

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. 7 & 69
)	

**CERTIFICATION OF COUNSEL REGARDING *REVISED*
PROPOSED FINAL ORDER (I) AUTHORIZING PAYMENT OF CERTAIN
PREPETITION EMPLOYEE WAGES AND BENEFITS, 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 Payment of Certain Prepetition Employee Wages and Benefits, and (II) Granting Related Relief* [D.I. 7] (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. 69] (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 responses from the United States Trustee (the “U.S. Trustee”), the Official Committee of Unsecured Creditors (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: Proterra Inc (1379); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.



“Committee”), and the United Steelworkers (the “United Steelworkers” and, collectively with the U.S. Trustee and the Committee, the “Responders”), 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 Responders 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
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
PROTERRA INC, <i>et al.</i> , ¹)	
	)	Case No. 23-11120 (BLS)
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket Nos. 7 & 69

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO PAY PREPETITION EMPLOYEE
WAGES AND BENEFITS, 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 (i) pay certain prepetition wages, salaries, other compensation, and reimbursable expenses, and (ii) continue employee benefits programs in the ordinary course of their business, including payment of certain prepetition obligations related thereto, 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 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

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 (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

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

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 pay, in an aggregate amount of \$12,192,410 prepetition obligations in connection with the Compensation and Benefits Programs, and to pay any postpetition Compensation and Benefits Programs obligations.
3. The Debtors are authorized to pay or remit, with respect to each program outlined below, each as more fully described in the Motion, the following final amounts upon entry of this Final Order:

Prepetition Compensation and Benefits Obligations	Final Amount
Unpaid Wages	\$7,074,316
<i>Wage Deductions</i>	\$1,236,000
Non-Insider Employee Cash Bonus Programs	\$4,800
Expenses and Reimbursements	\$120,000
Employee Benefits Programs	\$4,775,494
<i>Insurance Benefits</i>	\$533,288
<i>Other Employee Benefits</i>	\$4,242,205
Employee Compensation Tax Obligations	\$55,800
Payroll Processor Fees	\$162,000
Total	\$12,192,410

4. The Debtors are authorized to continue the Compensation and Benefits Programs described in the Motion in accordance with historical practice in the ordinary course of the Debtors’ business, *provided* that the Debtors are not authorized to continue the Executive

Employee Severance Agreements; *provided, further*, that this Final Order does not authorize the Debtors to grant additional awards under the Equity Incentive Program during these chapter 11 cases.

5. The Debtors are authorized to continue to honor all prepetition and postpetition obligations to the RIF Workers and the COI Workers; *provided, that*, payments on account of prepetition obligations to RIF Workers and COI Workers will not exceed that amounts set forth in this Final Order.

6. The Debtors are not authorized to make any payments to “insiders” of the Debtors, as that term is defined by section 101(31) of the Bankruptcy Code, under the Annual Cash Bonus Programs.

7. The Debtors may pay and remit any and all Wage Deductions, Employee Compensation Tax Obligations, and Payroll Taxes in the ordinary course of business on a postpetition basis.

8. The Debtors are authorized to pay any Paid Time Off obligations as required by applicable state law.

9. The Debtors are authorized to modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits in the ordinary course during these chapter 11 cases in the Debtors’ sole discretion and without the need for further Court approval, subject to applicable law including 11 U.S.C. § 1113, including, without limitation, modifying, extending, or changing the terms of the EBA with the consent of the Union; *provided* that the Debtors shall use commercially reasonable efforts to provide the Committee, the First Lien Agent, and the Second Lien Agent, with at least three (3) calendar days’ written notice (and otherwise, as soon as commercially practicable) of any material changes or

modifications to their Compensation and Benefits Programs; *provided, further*, that payments on account of prepetition obligations under the EBA will not exceed the amounts provided in this Final Order.

10. The Debtors are authorized to establish the Self-Insured Escrow Account and deposit the Self-Insured Escrow Amount as soon as reasonably practicable following the Petition Date, *provided* that the Self-Insured Escrow Account will maintain a balance equal to the Self-Insured Escrow Amount during the pendency of the Chapter 11 Cases.

11. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program, in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of these chapter 11 cases, regardless of when accrued.

12. 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 of all post-petition payments to employees and insiders relating to pre-petition activities and liabilities. 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).

13. 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.

14. 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; (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; or (i) to approve or authorize any prepetition or postpetition payment pursuant to the Debtors' prepetition Key Employee Retention Plan ("KERP") and all rights of the Committee in connection with the KERP and the payments made thereunder are expressly preserved.

15. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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

EXHIBIT B

Blackline

**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)
)	
	)	Re: Docket Nos. ---7 & ---69

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO PAY PREPETITION EMPLOYEE
WAGES AND BENEFITS, 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 (i) pay certain prepetition wages, salaries, other compensation, and reimbursable expenses, and (ii) continue employee benefits programs in the ordinary course of their business, including payment of certain prepetition obligations related thereto, 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 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

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 (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

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

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 pay, in an aggregate amount of ~~\$11,192,410~~12,192,410 prepetition obligations in connection with the Compensation and Benefits Programs, and to pay any postpetition Compensation and Benefits Programs obligations.

3. The Debtors are authorized to pay or remit, with respect to ~~the~~ each program outlined below, each as more fully described in the Motion, the following final amounts upon entry of this Final Order:

Prepetition Compensation and Benefits Obligations	Final Amount
Unpaid Wages	\$6,074,316 <u>7,074,316</u>
<i>Wage Deductions</i>	\$1,236,000
Non-Insider Employee Cash Bonus Programs	\$4,800
Expenses and Reimbursements	\$120,000
Employee Benefits Programs	\$4,775,494
<i>Insurance Benefits</i>	\$533,288
<i>Other Employee Benefits</i>	\$4,242,205
Employee Compensation Tax Obligations	\$55,800
Payroll Processor Fees	\$162,000
Total	\$11,192,410 <u>12,192,410</u>

4. The Debtors are authorized to continue the Compensation and Benefits Programs described in the Motion in accordance with historical practice in the ordinary course of the Debtors' business, *provided* that the Debtors are not authorized to continue the Executive Employee Severance Agreements; *provided, further*, that this Final Order does not authorize the Debtors to grant additional awards under the Equity Incentive Program during these chapter 11 cases.

5. The Debtors are authorized to continue to honor all prepetition and postpetition obligations to the RIF Workers and the COI Workers; *provided, that*, payments on account of prepetition obligations to RIF Workers and COI Workers will not exceed that amounts set forth in this Final Order.

6. The Debtors are not authorized to make any payments to "insiders" of the Debtors, as that term is defined by section 101(31) of the Bankruptcy Code, under the Annual Cash Bonus Programs.

7. ~~6.~~The Debtors may pay and remit any and all Wage Deductions, Employee Compensation Tax Obligations, and Payroll Taxes in the ordinary course of business on a postpetition basis.

8. The Debtors are authorized to pay any Paid Time Off obligations as required by applicable state law.

9. ~~7.~~The Debtors are authorized to modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits in the ordinary course during these chapter 11 cases in the Debtors' sole discretion and without the need for further Court approval, subject to applicable law including 11 U.S.C. § 1113, including,

without limitation, modifying, extending, or changing the terms of the EBA; ~~provided~~ with the consent of the Union; provided that the Debtors shall use commercially reasonable efforts to provide the Committee, the First Lien Agent, and the Second Lien Agent, with at least three (3) calendar days' written notice (and otherwise, as soon as commercially practicable) of any material changes or modifications to their Compensation and Benefits Programs; provided, further, that payments on account of prepetition obligations under the EBA will not exceed the amounts provided in this Final Order.

10. ~~8.~~ The Debtors are authorized to establish the Self-Insured Escrow Account and deposit the Self-Insured Escrow Amount as soon as reasonably practicable following the Petition Date, provided that the Self-Insured Escrow Account will maintain a balance equal to the Self-Insured Escrow Amount during the pendency of the Chapter 11 Cases.

11. ~~9.~~ The Debtors are authorized, but not directed, to continue the Workers' Compensation Program, in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of these chapter 11 cases, regardless of when accrued.

12. 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 of all post-petition payments to employees and insiders relating to pre-petition activities and liabilities. 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).

13. ~~10.~~ 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.

14. ~~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 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; or (i) to approve or authorize any prepetition or postpetition payment pursuant to the Debtors' prepetition Key Employee Retention Plan ("KERP") and all rights of the Committee in connection with the KERP and the payments made thereunder are expressly preserved.

15. ~~12.~~ Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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