Liquidation Analysis was derived from (i) the Debtors’ current cash balances and projected cash as reflected in the Cash Flow Projections and(ii) liquidation value recovery rates for certain categories of the Debtors’ assets provided by Hilco Global (“Hilco”), in its capacity as an outside consultant providing liquidation value estimates of the Prepetition Secured Parties’ collateral in the ordinary course in accordance with the Senior Credit Agreement, modified to address certain inapplicable limitations imposed by revolving lenders. The latest liquidation values from Hilco were adjusted to reflect varying assumptions on recoveries outside of Hilco’s assumptions pursuant to the Senior Credit Agreement. For example, the First Lien Credit Facility has a concentration limit on the accounts receivable whereby the revolving lenders will not lend against receivables past a threshold. This limit is an internal risk management mechanism for underwriting and not a reflection on the value of the accounts receivable. This concentration limit is not reflected in the Liquidation Analysis.

11. The Liquidation Analysis demonstrates that the liquidation value of the Debtors’ cash, inventory, and accounts receivable alone substantially exceeds the amount of the Prepetition Secured Parties’ claims throughout the pendency of the contemplated Chapter 11 Cases. The liquidation value of such Prepetition Collateral exceeds the amount of the Prepetition Secured Parties’ claims by no less than

approximately 72% to 88% at the end of August 2023 and by no less than approximately 42% to 55% by the end of January 2024—a substantial equity cushion.

12. This equity cushion, measured in the Liquidation Analysis as a percentage equal to a quotient, where the numerator in the quotient is the difference between the estimated liquidation value of the Debtors' cash, inventory, and accounts receivable (which accounts for only a subset of the Prepetition Secured Parties' overall collateral) less Secured Parties outstanding claims as of the Petition Date, and the denominator in the quotient is the Prepetition Secured Parties' outstanding claims as of the Petition Date. For example, as of July 31, 2023, if the liquidation value of the Prepetition Secured Parties' collateral were \$326 million and the Prepetition Secured Parties' Secured debt were \$176 million, the equity cushion would be approximately 85%—*i.e.*, $(\$326 \text{ million} - \$176 \text{ million}) \div \176 million . This equity cushion is projected to exceed the equity cushions that I understand courts have held in other cases to independently be sufficient to adequately protect a secured creditors' interests.

B. Projected Cash Flows

13. As further evidence that the Prepetition Secured Parties' interests in Cash Collateral are adequately protected, the Cash Flow Projections demonstrate that the Debtors' cash position substantially *increases* from the Petition Date (approximately \$138 million) to four weeks after the Petition Date (approximately \$147 million). As a result, the Prepetition Secured Parties' Cash Collateral is not at risk of diminution during the contemplated length of the Interim Period.

14. Moreover, the Cash Flow Projections reflect that the filing of these Chapter 11 Cases *enhances* the Debtors' cash balances as compared to the out-of-court status quo through a six-month bankruptcy timeline. This enhancement of the Debtors'

cash position reflects the many tools provided by the Bankruptcy Code to facilitate the restructuring of distressed debtors, including the breathing spell provided by the automatic stay and the Debtors' ability to reject burdensome contracts, optimize their use of inventory, and rationalize their operations.

C. Conclusion

15. The Liquidation Analysis and Projected Cash Flows demonstrate that at all times during the pendency of the Chapter 11 Cases, the Prepetition Secured Parties should maintain a sizeable equity cushion in excess of 20%. Moreover, the filing of these Chapter 11 Cases will benefit the Debtors' cash position and cash burn over the course of these Chapter 11 Cases.

16. It is my opinion that in the event the Debtors do not have the ability to use their Cash Collateral, they would suffer immediate and irreparable harm. Without immediate access to Cash Collateral, the Debtors would face the prospect of immediate liquidation, which would cause immediate and irreparable harm to the Debtors, their estates, and all stakeholders as the Debtors would be unable to preserve and maximize going concern value, including by: (a) making payroll expenses to their employees; (b) satisfying vendor expenses incurred in the ordinary course of business, including certain payments that are essential for the ongoing operations of the Debtors' Business Lines; and (c) funding the administration of these Chapter 11 Cases, including to running their planned sale and reorganization processes.

VENDOR CLAIMANTS MOTION

17. By the Vendor Claimants Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition claims held by certain (i) Shippers and Warehouseman (each as defined below

and, collectively, the “Lien Claimants”), (ii) 503(b)(9) Claimants (as defined below), and (iii) Critical Vendors (as defined below and, collectively, the “Vendor Claimants”), collectively, in an amount not to exceed \$17,718,000 on an interim basis and \$35,638,000 on a final basis, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order. The Debtors also request that the Court authorize all banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing. Finally, the Debtors request that the Court authorize, but not direct, the Debtors to make payments with respect to goods ordered prior to the Petition Date that which will not be delivered under after the Petition Date (collectively, the “Outstanding Orders”) in the ordinary course of business.

A. The Vendor Claimants

18. The Debtors’ business, including each Business Line—Proterra Transit, Proterra Powered, and Proterra Energy—is heavily reliant on the prompt shipment of goods and provision of services from suppliers both in the United States and across the world. Accordingly, it is essential that the Debtors maintain their relationship with, and maintain the ability to honor, prepetition payment obligations to the Vendor Claimants (the “Vendor Obligations”) in order to prevent any unexpected or inopportune interruption to the Debtors’ operations during these chapter 11 cases. The services and goods that the Vendor Claimants supply to the Debtors are vital to the Debtors’ business and any loss of access to, or delay in the delivery of, such goods and services would materially harm the Debtors’ business and operations. Authorization to pay the Vendor Claimants in the ordinary course of business is necessary in order to minimize disruption to the Debtors’

operations, ensure uninterrupted operation of the Debtors' business, and allow for a seamless transition through these chapter 11 cases, for the benefit of all parties in interest.

19. Prior to the Petition Date, the Debtors took significant efforts to ensure the stability of the goods and services essential to their ongoing business prior to commencing these chapter 11 cases, including developing the vendor claimant program. The process of developing the vendor claimant program involved a core, centralized team of comprised of members of the Debtors operations with my assistance, as well as the assistance of members of the FTI team working under my supervision. In order to develop the vendor claimants program, the Debtors reviewed a master accounts payable schedule of approximately 600 vendors with balances outstanding as of the Petition Date (excluding the vendors which were analyzed in connection with the other first day motions). With the assistance of myself and members of my team, the Debtors determined whether each vendor was a Lien Claimant, 503(b)(9) Claimant, or Critical Vendor. It is such vendors that fall into one or more of the foregoing categories for which the Debtors seek authority, but not direction, to pay pursuant to the Proposed Orders.

20. The following table summarizes the Vendor Obligations, the Debtors' estimate of the Vendor Obligations accrued as of the Petition Date, and the amounts of Vendor Obligations the Debtors expect to become due within thirty (30) days of the Petition Date.

Category	Amount Outstanding as of Petition Date	Amount Due Within 30 Days (Interim Order)
Lien Claimants	\$910,00	\$867,000
503(b)(9) Claimants	\$22,090,000	\$7,681,000
Critical Vendors	\$12,638,000	\$9,170,000

Total Amounts	\$35,638,000	\$17,718,000
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21. I believe that the relief requested in the Vendor Claimants Motion will allow the Debtors to preserve stakeholder value by paying the prepetition claims of certain counterparties that are critical to the Debtors' business enterprise. I believe that the relief requested in the Vendor Claimants Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11.

i. The Lien Claimants (Shippers and Warehousemen)

22. In operating their business, the Debtors use and make payments to shippers, common carriers, and distributors (collectively, the "Shippers") to ship, transport, and otherwise facilitate the movement of inventory, supplies, merchandise, tools, equipment, components, materials, and other items (collectively, the "Goods"), some of which are stored at third party warehouses (the "Warehousemen" and, together with the Shippers, the "Lien Claimants"), and such payments, the "Shipping and Warehousing Charges").

23. The services provided by the Shippers and Warehousemen are critical to the Debtors' day-to-day operations. If certain of the Goods in transit are not timely delivered, the Debtors' business operations would be impaired, precluding or frustrating them from completing the manufacturing process for electric transit buses, batteries, drivetrains, and other products.

24. Because of the commencement of these chapter 11 cases, certain Shippers and Warehousemen who hold Goods for delivery to or from the Debtors may refuse to release the Goods pending receipt of payment for their prepetition services. Under

some state laws, I understand that a Shipper or Warehouseman may have a lien on the Goods in its possession to secure charges or expenses incurred for the transportation or storage of Goods. Additionally, I understand that, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen, as bailees, may be entitled to adequate protection as holders of possessory liens. As discussed, because of the Debtors' supply needs, any delay in shipments could disrupt the Debtors' operations and could harm the Debtors' sales process and restructuring efforts.

25. It is thus imperative that the Debtors be authorized to pay the Shipping and Warehousing Charges, on the terms set forth in the Proposed Orders, whether they arose prior to or after the Petition Date, that the Debtors determine in their business judgment they must pay to ensure the uninterrupted shipment and delivery of Goods.

26. As of the Petition Date, the Debtors estimate that approximately \$910,000 is owed to the Lien Claimants (including Shippers and Warehousemen), approximately \$867,000 of which is expected to become due prior to a final hearing on this Motion. To continue to have access to the goods and services provided by the Lien Claimants, including securing the release of any such liens the Lien Claimants may have, the Debtors request authority, but not the direction, to pay the prepetition Lien Claims.

ii. The 503(b)(9) Claimants

27. The Debtors have identified certain claims that may be entitled to priority status under section 503(b)(9) of the Bankruptcy Code because they are undisputed obligations for goods received from various vendors (the "503(b)(9) Claimants") by the Debtors in the ordinary course of business in the twenty (20) days prior to the Petition Date. The Debtors seek, in their discretion, to pay certain 503(b)(9) Claims as they come due in

the ordinary course of business, instead of satisfying the 503(b)(9) Claims upon confirmation of a chapter 11 plan.

28. Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term executory contracts but, rather, the Debtors obtain goods or other materials from such claimants on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims (each, a "503(b)(9) Claim"), or demand payment in cash on delivery. Such refusal or prejudicial trade terms could negatively affect the Debtors' estates as the Debtors' business are dependent on the steady flow of goods and materials through their supply chain. Even if the 503(b)(9) Claimants were not entitled to priority status under the Bankruptcy Code, the Debtors would still seek to pay most, if not all, of their claims in the ordinary course as a Critical Vendor given their importance to the Debtors and their business.

29. As of the Petition Date, the Debtors estimate that approximately \$22,090,000 is owed on account of 503(b)(9) Claims, approximately \$7,681,000 of which is expected to become due prior to the final hearing on this Motion. To continue to have access to the goods provided by the 503(b)(9) Claimants, the Debtors request authority, but not direction, to pay the 503(b)(9) Claims as they become due in the ordinary course of business.

iii. Critical Vendor Claims

30. With the assistance of myself and members of my team, the Debtors have spent significant time reviewing and analyzing their books and records, consulting with the Debtors' managers, and reviewing contracts and supply agreements, to identify certain critical business relationships and suppliers of goods and services—the loss of

which would immediately and irreparably harm their business. In this process, the Debtors considered a variety of factors, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- whether a vendor is a sole-source, limited-source, or high volume provider of goods or services critical to the Debtors' business operations;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases; and
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis.

31. Through this analysis, the Debtors identified certain vendors (collectively, the "Critical Vendors" and, such vendors claims, the "Critical Vendor Claims") that supply products and services that are essential to the Debtors' go-forward operations. Additionally, not only do the Debtors rely heavily on the Critical Vendors to deliver current orders, but they also rely on such Critical Vendors for all future deliveries. Therefore, replacing Critical Vendors is often time consuming, impossible, or cost prohibitive.

32. Based on the above-listed criteria, the Debtors identified a roster of Critical Vendors that generally fall into one or both of the following categories: (a) parts and equipment suppliers; and (b) specialized service vendors.

- *Parts and Equipment Suppliers.* The Debtors rely on certain Critical Vendors to provide specialized parts, supplies, and technical equipment essential to the Debtors' operations (the "Parts and Equipment Suppliers"). The Parts and Equipment Suppliers provide the Debtors with supplies and equipment specifically tailored to meet the Debtors' business needs and to comply with various regulations. Locating and agreeing to terms with replacement vendors may involve extensive testing and resulting in needless delay and costs. Because the Debtors cannot immediately replace these vendors, the Parts and Equipment Suppliers continued supply is essential to the Debtors' efforts to continue uninterrupted operations and to ensure that their business operate at maximum safety and efficiency.
- *Specialized Service Vendors.* In the ordinary course of business, the Debtors use a variety of vendors to provide routine operational services, ranging from general maintenance to specialized engineering in connection with operation of their business. Due to the specialized, technical, and often hazardous nature of some of the services involved, certain of these services can only be obtained from vendors with specialized knowledge (the "Specialized Service Vendors"). For example, routine services that could be performed for other companies by a wide range of vendors (*e.g.*, wiring harness manufacturers) may only be performed for the Debtors by certain Specialized Service Vendors possessing specialized knowledge, technical expertise, or required licensing. Due to the limited availability of vendors able to provide the Debtors with these specialized services that are routine to the operation of the Debtors' business, the Debtors believe that certain Specialized Service Vendors may refuse to provide postpetition services to the Debtors if all or a portion of their prepetition claims are not satisfied. Accordingly, the Debtors believe that having the authority to satisfy the prepetition claims of the Specialized Service Vendors is crucial to their ability to continue to operate their business on an uninterrupted basis.

33. Any delay in the provision of essential goods, equipment, and/or specialized maintenance and repair services, and any disruption to the relationship between

the Debtors and the Critical Vendors, would cause irreparable harm to the Debtors' business. Accordingly, under the circumstances, paying Critical Vendor Claims on the terms proposed is both necessary and essential to their ability to achieve their chapter 11 objectives and preserve the value of their estates for the benefit of their various constituencies.

34. As of the Petition Date, the Debtors estimate that approximately \$12,638,000 in Critical Vendor Claims are outstanding, approximately \$9,170,000 of which is expected to become due prior to a final hearing on this Motion. To continue to have access to the goods and services provided by the Critical Vendors, the Debtors request authority, but not the direction, to pay the prepetition Critical Vendor Claims on the terms proposed herein.

iv. The Trade Terms Conditions

35. In return for paying the Vendor Obligations either in full or in part, the Debtors propose that the Debtors be authorized, but not required, to require Vendor Claimants to provide favorable trade terms for the postpetition procurement of goods and services from the Vendor Claimants. Specifically, the Debtors seek authorization, but not direction, to condition payment of Vendor Obligations upon each Vendor Claimant's agreement to continue—or recommence—supplying goods and services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve months prior to the Petition Date, or on other terms satisfactory to the Debtors in their reasonable discretion (the "Customary Terms").

36. In addition, the Debtors request that if a payee, after receiving a payment under an order approving this Motion, ceases to provide Customary Terms, then

the Debtors may, in their reasonable discretion, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable postpetition transfer of property.

B. Outstanding Orders

37. Prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods which will not be delivered until after the Petition Date (the Outstanding Orders). To avoid becoming general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, including obligating the Debtors to re-order goods that were ordered prior to the Petition Date, the Debtors seek an order authorizing, but not directing, the Debtors to satisfy certain Outstanding Order obligations in the ordinary course of business.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: August 9, 2023
New York, New York

/s/ Justin Pugh
Justin Pugh
Senior Managing Director
FTI Consulting, Inc.

EXHIBIT A

Liquidation Analysis

Liquidation Analysis

Summary: The chart below represents a partial liquidation analysis based on July month-end values of inventory and accounts receivable, and the Petition Date estimated values for cash. These values do not consider other valuable collateral of the Secured Parties, including, for instance, IP and PP&E. In other words, the liquidation value is **no less** than the values represented in the chart below.

Balance Sheet As Of:		Jul-23				
BALANCE SHEET	TRIAL BALANCE	NOTES	ESTIMATED RECOVERY %		ESTIMATED RECOVERY \$	
			LOW	HIGH	LOW	HIGH
Assets						
Cash and Cash Equivalents	6,942,520	A	100%	100%	6,942,520	6,942,520
Short-Term Investments	130,939,165	A	100%	100%	130,939,165	130,939,165
Accounts Receivable, Net	89,172,375	B	50%	59%	44,591,249	52,460,293
Inventory	325,818,397	C	36%	42%	116,514,661	137,076,072
Total Current Assets	552,872,458		54%	59%	298,987,596	327,418,051
CLAIMANT						
	BALANCE					
Senior Convertible Noteholders	(176,984,000)				(176,984,000)	(176,984,000)
Total Secured Claims	(176,984,000)				(176,984,000)	(176,984,000)

NET PROCEEDS AVAILABLE AFTER SETTLEMENT OF SR CONVERTIBLE NOTES	\$122,003,596	\$150,434,051
<i>% Cushion Above Senior Convertible Noteholders</i>	<i>69%</i>	<i>85%</i>

NOTES:

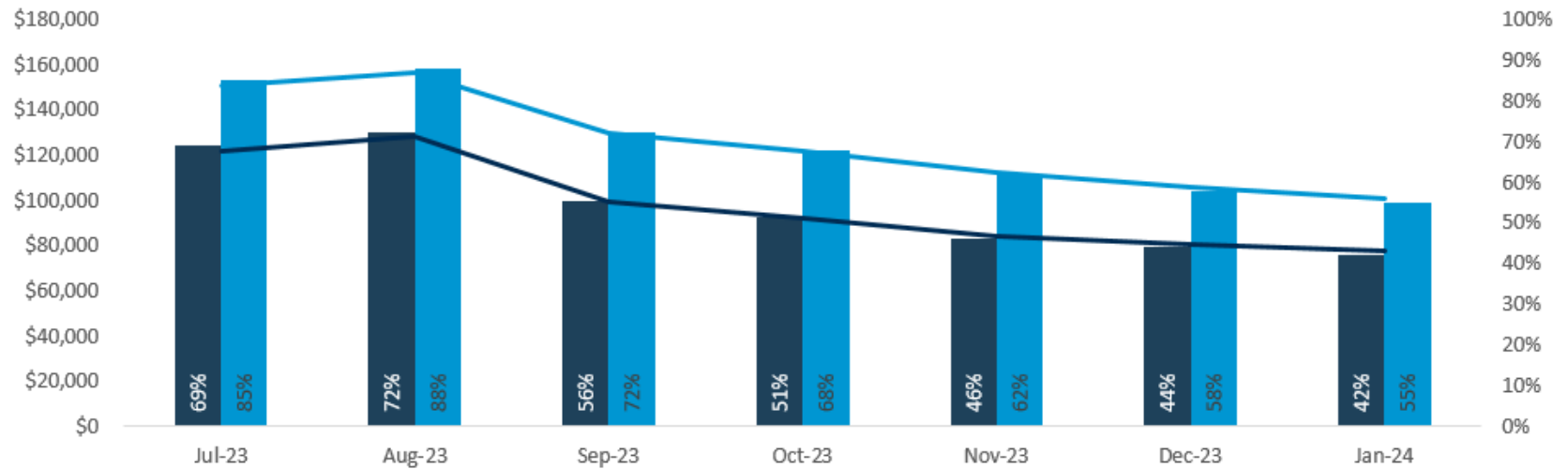
(A) Cash & Investments: Reported cash balances reflect actual bank balances as of close of business on 8/7/23.

(B) AR recoveries are based in large part on the assumptions prepared by HILCO and incorporated into the Revolving Lender's borrowing base certificate filed as of 6/30/2023. These advance rates have been applied to the Company's trial balance for the respective date presented

(C) Inventory recoveries are based in large part by the advance rates prepared by HILCO and incorporated into the Revolving Lender's borrowing base certificate filed as of 6/30/2023. These advance rates have been applied to the Company's trial balance for the respective date presented

Equity Cushion: The secured creditor has a sufficient “equity cushion”—*i.e.*, the amount that the value of its collateral exceeds the amount of the secured creditor’s claim.

Forecasted Equity Cushion | In 000s & %



- The chart above, based on the liquidation value analysis in the previous slide, shows both the dollar value and % equity cushion (equity cushion/secured claim) through the first 6 months of the bankruptcy where the collateral is limited to cash, accounts receivable, and inventory. Note that **there is sufficient equity cushion**, excluding other assets that represent the secured lenders’ collateral. The liquidation values are primarily sourced from one of the secured creditor’s appraisal agents, HILCO—a renowned liquidator.

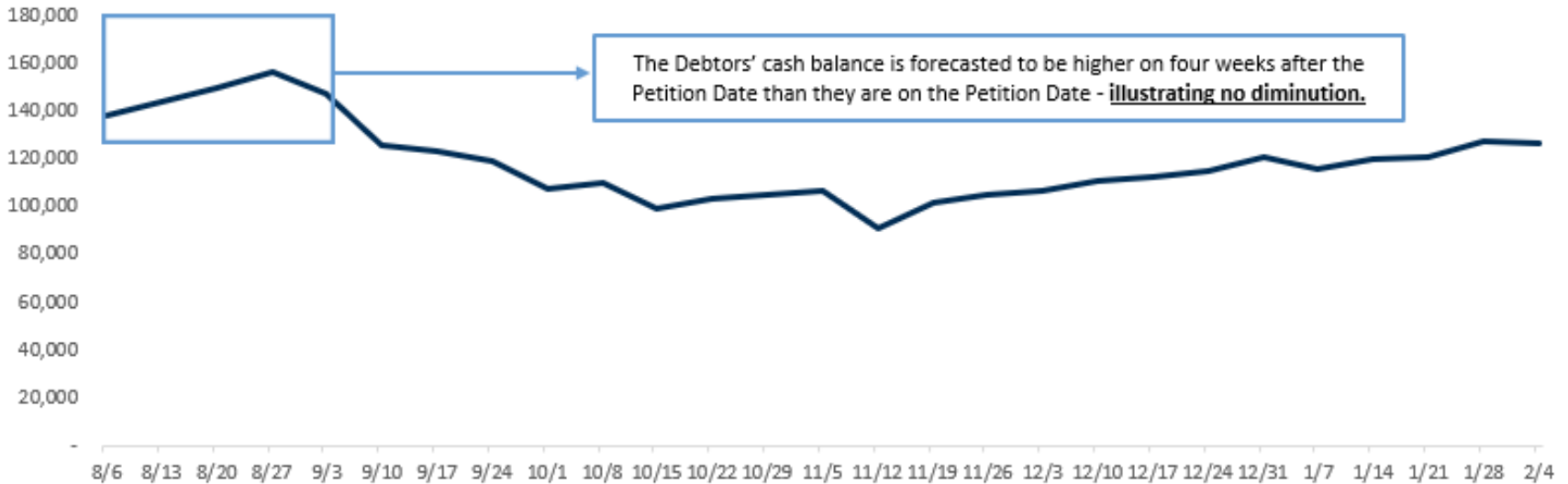
EXHIBIT B

Cash Flow Projections

Cash Flow Projections

No Diminution: The value of the relevant collateral (cash) will not diminish during the relevant period.

Forecasted Weekly Cash Balance | In 000s



Enhanced Cash Position: The debtor’s net cash consumption in bankruptcy is less than its net cash consumption outside of bankruptcy and thus the secured creditor’s position is improved by imposition of the automatic stay.

