

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

In re:

PROTERRA INC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11120 (____)
)
) (Joint Administration Requested)
)

**DEBTORS'
MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF (A) LIEN CLAIMANTS,
(B) 503(B)(9) CLAIMANTS, AND (C) CRITICAL VENDORS,
(II) AUTHORIZING THE DEBTORS TO PAY CLAIMS IN RESEPECT
OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (the “Motion”):²

Relief Requested

1. The Debtors seek entry of an interim order (the “Interim Order”) and a final order (the “Final Order” and, together with the Interim Order, the “Proposed Orders”), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition claims held by certain (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors (each as defined

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 A detailed description of the Debtors and their business, including the facts and circumstances giving rise to these chapter 11 cases and supporting this motion, is set forth in the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference. Capitalized terms used but not defined in this motion have the meanings ascribed to them in the First Day Declaration.



below and, collectively, the “Vendor Claimants”), collectively, in an amount not to exceed \$17,718,000 on an interim basis and \$35,638,000 on a final basis, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (b) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, (c) authorizing, but not directing, the Debtors to make payments with respect to Outstanding Orders in the ordinary course of business, and (d) granting related relief. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing to consider approval of this Motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to a final order with respect to this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue of these chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a), 363(b), and 503(b)(9) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1(f).

Background

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have contemporaneously filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Vendor Claimants

7. As further explained herein and in the First Day Declaration and in the *Declaration of Justin D. Pugh in Support of Debtors’ (I) Cash Collateral Motion and (II) Vendor Claimants Motion* filed contemporaneously herewith (the “Pugh Declaration”), the Debtors have three Business Lines, each of which is heavily reliant on the prompt shipment of goods and provision of services from suppliers both in the United States and across the world. The Debtors are a leader in the U.S. electric transit bus market through their transit Business Line, Proterra Transit, which designs, develops, and sells electric transit buses as an original equipment manufacturer (“OEM”) for North American public transit agencies, airports, universities, and other commercial transit fleets. Proterra Transit vehicles showcase and validate the Debtors’ electric vehicle technology platform through rigorous daily use by a large group of sophisticated customers focused on meeting the wide-ranging needs of the communities that they serve.

8. The Debtors' commercial electrification solutions Business Line, Proterra Powered, among other things, designs and manufactures proprietary battery systems and electrification solutions for global commercial vehicle OEM customers. These OEMs build vehicles in varying sizes, including delivery trucks, school buses, and coach buses, as well as construction and mining equipment, and other applications. To date, Proterra Powered has partnered with more than a dozen OEMs, spanning several types of buses and off-highway categories, and has delivered battery systems and electrification solutions for more than 2,300 vehicles to the Debtors' OEM customers. Proterra Powered also designs and integrates electric drivetrains for distribution with its battery pack products.

9. The Debtors' energy Business Line, Proterra Energy, among other things, designs, sells, and services turnkey fleet-scale, high-power charging solutions and software services, currently offering various charger capacities which can be tailored for small and large fleet solutions. To date, Proterra Energy has installed more than 110 megawatts of charging infrastructure across North America.

10. The Debtors rely on timely and frequent delivery of goods and services in order to manufacture and service their products. Accordingly, it is essential that the Debtors maintain their relationship with, and maintain the ability to honor, prepetition payment obligations to the Vendor Claimants (the "Vendor Obligations") in order to prevent any unexpected or inopportune interruption to the Debtors' operations during these chapter 11 cases. The services and goods that the Vendor Claimants supply to the Debtors are vital to the Debtors' business and any loss of access to, or delay in the delivery of, such goods and services would materially harm the Debtors' business and operations. Authorization to pay the Vendor Claimants in the ordinary course of business is necessary in order to minimize disruption to the Debtors' operations, ensure

uninterrupted operation of the Debtors' business, and allow for a seamless transition through these chapter 11 cases, for the benefit of all parties in interest.

11. In order to determine which vendors to designate as Vendor Claimants, the Debtors and their advisors undertook a comprehensive process to ensure that, among other criteria, only vendors that were necessary to preserve the value of the estates were designated as Vendor Claimants. It is only these Vendor Claimants whom the Debtors request to pay pursuant to the Proposed Orders.

12. The Debtors first obtained a master "accounts payable" schedule of approximately 600 vendors with balances outstanding as of the Petition Date (excluding the vendors which were analyzed in connection with the other first day motions, such as utility providers or insurance brokers). Thereafter, the Debtors and their advisors determined whether each vendor fell under one or more of the following categories: (i) Shipper or Warehouseman; (ii) such vendor provided goods which were received by the Debtors within the twenty (20) days prior to the Petition Date (the 503(b)(9) Claimants); and (iii) such vendor met certain other criteria, described below in paragraph 22, that led the Debtors to denote such vendor as a Critical Vendor. It is such vendors that fall into one or more of the foregoing categories for which the Debtors seek authority, but not direction, to pay pursuant to the Proposed Orders.

13. The following table summarizes the Vendor Obligations, the Debtors' estimate of the Vendor Obligations accrued as of the Petition Date, and the amounts of Vendor Obligations the Debtors expect to become due within thirty (30) days of the Petition Date.

Category	Amount Outstanding as of Petition Date	Amount Due Within 30 Days (Interim Order)
Lien Claimants	\$910,000	\$867,000
503(b)(9) Claimants	\$22,090,000	\$7,681,000
Critical Vendors	\$12,638,000	\$9,170,000
Total Amounts	\$35,638,000	\$17,718,000

I. The Lien Claimants (Shippers and Warehousemen)

14. In operating their business, the Debtors use and make payments to shippers, common carriers, and distributors (collectively, the “Shippers”) to ship, transport, and otherwise facilitate the movement of inventory, supplies, merchandise, tools, equipment, components, materials, and other items (collectively, the “Goods”), some of which are stored at third party warehouses (the “Warehousemen” and, together with the Shippers, the “Lien Claimants”, and such payments, the “Shipping and Warehousing Charges”).

15. The services provided by the Shippers and Warehousemen are critical to the Debtors’ day-to-day operations. If certain of the Goods in transit are not timely delivered, the Debtors’ business operations would be impaired, precluding or frustrating them from completing the manufacturing process for electric transit buses, batteries, drivetrains, and other products.

16. Because of the commencement of these chapter 11 cases, certain Shippers and Warehousemen who hold Goods for delivery to or from the Debtors may refuse to release the Goods pending receipt of payment for their prepetition services. Under some state laws, a Shipper or Warehouseman may have a lien on the Goods in its possession to secure charges or expenses

incurred for the transportation or storage of Goods.³ Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen, as bailees, may be entitled to adequate protection as holders of possessory liens. As discussed, because of the Debtors' supply needs, any delay in shipments could disrupt the Debtors' operations and could harm the Debtors' sales process and restructuring efforts.

17. It is thus imperative that the Debtors be authorized to pay the Shipping and Warehousing Charges, on the terms set forth in the Proposed Orders, whether they arose prior to or after the Petition Date, that the Debtors determine in their business judgment they must pay to ensure the uninterrupted shipment and delivery of Goods.

18. As of the Petition Date, the Debtors estimate that approximately \$910,00 is owed to the Lien Claimants (including Shippers and Warehousemen), approximately \$867,000 of which is expected to become due prior to a final hearing on this Motion. To continue to have access to the goods and services provided by the Lien Claimants, including securing the release of any such liens the Lien Claimants may have, the Debtors request authority, but not the direction, to pay the prepetition Lien Claims.

II. The 503(b)(9) Claimants

19. The Debtors have identified certain claims that may be entitled to priority status under section 503(b)(9) of the Bankruptcy Code because they are undisputed obligations for goods received from various vendors (the "503(b)(9) Claimants") by the Debtors in the ordinary course of business in the twenty (20) days prior to the Petition Date. The Debtors seek, in their discretion,

³ For example, section 7-209 of the Uniform Commercial Code provides, in pertinent part, that "[a] warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to the law." U.C.C. § 7-209(a) (2012).

to pay certain 503(b)(9) Claims as they come due in the ordinary course of business, instead of satisfying the 503(b)(9) Claims upon confirmation of a chapter 11 plan.

20. Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term executory contracts but, rather, the Debtors obtain goods or other materials from such claimants on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims (each, a "503(b)(9) Claim"), or demand payment in cash on delivery. Such refusal or prejudicial trade terms could negatively affect the Debtors' estates as the Debtors' business are dependent on the steady flow of goods and materials through their supply chain. Even if the 503(b)(9) Claimants were not entitled to priority status under the Bankruptcy Code, the Debtors would still seek to pay most, if not all, of their claims in the ordinary course as a Critical Vendor given their importance to the Debtors and their business.

21. As of the Petition Date, the Debtors estimate that approximately \$22,090,000 is owed on account of 503(b)(9) Claims, approximately \$7,681,000 of which is expected to become due prior to the final hearing on this Motion. To continue to have access to the goods provided by the 503(b)(9) Claimants, the Debtors request authority, but not direction, to pay the 503(b)(9) Claims as they become due in the ordinary course of business.

III. Critical Vendor Claims

22. With the assistance of their advisors, the Debtors have spent significant time reviewing and analyzing their books and records, consulting with the Debtors' managers, and reviewing contracts and supply agreements, to identify certain critical business relationships and suppliers of goods and services—the loss of which would immediately and irreparably harm their business. In this process, the Debtors considered a variety of factors, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;

- whether a vendor is a sole-source, limited-source, or high volume provider of goods or services critical to the Debtors' business operations;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases; and
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis.

23. Through this analysis, the Debtors identified certain vendors (collectively, the "Critical Vendors") and, such vendors' claims, the "Critical Vendor Claims") that supply products and services that are essential to the Debtors' go-forward operations. Additionally, not only do the Debtors rely heavily on the Critical Vendors to deliver current orders, but they also rely on such Critical Vendors for all future deliveries. Therefore, replacing Critical Vendors is often time consuming, impossible, or cost prohibitive.

24. Based on the above-listed criteria, the Debtors identified a roster of Critical Vendors that generally fall into one or both of the following categories: (a) parts and equipment suppliers; and (b) specialized service vendors.

- *Parts and Equipment Suppliers.* The Debtors rely on certain Critical Vendors to provide specialized parts, supplies, and technical equipment essential to the Debtors' operations (the "Parts and Equipment Suppliers"). The Parts and Equipment Suppliers provide the Debtors with supplies and equipment specifically tailored to meet the Debtors' business needs and to comply with various regulations. Locating and agreeing to terms with replacement vendors may involve extensive testing and resulting in needless delay and costs. Because the Debtors cannot immediately replace

these vendors, the Parts and Equipment Suppliers continued supply is essential to the Debtors' efforts to continue uninterrupted operations and to ensure that their business operate at maximum safety and efficiency.

- *Specialized Service Vendors.* In the ordinary course of business, the Debtors use a variety of vendors to provide routine operational services, ranging from general maintenance to specialized engineering in connection with operation of their business. Due to the specialized, technical, and often hazardous nature of some of the services involved, certain of these services can only be obtained from vendors with specialized knowledge (the "Specialized Service Vendors"). For example, routine services that could be performed for other companies by a wide range of vendors (*e.g.*, wiring harness manufacturers) may only be performed for the Debtors by certain Specialized Service Vendors possessing specialized knowledge, technical expertise, or required licensing. Due to the limited availability of vendors able to provide the Debtors with these specialized services that are routine to the operation of the Debtors' business, the Debtors believe that certain Specialized Service Vendors may refuse to provide postpetition services to the Debtors if all or a portion of their prepetition claims are not satisfied. Accordingly, the Debtors believe that having the authority to satisfy the prepetition claims of the Specialized Service Vendors is crucial to their ability to continue to operate their business on an uninterrupted basis.

25. Any delay in the provision of essential goods, equipment, and/or specialized maintenance and repair services, and any disruption to the relationship between the Debtors and the Critical Vendors, would cause irreparable harm to the Debtors' business. Accordingly, under the circumstances, the Debtors maintain that paying Critical Vendor Claims on the terms proposed is both necessary and essential to their ability to achieve their chapter 11 objectives and preserve the value of their estates for the benefit of their various constituencies.

26. As of the Petition Date, the Debtors estimate that approximately \$12,638,000 in Critical Vendor Claims are outstanding, approximately \$9,170,000 of which is expected to become due prior to a final hearing on this Motion. To continue to have access to the goods and services provided by the Critical Vendors, the Debtors request authority, but not the direction, to pay the prepetition Critical Vendor Claims on the terms proposed herein.

IV. Trade Terms Conditions

27. Subject to the Court’s approval, the Debtors intend to pay the Vendor Obligations as set forth herein. To that end, in return for paying the Vendor Obligations either in full or in part, the Debtors propose that the Debtors be authorized, but not required, to require Vendor Claimants to provide favorable trade terms for the postpetition procurement of goods and services from the Vendor Claimants. Specifically, the Debtors seek authorization, but not direction, to condition payment of Vendor Obligations upon each Vendor Claimant’s agreement to continue—or recommence—supplying goods and services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve months prior to the Petition Date, or on other terms satisfactory to the Debtors in their reasonable discretion (the “Customary Terms”).

28. In addition, the Debtors request that if a payee, after receiving a payment under an order approving this Motion, ceases to provide Customary Terms, then the Debtors may, in their reasonable discretion, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable postpetition transfer of property.

V. Outstanding Orders.

29. Prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods which will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, including obligating the Debtors to re-order goods that were ordered prior to the Petition Date, the

Debtors seek an order authorizing, but not directing, the Debtors to satisfy certain Outstanding Order obligations in the ordinary course of business.

Bases for Relief

I. Payment of the Vendor Obligations as Provided Herein is a Sound Exercise of the Debtors' Business Judgment

30. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."). In doing so, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

31. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Indeed, courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim." *In re CoServ, L.L.C.*, 273 B.R. at 499.

32. Section 105(a) of the Bankruptcy Code and the "doctrine of necessity" permit the bankruptcy court to exercise its broad grant of equitable powers to authorize the payment of prepetition obligations when such payment is "essential to the continued operation" of the debtor's business. *See, e.g., In re Lehigh & New England Railway. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999).

33. The above-referenced sections of the Bankruptcy Code empower the Court to authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g., In re Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims of certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re CoServ, L.L.C.*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate.").

34. Here, for the reasons outlined herein and in the Pugh Declaration, the Debtors submit that retaining their ability to pay the Vendor Obligations as described herein is necessary to their continued and uninterrupted operations during these chapter 11 cases. As the foregoing authority provides, where the ability to promptly pay prepetition claims is necessary to prevent disruption to the Debtors' business operations, courts are empowered to authorize such payments. Further, the satisfaction of the Vendor Obligations will enable the Debtors to preserve the value of their estates and safeguard the confidence and goodwill of their service and goods providers. Without the requested relief, which is based on the careful exercise of the Debtors' business judgment, the Debtors' efforts to maximize the value of these estates will be jeopardized. Moreover, the relief requested in this Motion contemplates the payment of Vendor Obligations of those Vendor Claimants who agree to provide postpetition services to the Debtors on Customary Terms when requested by the Debtors, and, the Debtors submit, is therefore consistent with, and appropriate under, sections 105 and 363 of the Bankruptcy Code.

35. As detailed above, unanticipated disruptions to the Debtors' ability to operate their business would result in substantial and irreparable harm to the Debtors and would severely impair

the Debtors' efforts to preserve and maximize the value of their estates during these chapter 11 cases. It is, therefore, critical that the Debtors receive necessary materials, goods, and services without interruption in order to preserve the Debtors' go-forward business and maximize the value of the Debtors' assets to be sold through the sales process described in the First Day Declaration and pursuant to the bidding and sales procedures motion filed contemporaneously herewith.

36. If the Vendor Claimants stop supplying services or goods to the Debtors, the Debtors' business would be adversely affected as a result for the reasons outlined herein. In light of the foregoing, the Debtors submit that payment of the Vendor Obligations is in the best interests of their estates and creditors. If the relief sought in this Motion is not granted, the Vendor Claimants may attempt to assert their considerable leverage and deny the Debtors essential services or goods going forward. Based on these circumstances, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

II. Failure to Make Timely Payment of the Lien Charges Would Threaten the Debtors' Ability to Operate and May Subject the Debtors' Assets to the Perfection of Liens

37. As noted above, certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁴ As a result, the Debtors

⁴ See 11 U.S.C. § 546(b)(1) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

anticipate that certain of the Lien Claimants may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' essential parts and equipment, mere possession or retention would disrupt the Debtors' operations.

38. Furthermore, paying the Lien Claimants should not impair unsecured creditor recoveries in these chapter 11 cases. For example, in instances where the amount owed to Lien Claimants is less than the value of the materials or equipment held by the Warehousemen, such Warehousemen are fully-secured creditors of the Debtors' estates. In such instances, payment now only provides such parties with what they might be entitled to receive under a plan of reorganization, only without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into chapter 11 and the ultimate delivery and sale of the Debtors' products to their customers.

39. Where debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and other jurisdictions have routinely authorized payments to lien claimants under similar circumstances.

III. The Court Should Authorize, But Not Direct, the Payment of 503(b)(9) Claims

40. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." These claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan.

41. Moreover, the Bankruptcy Code does not prohibit a debtor from paying administrative claims prior to confirmation. As administrative claims incurred in the ordinary

course of business, the Debtors believe that they may be able to pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g., In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) Hr’g Tr. 49:21–23 (“I think arguably the [D]ebtor could pay its 503(b)(9) claimants without court approval.”). The timing of such payments also lies squarely within the Court’s discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”).

42. The Debtors’ ongoing ability to obtain materials and products as provided herein is key to their reorganization and necessary to preserve the value of their estates. Absent the payment of some 503(b)(9) Claims at the outset of these chapter 11 cases—which may merely accelerate the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to materials and products necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

43. Instead of satisfying all 503(b)(9) Claims after confirmation of a plan of reorganization (at which time such payments may be too late to benefit the Debtors’ estates), the Debtors seek authority to pay certain of these claims, while such payments can still induce 503(b)(9) Claimants to adhere to favorable trade terms and do business with the Debtors on a go-forward basis. Failure to honor these claims in may also cause the Debtors’ vendor base to withhold support for the Debtors during the chapter 11 process. Such vendors could accelerate or eliminate favorable trade terms. The payment of certain 503(b)(9) Claims is in the best interests of the Debtors’ estates because favorable trade terms will prevent foreseeable disruptions to the Debtors’ operations, and the Court’s time and resources will not be burdened with numerous

motions from individual vendors requesting payment on account of their administrative priority expense claims. Such costs and distractions could impair the Debtors' ability to stabilize their operations at this critical juncture to the detriment of all stakeholders.

IV. The Court Should Authorize, But Not Direct, the Payment of Claims in Respect of Outstanding Orders

44. Pursuant to section 503(b) of the Bankruptcy Code, most obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, the granting of the relief sought herein with respect to the Outstanding Orders will not provide the suppliers with any greater priority than they would otherwise have if the relief requested herein were not granted, and will not prejudice any other party in interest.

45. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide the suppliers with assurance of such administrative priority. Any disruption to the continuous and timely flow of goods to the Debtors could result in substantial delays in the Debtors' operations, which could lead to dissatisfied customers and reduced sales. Accordingly, the Debtors submit that the Court should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

Processing of Checks and Electronic Funds Transfers Should Be Authorized

46. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations

and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

Immediate Relief is Necessary

47. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As described above and in the Pugh Declaration, any disruption in payments to the Vendor Claimants, on the terms proposed, would substantially diminish or impair the Debtors' efforts in these chapter 11 cases to preserve and maximize the value of their estates. For this reason and those set forth above and in the Pugh Declaration, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and because the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

Waiver of Stay Under Bankruptcy Rule 6004(h)

48. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Orders include a finding that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

49. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders

Reservation of Rights

50. Nothing contained herein or any actions taken pursuant to such relief requested is intended to be or should be construed as: (a) an implication or 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 this Motion or any order granting the relief requested by this 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 waiver of the obligation of any party in interest to file a proof of claim; or (i) 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.

Notice

51. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the

Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the state attorneys general for states in which the Debtors conduct business; (f) the Securities and Exchange Commission; (g) counsel to the Cowen Parties; (h) counsel to Bank of America; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank.]

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: August 7, 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Andrew L. Magaziner

Pauline K. Morgan (No. 3650)
Andrew L. Magaziner (No. 5426)
Sheila 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 (*pro hac vice* admission pending)
Robert A. Britton (*pro hac vice* admission pending)
Michael J. Colarossi (*pro hac vice* admission pending)
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

Proposed Interim Order

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

In re:

PROTERRA INC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11120 (____)
)
) (Jointly Administered)
)
) **Re: Docket No. ____**

INTERIM ORDER

**(I) AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF (A) LIEN CLAIMANTS,
(B) 503(B)(9) CLAIMANTS, AND (C) CRITICAL VENDORS,
(II) AUTHORIZING THE DEBTORS TO PAY CLAIMS IN RESPECT
OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business prepetition claims held by certain (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors (collectively, the “Vendor Claimants”) collectively, in an amount not to exceed \$17,718,000 on an interim basis, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (b) authorizing Banks to honor and process check and electronic transfer requests related to the foregoing, (c) authorizing, but not directing, the Debtors to make payment with respect to Outstanding Orders in the ordinary course of business, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day

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 (9565); and Proterra 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.

Declaration and the Pugh 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 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 an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay Vendor Obligations in an aggregate amount not to exceed \$17,718,000 on an interim basis.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay claims arising in connection with Outstanding Orders in the ordinary course of business.
4. The Debtors are authorized, but not directed, in their sole discretion, to require that, as a condition to receiving any payment under this Interim Order, a Vendor Claimant maintain or apply, as applicable, Customary Terms. The Debtors may require more favorable trade terms with any Vendor Claimant as a condition to payment of any prepetition claim. If a Vendor Claimant, after receiving a payment under this Interim Order, ceases to provide Customary Terms, then the

Debtors may, in their reasonable business judgment, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable unauthorized postpetition transfer of property. Any party that accepts payment from the Debtors on account of a Vendor Obligation shall be deemed to have agreed to the terms and provisions of this Interim Order.

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 Interim Order.

6. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim 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. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and accordingly, Bankruptcy Rule 6003(b) has been satisfied.

8. 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.

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

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

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

12. The final hearing on the Motion shall be held on _____, 2023, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before 4:00 p.m., prevailing Eastern Time, on _____, 2023, and served on the following parties: (a) counsel to the Debtors; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Cowen Parties; (d) counsel to Bank of America; and (e) the statutory committee of unsecured creditors, if any has been appointed. If no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the final hearing.

Exhibit B

Proposed Final Order

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

In re:

PROTERRA INC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-11120 (____)
)
) (Jointly Administered)
)
) **Re: Docket Nos. __ & __**

FINAL ORDER

**(I) AUTHORIZING THE DEBTORS TO PAY
PREPETITION CLAIMS OF (A) LIEN CLAIMANTS,
(B) 503(B)(9) CLAIMANTS, AND (C) CRITICAL VENDORS,
(II) AUTHORIZING THE DEBTORS TO PAY CLAIMS IN RESPECT
OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business prepetition claims held by certain (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors (collectively, the “Vendor Claimants”) collectively, in an amount not to exceed \$35,638,000 on a final basis, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (b) authorizing Banks to honor and process check and electronic transfer requests related to the foregoing, (c) authorizing, but not directing, the Debtors to make payment with respect to Outstanding Orders in the ordinary course of business, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration and 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 (9565); and Proterra 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.

Pugh 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 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, if any (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, in their sole discretion, to pay Vendor Obligations in an aggregate amount not to exceed \$35,638,000 on a final basis.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay claims arising in connection with Outstanding Orders in the ordinary course of business.
4. The Debtors are authorized, but not directed, in their sole discretion, to require that, as a condition to receiving any payment under this Final Order, a Vendor Claimant maintain or apply, as applicable, Customary Terms. The Debtors may require more favorable trade terms with any Vendor Claimant as a condition to payment of any prepetition claim. If a Vendor Claimant,

after receiving a payment under this Final Order, ceases to provide Customary Terms, then the Debtors may, in their reasonable business judgment, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable unauthorized postpetition transfer of property. Any party that accepts payment from the Debtors on account of a Vendor Obligation shall be deemed to have agreed to the terms and provisions of this Final Order.

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.