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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 ALEXANDRIA DIVISION**

| | | |
|------------------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| ENVIVA INC., <i>et al.</i> , |) | Case No. 24-10453 (BFK) |
| Debtors. ¹ |) | (Jointly Administered) |
| |) | |
| |) | |

**FINAL ORDER
 (I) AUTHORIZING THE DEBTORS
 TO (A) MAINTAIN THE CASH MANAGEMENT
 SYSTEM, (B) CONTINUE USING EXISTING BUSINESS FORMS,
 AND (C) CONTINUE INTERCOMPANY TRANSFERS, (II) PROVIDING
 ADMINISTRATIVE EXPENSE PRIORITY STATUS FOR POSTPETITION
 INTERCOMPANY CLAIMS, AND (III) GRANTING RELATED RELIEF**

¹ Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Final Order*”) (a) authorizing the Debtors to (i) maintain their existing Bank Accounts and Cash Management System, (ii) continue using their existing Business Forms, (iii) pay any undisputed prepetition Bank Fees and continue to pay the Bank Fees in the ordinary course of business, and (iv) continue to engage in Intercompany Transfers in the ordinary course of business and consistent with past practices, (b) providing administrative expense priority status for postpetition payments made on account of Intercompany Transfers, and (c) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the 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 the Court having reviewed the Motion and the First Day Declarations; and the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

1. The Debtors are authorized, on a final basis, to: (a) maintain their existing Bank Accounts and Cash Management System, substantially as described in the Motion and as identified on **Exhibit D** thereto; (b) continue using their existing Business Forms; (c) pay any undisputed prepetition Bank Fees and continue to pay the Bank Fees in the ordinary course of business; and (d) continue to engage in Intercompany Transfers in the ordinary course of business and consistent with past practices, in each case, subject to the limitations set forth herein.

2. The Debtors are authorized, on a final basis, to: (a) continue to use, in the same names and with the same account numbers, the Bank Accounts in existence as of the Petition Date, as described in the Motion and identified on **Exhibit C** thereto, including any prepetition accounts maintained with Banks not included on the list of Depositories Authorized to Hold Bankruptcy Estate Funds, dated December 20, 2023 (the “*UST List*”); *provided*, that notwithstanding anything to the contrary in this Final Order, the Debtors shall not open any new bank account at an institution not included on the UST List without consent from the U.S. Trustee, the Required DIP Creditors, the official committee of unsecured creditors (the “*Committee*”) or further order of the Court; *provided, further*, that the DIP Funding Account (as defined in the DIP Documents) shall be funded, maintained and used by the Debtors solely in accordance with the terms of the DIP Order and the DIP Documents; (b) treat their Bank Accounts for all purposes as debtor-in-possession accounts; (c) collect, concentrate, deposit funds in, and withdraw and disburse funds from the Bank Accounts in accordance with the Cash Management System by all usual means, including, but not limited to, checks, wire transfers, ACH transfers and debits, electronic funds transfers, and other debits; (d) use, in their present form, all pre-printed correspondence and Business Forms (including checks and letterhead) without reference to the Debtors’ status as debtors in possession; *provided*, that once the Debtors’ supplies of pre-printed correspondence and Business Forms have been

exhausted, the Debtors shall, when reordering, require the designation “Debtor in Possession” and the corresponding bankruptcy case number on all such documents; and (e) pay the Bank Fees, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts. Any postpetition fees, costs, charges, and expenses, including Bank Fees or charge-backs payable to the Banks that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code. To the extent any of the Debtors’ Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have forty-five days (or such additional time to which the U.S. Trustee may agree) from the date of entry of the Interim Order to either bring such Bank Accounts into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court; *provided*, that nothing in the foregoing shall prevent the Debtors from seeking further relief from the Court to the extent that such agreement cannot be reached within that time period (or such other period as agreed to by the Debtors and the U.S. Trustee).

3. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

4. The Banks are authorized and directed to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

5. Subject to applicable bankruptcy or other law, any existing deposit agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect.

6. The Debtors and the Banks may, without further order of the Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business pursuant to the terms of any existing deposit agreements, including, without limitation, the closing of Bank Accounts or the opening of new bank accounts, and enter into any ancillary agreement, including deposit account control agreements, associated with the foregoing; *provided*, that the Debtors shall give notice within three (3) days to the U.S. Trustee, counsel to the administrative agent under the Senior Secured Credit Facility, counsel to the Ad Hoc Group, counsel to the 2026 Notes Trustee, and counsel to the Committee of (a) the opening of any new bank account or closing of any Bank Account, (b) entry into any agreement ancillary thereto, or (c) any material changes to the Cash Management System; *provided, further*, that the Debtors shall open any such new bank account at banks that have executed a UDA with the U.S. Trustee or at such banks that are willing to immediately execute such agreement.

7. The relief granted in this Final Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Bank.

8. Except for checks and other debits which Debtors have instructed the Banks to dishonor by issuing “stop payment” orders to the Banks, the Banks are authorized to conclusively

presume payment of such items has been authorized by the Court and, regardless of when drawn, to honor any request for a bank payment or draw on the Bank Accounts and to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Debtors' Bank Accounts.

9. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

10. In the course of providing cash management services to the Debtors, each of the Banks is authorized, without further order of this Court, to deduct all applicable fees and expenses (including Bank Fees), whether arising prepetition or postpetition, from the appropriate Bank Accounts of the Debtors consistent with historical practice, and further, to charge back to the appropriate Bank Accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Each Bank is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of: (a) all checks drawn on the Debtors' accounts that have been cashed at such Banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date and all ACH transactions, wire and other transfers that may have been initiated but not cleared on or before the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection

therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as to service charges for the maintenance of the Cash Management System.

12. The Debtors are authorized to maintain the Corporate Credit Card Program and the Gas Card Program in connection with the Cash Management System, in their discretion and in the ordinary course of business, subject to the limitations of this Final Order and the final order granting the Wages Motion at Docket No. 370.

13. Subject to the terms set forth herein, any bank, including the Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to, on, or after the Petition Date should be honored pursuant to any order of this Court, whether or not the Banks believe the payment is authorized by an order of this Court. No bank shall be liable to the Debtors or their estates for honoring or dishonoring a prepetition or postpetition check or other item drawn on any of the Bank Accounts as a result of this Final Order, at the direction of the Debtors, or as a result of an inadvertent mistake.

14. Any and all banks, including the Banks, are further authorized to: (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account; and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided*, that the Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

15. The Debtors are authorized to enter into and engage in postpetition Intercompany Transfers (including, for the avoidance of doubt, the Intercompany Arrangements) in the ordinary course of business consistent with historical practice as and to the extent permitted under the DIP Documents (as defined in the DIP Order); *provided*, that on a monthly basis, the Debtors shall

provide to counsel to the Committee a variance report showing the net receipts and disbursements between the Debtors and their non-Debtor affiliates for such month and comparing such amounts with those of the prior three (3) months. For the avoidance of doubt, monthly variance reports shall be provided within 10 days of the end of such calendar month. Pursuant to sections 364(b) and 503(b)(1) of the Bankruptcy Code, all valid claims of any Debtor or non-Debtor against any of the Debtors arising as a result of any ordinary course postpetition Intercompany Transfers are hereby accorded, as and to the extent provided under applicable law, administrative expense priority status, subject and junior to any DIP Superpriority Claims and 507(b) Claims (each as defined in the DIP Order); *provided*, that the rights of the Debtors, the Committee, the Ad Hoc Group, and the U.S. Trustee in respect of the treatment of any such claims under a chapter 11 plan are fully reserved hereunder. In connection therewith, the Debtors shall continue to maintain current records with respect to all transfers of cash within the Cash Management System so that all such transfers, including the postpetition Intercompany Transfers, may be readily ascertained, traced, and recorded properly on applicable intercompany accounts, and the Debtors shall provide reasonable access to such records to counsel to the Ad Hoc Group, counsel to the Committee, and the U.S. Trustee.

16. In addition, on a bi-weekly basis beginning Wednesday, May 22, 2024, for the two-week period ending Friday, May 17, 2024, the Debtors shall provide counsel to the Committee with a matrix/schedule of all Intercompany Transfers in the two (2) weeks prior, which schedule shall include: (a) the Debtor that made the Intercompany Transfer; (b) the Debtor(s) or non-Debtor affiliates that received the Intercompany Transfer; (c) the date and amount of such transaction and the name of the counter party; (d) the general purposes of such transfer; (e) whether the Intercompany Transfer involved assets that were unencumbered as of the Petition Date; and

(f) such other information relating to Intercompany Transfers as may reasonably be requested by counsel to the Committee. For the avoidance of doubt, bi-weekly reports shall be provided within five (5) days of the end of such bi-weekly period. The Debtors shall also, no later than May 22, 2024, provide counsel to the Committee with a matrix/schedule of all Intercompany Transfers for the period starting on the Petition Date through May 3, 2024, and which schedule shall include such information set forth in this paragraph 16(a)-(f). The Debtors, the Committee, and the Ad Hoc Group reserve all rights with respect to intercompany balances, including cost allocations, as well as the priority or status of any Intercompany Transfer or claim.

17. The Debtors shall provide counsel to the Committee with as much advance notice as is reasonably practicable, but in no fewer than two (2) business days, prior to any Intercompany Transfer in excess of \$35,000,000 (a) between Debtors, (b) to a non-Debtor affiliate, and (c) from subsidiaries of Enviva Inc. that were not party to documents governing the Prepetition Funded Debt (as defined in the Nunziata Declaration) as of the Petition Date to entities whose assets were encumbered by the Prepetition Funded Debt as of the Petition Date (whether such entity is a Debtor or non-Debtor affiliate); *provided, however*, that the Debtors will use commercially reasonable efforts to provide counsel to the Committee with historical Intercompany Transfer data by May 22, 2024, or as soon as reasonably practicable thereafter. Upon the Committee's receipt of such data, the Debtors and the Committee agree to work in good faith on any modifications to the reporting or advance notice provided for pursuant to this Final Order following the Committee's review of such information. The Committee reserves its right to seek relief from the Court to the extent such modifications are not consensually agreed upon with the Debtors.

18. Nothing contained herein shall prevent the Banks from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such Bank Accounts or services and the terms of this Final Order.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

20. Nothing contained in the Motion or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any security interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

21. 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 any Bank Fees.

22. Unless specifically provided herein, and notwithstanding any payment made or actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, including the Committee's, rights to dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption

or adoption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

23. Notwithstanding the relief granted in this Final Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 24] (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Final Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control. For the further avoidance of doubt, the Debtors are not authorized to make any payments to, or on behalf of, a non-Debtor affiliate, except as permitted by this Final Order or other order of the Court.

24. The requirements of Bankruptcy Rule 6004(a) are waived.

25. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

26. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

27. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: May 1 2024
Alexandria, Virginia

/s/ Brian F Kenney
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Entered On Docket: May 1 2024

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SEEN AND NO OBJECTION:

/s/ Nicholas S. Herron

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Office of the United States Trustee

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Adolyn C. Wyatt