

**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. 3 & 67
)	

**CERTIFICATION OF COUNSEL REGARDING *REVISED*
PROPOSED FINAL ORDER (I) AUTHORIZING MAINTENANCE,
ADMINISTRATION, AND CONTINUATION OF DEBTORS’ CUSTOMER
PROGRAMS 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 Maintenance, Administration, and Continuation of Debtors’ Customer Programs and (II) Granting Related Relief* [D.I. 3] (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. 67] (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”) and an objection from Ontario

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.



International Airport Authority [D.I. 160], 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 Ontario International Airport Authority 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

Pauline K. Morgan (No. 3650)
Andrew L. Magaziner (No. 5426)
Shella Borovinskaya (No. 6758)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: pmorgan@ycst.com
amagaziner@ycst.com
sborovinskaya@ycst.com

- and -

**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**

Paul M. Basta (admitted *pro hac vice*)
Robert A. Britton (admitted *pro hac vice*)
Michael J. Colarossi (admitted *pro hac vice*)
1285 Avenue of the Americas
New York, New York 10019
Tel: (212) 373-3000
Fax: (212) 757-3990
Email: pbasta@paulweiss.com
rbritton@paulweiss.com
mcolarossi@paulweiss.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Revised Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
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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. 3 & 67

**FINAL ORDER (I) AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF DEBTORS’ CUSTOMER PROGRAMS AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors² for entry of a final (this “Final Order”)

(a) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the “Customer Programs”) in the ordinary course of business and in a manner consistent with past practice, (b) authorizing the Debtors to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (c) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) 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 Article III of the United States Constitution; and this Court having found that

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

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 (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, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice or as set forth in the Motion.
3. The Debtors are authorized, but not directed, to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, including making payments to third parties (excluding third party staff augmentation that are otherwise considered wages) in connection with Customer Programs obligations arising prior to the Petition Date, which include (without limitation) any cash payments related to any warranty claims asserted prior to, on, or after the Petition Date, in an aggregate amount of \$1,200,000, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business without further Court order; *provided* that nothing in this Final Order shall (a) authorize the Debtors to modify or

terminate their obligations under a contract governing a Customer Program other than in accordance with the terms of such contract (including, where applicable, any contract terms requiring the consent of an affected non-Debtor counterparty) and/or (b) constitute a determination regarding the classification or treatment of pre-petition or post-petition warranty claims and/or obligations thereunder and each of the parties to the Customer Programs reserves all of their respective rights with respect thereto.

4. The Debtors shall provide monthly reporting to (a) the Official Committee of Unsecured Creditors' professionals, (b) counsel to the First Lien Agent, and (c) counsel to the Second Lien Agent of (i) all claims made against the Debtors during the preceding month, and (ii) all payments made during the preceding month in connection with the warranty programs towards the \$1.2 million cap and the remaining availability of the \$1.2 million cap at the end of the preceding month, made in connection with this Final Order; *provided* that such monthly reporting shall be provided by the deadline for the Debtors to file their applicable monthly operating report (the "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).

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. 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.

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

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

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.

EXHIBIT B

Blackline

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

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(a) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the “Customer Programs”) in the ordinary course of business and in a manner consistent with past practice, (b) authorizing the Debtors to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (c) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) 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 Article III of the United States

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

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 (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, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice or as set forth in the Motion.

3. The Debtors are authorized, but not directed, to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, including making payments to third parties (excluding third party staff augmentation that are otherwise considered wages) in connection with Customer Programs obligations arising prior to the Petition Date, which include (without limitation) any cash payments related to any warranty claims asserted prior to, on, or after the Petition Date, in an aggregate amount of \$1,200,000, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business;

without further Court order; provided that nothing in this Final Order shall (a) authorize the Debtors to modify or terminate their obligations under a contract governing a Customer Program other than in accordance with the terms of such contract (including, where applicable, any contract terms requiring the consent of an affected non-Debtor counterparty) and/or (b) constitute a determination regarding the classification or treatment of pre-petition or post-petition warranty claims and/or obligations thereunder and each of the parties to the Customer Programs reserves all of their respective rights with respect thereto.

4. The Debtors shall provide monthly reporting to (a) the Official Committee of Unsecured Creditors' professionals, (b) counsel to the First Lien Agent, and (c) counsel to the Second Lien Agent of (i) all claims made against the Debtors during the preceding month, and (ii) all payments made during the preceding month in connection with the warranty programs towards the \$1.2 million cap and the remaining availability of the \$1.2 million cap at the end of the preceding month, made in connection with this Final Order; provided that such monthly reporting shall be provided by the deadline for the Debtors to file their applicable monthly operating report (the "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).

5. ~~4.~~ 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. ~~5.~~ 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.

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

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

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