

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.)	(Jointly Administered)
)	
)	Ref. Docket Nos. 4 & 65
)	

**CERTIFICATION OF COUNSEL REGARDING *REVISED*
PROPOSED FINAL ORDER (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 OF
OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

On August 7, 2023, the above-captioned debtors and debtors in possession (together, the “Debtors”) filed 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 of Outstanding Orders, and (III) Granting Related Relief* [D.I. 4] (the “Motion”). A proposed form of order approving the Motion on a final basis was attached to the Motion as Exhibit A (the “Proposed Final Order”).

On August 10, 2023, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order approving the Motion on an interim basis [D.I. 65] (the “Interim Order”). Pursuant to the Interim Order, any objections or responses to entry of the

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: Protterra Inc (1379); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.



Proposed Final Order were to be filed and served by August 31, 2023 at 4:00 p.m. (ET) (as may have been extended by the Debtors for any party, the “Objection Deadline”).

Prior to the Objection Deadline, the Debtors received informal comments from the Official Committee of Unsecured Creditors (the “Committee”) and Expeditors International of Washington, Inc. (“Expeditors”), which have been resolved through a revised form of order (the “Revised Proposed Order”), a copy of which is attached hereto as **Exhibit A**. For the convenience of the Court and other interested parties, a blackline comparing the Revised Proposed Order against the Proposed Final Order is attached hereto as **Exhibit B**.

WHEREFORE, as the Debtors did not receive any objections or responses other than that described herein, and the Committee and Expeditors do not object to entry of the Revised Proposed Order, the Debtors respectfully request that the Court enter the Revised Proposed Order without further notice or hearing at the Court’s earliest convenience.

[Remainder of page intentionally left blank]

Dated: September 5, 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Shella Borovinskaya

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Revised Proposed Order

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

In re:)	
)	Chapter 11
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PROTERRA INC, <i>et al.</i> , ¹)	Case No. 23-11120 (BLS)
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Debtors.)	(Jointly Administered)
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)	Re: Docket Nos. 4 & 65

FINAL ORDER
(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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business prepetition claims held by certain (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors (collectively, the “Vendor Claimants”) collectively, in an amount not to exceed \$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, (b) authorizing Banks to honor and process check and electronic transfer requests related to the foregoing, (c) authorizing, but not directing, the Debtors to make payment with respect to Outstanding Orders in the ordinary course of business, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and the Pugh Declaration and the *Supplemental Declaration of*

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Justin D. Pugh in Support of Debtors' Vendor Claimants Motion [D.I. No. 55]; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT,

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay Vendor Obligations in an aggregate amount not to exceed \$35,638,000 on a final basis.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay claims arising in connection with Outstanding Orders in the ordinary course of business.
4. The Debtors are authorized, but not directed, in their sole discretion, to require that, as a condition to receiving any payment under this Final Order, a Vendor Claimant maintain or apply, as applicable, Customary Terms. The Debtors may require more favorable trade terms

with any Vendor Claimant as a condition to payment of any prepetition claim. If a Vendor Claimant, after receiving a payment under this Final Order, ceases to provide Customary Terms, then the Debtors may, in their reasonable business judgment, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable unauthorized postpetition transfer of property, provided that this provision is included in the Customary Terms agreement executed between the Debtors and such payee. Any party that accepts payment from the Debtors on account of a Vendor Obligation shall be deemed to have agreed to the terms and provisions of this Final Order.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors shall provide monthly reporting to (i) the Official Committee of Unsecured Creditors' professionals, (ii) counsel to the First Lien Agent, and (iii) counsel to the Second Lien Agent (together, the "Notice Parties") reflecting (a) all payments made during the preceding month in connection with this Final Order, (b) amounts remaining to be paid to each Vendor Claimant, and (c) the prepetition balance remaining to date for each Vendor Claimant. Such monthly reporting shall be provided by the deadline for the Debtors to file their applicable Monthly Operating Report ("MOR") and shall commence with a report for the month of September (to be delivered no later than the deadline for filing the September MOR—*i.e.*, October 21, 2023).

7. The Debtors shall use commercially reasonable efforts to provide the Notice Parties with at least three (3) calendar days' written notice (and otherwise, as soon as commercially practicable) prior to distributing any prospective vendor agreements not already distributed as of the date of this Final Order or canceling any agreements with Vendor Claimants. In addition, the Debtors shall provide copies of all such executed agreements with Vendor Claimants to the Notice Parties.

8. The Debtors shall use commercially reasonable efforts to provide the Notice Parties with at least three (3) calendar days' written notice (and otherwise, as soon as commercially practicable) prior to the payment of any prepetition amount in excess of \$250,000 pursuant to this Final Order; *provided*, that the Notice Parties shall be deemed to have notice of any payments contemplated by agreements with Vendor Claimants that have been provided to the Notice Parties.

9. Any challenge by any party in interest to the validity, extent, perfection, or priority of the pre-Petition Date claims or liens of Expeditors International of Washington, Inc. (including its subsidiaries, "Expeditors"), or any claim against Expeditors under chapter 5 of the Bankruptcy Code, must be made by commencing an adversary proceeding against Expeditors not later than December 22, 2023. If no such adversary proceeding is commenced within that time, all such challenges and claims are barred, and the Debtors stipulate that Expeditors' pre-petition claims are allowed as secured claims.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right

to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the 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.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

Blackline

Exhibit B

Proposed Final Order

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

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In re:)	Chapter 11
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Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business prepetition claims held by certain (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors (collectively, the “Vendor Claimants”) collectively, in an amount not to exceed \$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, (b) authorizing Banks to honor and process check and electronic transfer requests related to the foregoing, (c) authorizing, but not directing, the Debtors to make payment with respect to Outstanding Orders in the ordinary

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course of business, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and the Pugh Declaration and the *Supplemental Declaration of Justin D. Pugh in Support of Debtors' Vendor Claimants Motion* [[ECFD.I](#), No. [155](#)]; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT,

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10. ~~6.~~ Notwithstanding the relief granted herein and any actions taken pursuant to

such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the 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.

11. ~~7.~~ Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. ~~8.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

13. ~~9.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.