

**MAUREEN A. HARRINGTON** (Cal. SBN 194606)  
GREENFIELD LLP  
55 S. Market Street, Suite 1500  
San Jose, California 95113  
Telephone: (408) 995-5600  
Email: mharrington@greenfieldlaw.com

Attorneys for Santa Clara Valley Transportation Authority

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

PROTERRA INC., et al.,

Debtor.

Case No. 23-11120 (BKS)

(Jointly administered)

**RESPONSE OF SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
TO DISTRIBUTION TRUSTEE'S SECOND NOTICE  
OF CLAIMS PREVIOUSLY SATISFIED**



Santa Clara County Transportation Authority (“VTA”) by and through its undersigned counsel, hereby files this response (the “Response”) to the “*Distribution Trustee’s Second Notice of Claims Previously Satisfied* [Docket No. 1462]” filed by the Distribution Trustee in the above-captioned matter (the “Trustee”, and, in support thereof, respectfully states as follows:

1. Prior to the initiation of this case, VTA entered into two contracts with Proterra, Inc. (“Proterra”) for the purchase of electric buses and charging equipment. Contract No. P16265 for the purchase of five electric buses was effective on September 20, 2017 (“Contract No. 1”). [Docket #415-1.] (Exhibit 1 hereto.) Contract No. P16130 was effective October 18, 2018, for the purchase of five electric buses (“Contract No. 2”). [Docket #415-2.] Contract No. 1 and Contract No. 2 are referred to together as the “Proterra Contracts”.<sup>1</sup> Ten buses were delivered to VTA by Proterra pursuant to the Proterra Contracts.

2. As of the commencement of this case on August 7, 2023 (the “Petition Date”) the Debtor scheduled the sum of \$11,571.26 as an unsecured undisputed, liquidated claim due to VTA. [Docket #338 at p. 257.]

3. The ten buses delivered by Proterra were plagued by continuing problems. While VTA had performance issues with many of the buses purchased under the Proterra Contracts, the most alarming incident occurred on September 1, 2023, when a Proterra bus caught fire while in a VTA maintenance facility (the “Bus Fire”). VTA employees pushed the burning bus out of the facility thereby avoiding damage to the structure and other vehicles, but some employees required treatment for smoke inhalation. The bus that burned was purchased under the provisions of

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<sup>1</sup> The Proterra Contracts contain numerous additional attachments and amendments that are incorporated into its terms, all of which are in the possession of the Debtor and should therefore be considered as within the definition of the “Proterra Contracts”.

Contract No. 2, and is identified as Bus #9505.

4. VTA is informed and believes and on that basis alleges that Bus #9505 delivered by Proterra is a total loss and the damage suffered by VTA as a result of the Bus Fire is at least \$880,786.98.

5. VTA has been forced to remove all the Proterra buses from service. Investigation of the specific cause of the Bus Fire is ongoing, and therefore VTA is not yet able to ascertain if all the buses provided by Proterra are impacted by the defect which caused the Bus Fire. It is therefore not presently clear if all the Proterra buses are a complete loss.

6. The Debtors listed the Proterra Contracts and additional contracts with VTA as contracts with "Proterra Operating Company, Inc." in its "NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) PROPOSED CURE AMOUNTS." [Docket #279 at p. 44.] However, a cure amount was provided only for Contract No. 1 [Contract No. P16265] in the amount of \$11,571.25. The remaining contractual obligations between VTA and the Debtor which are sought to be assumed and assigned are scheduled with no cure amount. [Docket #279 at p. 44.]

7. VTA objected to the cure amount proposed by the Debtor in its "OBJECTION OF SANTA CLARA VALLEY TRANSPORTATION AUTHORITY TO NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNT" filed herein on October 16, 2023. [Docket #415.]

8. Assumption and assignment of contracts requires a cure of defaults under the contract, compensation for defaults, and adequate assurance of future performance. 11 U.S.C. § 365(b)(1)(A)-(C). VTA objects to the assumption and assignment of its contracts with the Debtor, given its history of failure to provide VTA

1 with safe, operable buses, as evidenced by, *inter alia*, the recent Bus Fire which has  
 2 required that the entire fleet of Proterra buses be removed from service.

3 9. It is well established that “the debtor must cure all defaults, assure  
 4 future performance, and make the other contracting party whole before it may be  
 5 permitted to assume the agreement.” *Kimmelman v. Port Auth. of N.Y. & N.J. (In re*  
 6 *Kiwi Int’l Air Lines, Inc.)*, 344 F.3d 311, 318 (3d Cir. 2003).

7 10. Based upon the foregoing, VTA objects to the assertion that its claim was  
 8 satisfied with a cure amount of zero.

9 11. VTA reserves the right to make such other and further objections as may  
 10 be appropriate or necessary.

11 WHEREFORE, VTA is owed no less than \$892,358.23 and objects an order  
 12 finding its claim has been satisfied in full.

13  
 14 GREENFIELD LLP

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 16 Dated: November 26, 2024

17 By: /s/ Maureen A. Harrington  
 18 MAUREEN A. HARRINGTON  
 19 Attorneys for Santa Clara Valley  
 20 Transportation Authority  
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