

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.)	(Joint Administration Requested)
)	

**DECLARATION OF JOHN KIMM IN SUPPORT
OF THE DEBTORS' MOTION FOR ENTRY OF: (I) AN ORDER (A) APPROVING
BIDDING PROCEDURES TO GOVERN THE SALE OF ALL OR SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS PURSUANT TO SECTION 363 OF THE
BANKRUPTCY CODE, (B) APPROVING PROCEDURES REGARDING ENTRY INTO
ONE OR MORE STALKING HORSE AGREEMENTS, (C) ESTABLISHING
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (D) APPROVING THE FORM AND
MANNER OF THE NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (E) SCHEDULING AUCTIONS FOR THE
SALES OF THE COMPANY ASSETS AND HEARINGS TO CONSIDER APPROVAL
OF THE SALES AND APPROVING THE FORM AND MANNER OF THE NOTICE
THEREOF, (F) APPROVING CERTAIN WIND-DOWN PROCEDURES, AND
(G) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING AND
APPROVING THE DEBTORS' ENTRY INTO ONE OR MORE ASSET PURCHASE
AGREEMENTS, (B) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL
OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, (C) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF THE ASSUMED EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, John Kimm, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am a Managing Director at Moelis & Company LLC ("Moelis"), a leading international investment banking and financial advisory firm (NYSE: MC) that has its principal office at 399 Park Avenue, 4th Floor, New York, New York 10022, and approximately 1,100

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.



2311120230808000000000023

employees in locations around the world. Moelis serves as proposed investment banker to the Debtors in the above-captioned chapter 11 cases. Moelis began working for the Debtors in April 2023, since which time Moelis has provided investment banking services to the Debtors.

2. I am authorized to submit this declaration (this “Declaration”) on the Debtors’ behalf in support of the relief requested in the *Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All Or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry Into One or More Stalking Horse Agreements, (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Scheduling Auctions for the Sales of the Company Assets and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors’ Entry Into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* (the “Bid Procedures Motion”).²

3. Unless otherwise indicated herein, the statements in this Declaration are based on my personal knowledge or my opinion based on my experience, on information that I have received from the Debtors’ employees and advisors, information that I have received from

² Capitalized terms used but not otherwise defined shall have the meaning ascribed to them in the Bid Procedures Motion, Bidding Procedures, or the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Pleadings* filed contemporaneously herewith, as applicable.

my colleagues at Moelis working directly with me or under my supervision, direction, or control, or on my review of relevant documents. If I were called to testify, I could and would testify competently to the matters set forth below.

Professional Background and Qualifications

4. I am based in Moelis' New York office, located at 399 Park Avenue, 4th Floor, New York, New York 10022 and have approximately twenty-five years of investment banking and related experience. I have extensive experience executing public and private buy-side and sell-side transactions, mergers, and joint ventures across a broad range of industries. My sell-side experience includes, among other engagements, CoreSite Realty Corporation, Neustar, Inc., Foundation Building Materials, Inc., the assets of Dean Foods Company through ten separate "363 sale" transactions in their chapter 11 cases, Barnes & Noble, Inc., Guardian Industries Corp., Morningstar Foods, LLC, and Solo Cup Company.

5. Moelis is a global investment banking and financial advisory firm that provides a broad range of financial advisory services, including (a) mergers and acquisitions, (b) recapitalization and restructuring, (c) capital markets advisory, and (d) private funds advisory.

6. I joined Moelis in 2022. Prior to joining Moelis, I was a Managing Director at Evercore, where I advised clients across the industrials, consumer, and various other sectors. Previously, I held senior investment banking roles at Bank of America, Jefferies, and Bear Stearns. Before that, I served as a strategy consultant at The Boston Consulting Group and Bain & Company.

7. I graduated with a B.S. in Mechanical Engineering from Cornell University and earned an M.B.A in Finance from The Wharton School at the University of Pennsylvania.

Moelis' Retention

8. Moelis has been engaged by the Debtors since April 2023. Over the course of our engagement, I have worked closely with the Debtors' senior management and other retained professionals and have become knowledgeable about the Debtors' business and financial affairs.

9. To date, Moelis has worked closely with the Debtors and their other professionals in: (i) reviewing and analyzing the Debtors' businesses, operations, and financial projections; and (ii) preparing for the contemplated post-petition marketing process.

10. Moelis has worked with the Debtors and their other professionals to collect, review, and organize diligence materials for inclusion in a virtual data room, access to which will be provided to interested parties that elect to execute a nondisclosure agreement. Moelis has also worked with the Debtors and their other professionals to draft marketing materials which reflect the Debtors' current and projected operations to facilitate counterparty diligence. Together, these preparations will enable Moelis and the Debtors to launch outreach for the sale and bidding process shortly after the Petition Date.

The Bidding Procedures

11. As set forth in the Bid Procedures Motion, the Debtors are seeking approval of the Bidding Procedures to establish a clear and transparent process for the solicitation, receipt, and evaluation of Bids, including Bids for Asset Sales and/or Recapitalization Transactions, on a court-approved timeline that allows the Debtors to timely consummate a sale or disposition, and/or reorganization, of the Debtors and their assets.

12. I have reviewed the Bidding Procedures. Generally speaking, the Bidding Procedures establish, among other things:

- a. a robust due diligence process for potential bidders;

- b. the deadlines and requirements for submitting Bids for the Track A Assets and the Track B Assets and the methods and criteria by which such bids will be deemed to be Qualified Bids sufficient to trigger a Track A Auction and/or Track B Auction, including the terms and conditions that must be satisfied and the deadlines that must be met by any bidder to be considered a Qualified Bidder and to participate in the Track A Auction and/or Track B Auction;
- c. the Debtors' authority to designate one or more Stalking Horse Bidders, and, subject to Court approval, to seek Bid Protections for such Stalking Horse Bids;
- d. the manner in which Qualified Bids will be evaluated by the Debtors;
- e. the conditions for holding the Auctions and procedures for the Auctions, if any;
- f. the Debtors' authority, in their business judgment, to (i) elect to move Track A Bids from the Track A Schedule to the Track B Schedule and (ii) reschedule or cancel the date by which Indications of Interest and Qualified Bids are due, and/or Auctions are to be held; and
- g. various other matters relating to the sales and marketing process generally, including the designation of one or more Backup Bids.

13. The Bidding Procedures propose the following key dates and deadlines:

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines</u> ³	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Initial Indication of Interest ("IOI") Deadline	Monday, September 18, 2023	
Sale Objection Deadline	Monday, October 2, 2023	
Cure/Assignment Objection Deadline	Thursday, October 12, 2023	
Qualified Bid Submission Deadline (can be moved at Debtors' discretion)	Monday, October 16, 2023	Monday, November 6, 2023

³ Unless otherwise indicated, all deadlines (but not events) are 4:00 p.m. (prevailing Eastern Time).

<u>Deadline/Event</u>	<u>Proposed Dates/Deadlines³</u>	
	<u>Track A Bids</u>	<u>Track B Bids</u>
Auction (if necessary)	Thursday, October 19, 2023 @ 10:00 a.m. (ET)	Thursday, November 9, 2023 @ 10:00 a.m. (ET)
Identification of Successful Bidder and Backup Bidder, if any	Friday, October 20, 2023 (or as soon as reasonably practicable thereafter)	Friday, November 10, 2023 (or as soon as reasonably practicable thereafter)
Post-Auction Objection Deadline	Monday, October 23, 2023	Monday, November 13, 2023
Sale Hearing	Thursday, October 26, 2023	Thursday, November 16, 2023

14. Based on my experience, I believe that the Bidding Procedures are designed to facilitate a transparent, robust, and efficient sales and marketing process. As described in the Bidding Procedures Motion, the proposed Bid Deadlines (at which points Bids are binding if accepted) are October 16, 2023, for the Track A Assets, and November 6, 2023, for the Track B Assets. The Bid Deadlines thus provide parties with approximately ten (10) and thirteen (13) weeks from the filing of the Bidding Procedures Motion to obtain information and formulate and submit a timely and informed Track A Bid and/or Track B Bid, respectively.

15. Given the outreach process to be launched by Moelis for the Debtors' assets, the potential publicity surrounding these chapter 11 cases, and the process timeline proposed by the Debtors, it is my view, based on my experience and in light of the circumstances, that the proposed post-petition sales and marketing process set forth in the Bidding Procedures is reasonable and appropriate under the circumstances. The Bidding Procedures seek to balance the Debtors' interests in consummating the Potential Transactions on a reasonable timeline while also

seeking to attract the highest or otherwise best offer in an effort to facilitate a value-maximizing outcome for these chapter 11 cases.

Conclusion

16. Accordingly, for all the foregoing reasons, I believe that the Bidding Procedures and the timeline set forth therein: (a) are consistent with sales and marketing timelines for businesses of similar size and complexity; (b) will allow for an efficient sales and marketing process; and (c) are reasonable and appropriate under the circumstances.

[Remainder of Page Intentionally Left Blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: August 8, 2023
New York, New York

/s/ John Kimm
John Kimm
Managing Director
Moelis & Company LLC