

**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. 13 & 64
)	

**CERTIFICATION OF COUNSEL REGARDING *REVISED*
PROPOSED FINAL ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN
TAXES AND FEES AND (II) 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 Payment of Certain Taxes and Fees and (II) Granting Related Relief* [D.I. 13] (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. 64] (the “Interim Order”). Pursuant to the Interim Order, any objections or responses to entry of the 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”), which have been resolved through

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.



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 does 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:)	
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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. 13 & 64

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
PAY CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors² for entry of a final order (this “Final Order”) (a) authorizing the Debtors to remit or pay (or use tax credits or other attributes to offset or otherwise satisfy) all Taxes and Fees (as defined herein) due and owing to federal, state, local, foreign, and other applicable Authorities (as defined herein) that arose prior to the Petition Date (as defined herein) (including any Assessment (as defined herein) determined by Audit (as defined herein) or otherwise to be owed for periods prior to the Petition Date), and to pay all Taxes and Fees due and owing to various federal, state, local, foreign, and other applicable Authorities that arose after the Petition Date (including any Assessment subsequently determined by Audit or otherwise to be owed for periods after the Petition Date) and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; 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

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

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, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, 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 to remit or pay (or use tax credits to offset or otherwise satisfy), in an aggregate amount of \$4,170,000, all Taxes and Fees expected to become due and owing to various federal, state, local, and other applicable Authorities that arose prior to the Petition Date (including any Assessment determined by Audit or otherwise to be owed for periods prior to the Petition Date and, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to Assessments), and that the Debtors expect to become due and payable following the Petition Date, in each case, solely to the extent that such Taxes and Fees become payable in accordance with applicable law, to pay any postpetition obligations related thereto, and to pay postpetition Taxes and Fees in the ordinary course of the Debtors' business.

3. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in the Motion or this Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

5. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

6. Nothing in this Final Order shall be construed as authorizing the Debtors to pay any amounts on account of past due taxes or to prepay any taxes, except with respect to trust fund taxes that do not constitute property of the Debtors' estates.

7. 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.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. The Debtors shall provide to (a) the Committee's professionals, (b) counsel to the First Lien Agent, and (c) counsel to the Second Lien Agent, in reasonable detail, monthly reporting reflecting all payments made during the preceding month in connection with this Final

Order. 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 September MOR—*i.e.*, October 21, 2023).

10. Other than with respect to customs and import duties, prior to the payment of any amount in excess of \$100,000 pursuant to this Final Order, the Debtors shall use commercially reasonable efforts to provide at least three (3) business days’ written notice to the Committee, the First Lien Agent, and the Second Lien Agent (and otherwise, as soon as commercially practicable).

11. 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 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.

12. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

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

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

15. 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

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

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In re:)	Chapter 11
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PROTERRA INC, <i>et al.</i> , ¹)	Case No. 23-11120 (--- BLS)
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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, 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 to remit or pay (or use tax credits to offset or otherwise satisfy), in an aggregate amount of \$4,170,000, all Taxes and Fees expected to become due and owing to various federal, state, local, and other applicable Authorities that arose prior to the Petition Date (including any Assessment determined by Audit or otherwise to be owed for periods prior to the Petition Date and, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to Assessments), and that the Debtors expect to become due and payable following the Petition Date, in each case, solely to the extent that such Taxes and Fees become payable in accordance with applicable law, to pay any postpetition

obligations related thereto, and to pay postpetition Taxes and Fees in the ordinary course of the Debtors' business.

3. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in the Motion or this Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

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7. 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.

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10. Other than with respect to customs and import duties, prior to the payment of any amount in excess of \$100,000 pursuant to this Final Order, the Debtors shall use commercially reasonable efforts to provide at least three (3) business days’ written notice to the Committee, the First Lien Agent, and the Second Lien Agent (and otherwise, as soon as commercially practicable).

11. ~~9.~~ 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 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.

12. ~~10.~~ Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

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

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

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