

**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 (BLS)
)
) (Jointly Administered)
)
) Ref. Docket No. 1039

**DECLARATION OF JILL FRIZZLEY IN
SUPPORT OF THE FOURTH AMENDED JOINT PLAN OF
REORGANIZATION FOR PROTERRA INC AND ITS DEBTOR AFFILIATE**

Pursuant to Section 1746 of Title 28 of the United States Code, I, Jill Frizzley, do hereby declare the following to the best of my information, knowledge, and belief:

1. On August 7, 2023, I was appointed to the boards of directors (the “Board”) of Proterra Inc and Proterra Operating Company, Inc., the above-captioned affiliated debtors and debtors in possession (collectively, the “Debtors” or the “Company”), and began serving as the sole member of the Board’s Investigation Committee (defined below).

2. I submit this declaration (this “Declaration”) in support of confirmation of the *Fourth Amended Joint Plan of Reorganization for Proterra Inc and its Debtor Affiliate* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”).²

3. I am a lawyer and member of the bar of New York and have over twenty years of experience as an advisor in corporate restructurings, reorganizations, mergers, and acquisitions, including significant experience advising companies, boards, board committees, and independent directors on corporate governance. From 2000 to 2016 I worked as an associate and counsel in

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: 500 Pennsylvania Avenue, PO Box 2205, Greer, SC 29652.

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



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the Bankruptcy and Business Finance group of the law firm Shearman & Sterling LLP in New York, New York. From 2016 to 2019 I worked as a counsel in the Business Finance and Restructuring group in Weil, Gotshal & Manges LLP's New York office. Since 2019 I have been the President of Wildrose Partners, LLC, where I serve as an independent director in restructurings through out-of-court negotiations and in-court proceedings, as well as provide specialized counsel to executives and boards of directors on fiduciary duties, corporate and board governance, and restructuring management planning. In this role, I have served on the boards of directors of over fifty companies spanning a range of industries.

4. Except as otherwise indicated, all statements set forth in this Declaration are based upon my personal knowledge, my opinions based on my experience, my discussions with advisors to the Investigation Committee, and my understanding of relevant documents (including the Plan). I am authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I would and could testify competently to the facts set forth in this Declaration.

The Mandate and Scope of the Investigation Committee's Investigation

5. On August 7, 2023, by unanimous resolutions (the "Investigation Committee Resolutions"), the Board approved and established a committee to investigate potential claims and causes of action of the Company (the "Investigation Committee"). The Investigation Committee was vested with the full and exclusive power and authority of the Board (a) to oversee an independent investigation (the "Investigation") of any potential claims and causes of action of the Company that may exist against any of the Company's directors, officers, managers, members, equity holders, principals, employees, and any other individual that may be an insider (the "Insiders") of the Company (collectively, the "Potential Causes of Action") and (b) to determine what action should be taken on account of any such Potential Causes of Action, including pursuant to any plan of reorganization in connection with the Debtors' bankruptcy cases (the "Chapter 11").

Cases”). The Investigation Committee Resolutions also authorized the Investigation Committee to retain such legal counsel and/or other professional advisors as the Investigation Committee deemed appropriate to assist the Investigation Committee in conducting its Investigation.

6. To carry out its mandate and discharge its responsibilities, the Investigation Committee retained Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Investigation Committee Counsel”) as counsel. FTI Consulting, Inc. (“FTI”) also provided investigative support in the Investigation. Both Investigation Committee Counsel and FTI were retained by the Company, effective June 2023, in connection with evaluating potential restructuring transactions and other strategic alternatives. The Investigation was conducted in two primary ways.

7. *First*, under the direct supervision of the Investigation Committee, and in close consultation with Investigation Committee Counsel, FTI employed a variety of forensic analyses to identify any transactions that would warrant further investigation by the Investigation Committee. FTI reviewed and analyzed Company disbursements and balance sheets between 2019 and 2023, as well as the Company’s financial plans, forecasts, liquidity analyses, and other business plans. FTI also reviewed information provided to the Board and minutes and other materials related to meetings of the Board. FTI did not identify any transaction with any additional parties that warranted further investigation by the Investigation Committee.

8. *Second*, also under the direct supervision of the Investigation Committee, Investigation Committee Counsel performed a factual examination and a review and analysis of applicable federal and state law. Investigation Committee Counsel collected emails from nine document custodians in senior leadership, accounting, and finance functions at the Company, spanning time periods from 2021 to 2023. Investigation Committee Counsel reviewed approximately 11,500 of these emails and attachments (totaling approximately 135,000 pages).

Investigation Committee Counsel also collected and reviewed minutes from meetings of the Board and the Audit Committee of the Board held between 2019 and 2023. Investigation Committee Counsel further reviewed key transaction documents, the Company's publicly filed documents, publications in financial media, as well as other relevant data sources. Finally, Investigation Committee Counsel interviewed or spoke with eight current or former officers, directors, and employees of the Company.

9. The Investigation broadly assessed whether any Potential Causes of Action, including breach of fiduciary duty claims, could be asserted by the Debtors against any Insider. In executing this mandate, the Investigation identified and focused, in part, on three areas. *First*, the Investigation analyzed the breach (the "MLC Breach") of a minimum liquidity covenant in the Note Purchase Agreement, the agreement governing the Company's secured convertible note facility, that was identified by the Company following the close of the fourth quarter of 2022. *Second*, the Investigation examined material weaknesses in internal controls over financial reporting identified in the Company's 2022 Form 10-K and Audit Report dated March 17, 2023. *Third*, the Investigation assessed allegations in two securities class action complaints filed in the U.S. District Court for the Northern District of California (the "Securities Class Actions") that the Company and certain of its former and current officers made materially false and misleading statements about the Company's financial and liquidity position.

10. The Official Committee of Unsecured Creditors (the "Committee") was actively engaged throughout the Investigation. The Investigation Committee consulted with and accepted revisions from counsel to the Committee regarding document search parameters. Counsel for the Committee also attended and participated in four of the interviews and conducted its own interviews with two Company employees. Investigation Committee Counsel updated counsel to

the Committee on the investigation process as it was ongoing, and produced approximately 4,600 non-privileged documents (90,900 pages) related to the investigation to counsel to the Committee. At the conclusion of the Investigation, Investigation Committee Counsel presented factual findings and conclusions of the Investigation to counsel to the Committee.

11. While the Investigation was active, I generally met with Investigation Committee Counsel and FTI weekly (although not every single week) to discuss the Investigation's progress, process, and preliminary findings. I also reviewed key documents relating to the Investigation. The Investigation Committee received the full cooperation of the Company and its employees.

The Investigation Committee's Findings

12. The Investigation Committee did not identify any plausible or colorable Potential Causes of Action that, if pursued by Proterra, are likely to provide value to the Debtors' estates. For example, among other findings, the Investigation Committee concluded that failure to detect the MLC Breach before the end of the fourth quarter of 2022 did not cause material harm to the Company. The Investigation Committee also concluded that the material weaknesses in internal controls over financial reporting did not require any restatements of the Company's financial reporting (as observed by the Company's auditor); did not involve any bad faith; did not cause any other material harm to the Company; and after their identification, the Board oversaw remediation efforts. The Investigation Committee further determined that the statements at issue in the Securities Class Actions were not false or misleading, and that the Insiders acted with honesty and good faith at all relevant times.

13. The Investigation Committee also identified no valuable Potential Causes of Action outside of these focus areas. For example, based on FTI's analysis, the Investigation Committee did not identify any transactions that were outside the realm of ordinary course business

transactions, that were unexplained or not supported by consideration flowing back to the Company, or that would otherwise support a fraudulent transfer claim.

The Plan Releases

14. The Plan provides for releases of certain Potential Causes of Action and other claims against certain parties identified in the Plan (collectively, the “Released Claims”) by the Debtors (the “Debtor Releases”) and by certain releasing parties (the “Third Party Releases,” and together with the Debtor Releases, the “Plan Releases”). The parties released under the Plan include the Insiders, the First Lien Agent, the Second Lien Agent, the Committee and its members, and holders of claims that vote to accept the Plan or are unimpaired under the Plan (together with the Insiders, the “Released Parties”). The Plan Releases do not release any Released Claims held by holders of claims or interests that are deemed to reject the Plan and do not opt into the Third Party Releases, or held by holders of claims or interests who are entitled to vote on the Plan and elect to opt out of the Third Party Releases.

15. I believe that the Debtors have reasonably exercised their business judgment in granting the Plan Releases under the Plan because this decision is well-informed, fair, reasonable, and in the best interests of the Debtors’ estates.

16. The Debtors’ Board members, officers, other Insiders, and advisors have made substantial and valuable contributions, on a prepetition and postpetition basis, to the Chapter 11 Cases. Those contributions include, among other things: (a) participating in extensive negotiations with various stakeholders concerning a variety of issues, including, for example, obtaining the consensual use of cash collateral; (b) ensuring the uninterrupted operation of the Debtors’ business during the Chapter 11 Cases and preserving the value of the Debtors’ estates in a challenging operating environment; (c) executing and consummating value-maximizing marketing and sale processes of the Debtors’ business lines; (d) attending court hearings; (e) attending meetings of

the Board and Board committees related to these Chapter 11 Cases; and (f) investing significant time and effort in preparation of the Plan, Disclosure Statement, all supporting analyses, and several other pleadings filed in the Chapter 11 Cases.

17. Again, as discussed above, the Investigation identified no grounds to support any Potential Cause of Action against any Insiders that are likely to succeed, let alone are likely to result in significant recoverable damages. Moreover, Proterra Inc's Restated Bylaws provide that Proterra Inc will indemnify Insiders for, and advance Insiders' expenses in defending, certain Potential Causes of Action. *See* Proterra Inc, Current Report Ex. 3.2, §§ 6.1–6.2 (Form 8-K) (June 17, 2021). In my view, because no such Potential Causes of Action were identified, the Plan Releases with respect to Insiders, including the Company's current and former officers and Board directors, are appropriate; reflect a reasonable balance of the low likelihood of success of any Potential Causes of Action and the material expense and delay of litigating such claims, on the one hand, against the benefits of fully and fairly resolving potential disputes and issues and obtaining these parties' support for the Debtors' Chapter 11 Cases, on the other hand; and thereby removes what could otherwise be potentially substantial impediments to the success of the Chapter 11 Cases.

18. Certain holders of Second Lien Convertible Notes Claims (the "Plan Sponsor") and the Committee (together with the Plan Sponsor, the "Consenting Stakeholders") have also made numerous contributions during the pendency of the Chapter 11 Cases to facilitate the administration of these cases as well as support confirmation of the Plan. Among other things, the Consenting Stakeholders are parties to a Plan Support Agreement (the "PSA") whereby they agreed to, among other obligations, (a) support the consummation and implementation of restructuring transactions contemplated by the Plan; and (b) support, and not object to, delay or

impede confirmation or consummation of the Plan, including in the case of the Plan Sponsor, voting in favor of the Plan, and in the case of the Committee, recommending that all holders of General Unsecured Claims vote in favor of the Plan. In addition, the Consenting Stakeholders agreed to, as applicable, provide mutual consensual releases to the non-Debtor Released Parties. The Consenting Stakeholders and First Lien Agent also, as applicable, either (a) consented to the Debtors' use of cash collateral, or (b) were supportive of the relief contained in the Final Cash Collateral Order.³ I understand that without such access to cash collateral to fund the Chapter 11 Cases, the Debtors would likely not have been able to successfully consummate sales of their businesses, manage the Chapter 11 Cases, and proceed to confirmation of the Plan. Moreover, the Consenting Stakeholders have reached an agreement with respect to the terms of a settlement, embodied in the Plan, regarding the Second Lien Agent's claim for a liquidation event premium under the Note Purchase Agreement for \$88.5 million, which includes mutual releases among the parties to the settlement. I believe these actions and the support of the Consenting Stakeholders was critical to the success of the Chapter 11 Cases.

19. The Debtor Releases were heavily negotiated among the Debtors and certain Released Parties under the Plan and represent a critical component of the transactions contemplated by the Plan. In my view, absent the Debtor Releases, it is highly unlikely that the applicable Released Parties would have entered into the PSA and agreed to support the Plan, including agreeing to the terms of the premium settlement. I do not believe that the Debtors would have been able to build the level of consensus with respect to the Plan and the transactions contemplated therein without the Debtor Releases.

³ The "Final Cash Collateral Order" is the *Final Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Projection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 422].

20. In light of the foregoing, I believe that the Debtor Releases are appropriate given the conclusions reached by the Investigation Committee, to bring appropriate finality to the Chapter 11 Cases and eliminate the risk of the Debtors incurring additional expenses pursuing valueless claims. Moreover, based on my extensive experience as a practicing attorney assisting distressed companies and as an independent director to numerous companies in chapter 11 cases and out-of-court restructurings, the Debtor Releases, approved at the conclusion of the Investigation, constitute a sound exercise of the Debtors' business judgment, are consistent with releases that are customary in transactions of this kind where no colorable claims against the Released Parties have been identified, are fair and reasonable, and are in the best interests of the Debtors and their estates.

21. Moreover, it is my belief and understanding that the Third Party Releases are appropriately tailored and apply only to parties that have been provided notice of, and consented to, the Third Party Releases. I understand that the Third Party Releases are applicable only to Releasing Parties under the Plan, which group was narrowly tailored in the Plan, including as a result of the Debtors' negotiations with the United States Trustee and consistent with the Court's prior rulings.

22. I believe that the Third Party Releases are an integral negotiated term of the Plan, and that the Third Party Releases facilitated the participation of critical parties in interest in both the Plan process and the Chapter 11 Cases more generally, including in respect of the Debtors' marketing and sale processes. Further, I believe that the Third Party Releases were crucial to incentivizing parties in interest to support the PSA and Plan by providing critical concessions and cooperation, and to prevent costly and time-consuming litigation regarding various parties' respective rights and interests. I understand that the Third Party Releases are designed to provide

finality for the Debtors and the Released Parties. As such, I believe that the Third Party Releases appropriately offer certain protections to parties that participated in the Debtors' Chapter 11 Cases. It is my belief that, without the Third Party Releases, it is highly unlikely that the Debtors' key stakeholders would have been willing to fund and otherwise support the transactions contemplated by the Plan, or otherwise support confirmation of the Plan, and thereby enable the Debtors to pursue and consummate value maximizing marketing and sale processes of their business lines.

23. Accordingly, for all of the above reasons, I believe that the Debtors have a good-faith basis for including the Third Party Releases in the Plan. I further believe that the Third Party Releases are a reasonable exercise of the Debtors' business judgment and appropriate in light of the circumstances of the Chapter 11 Cases, and satisfy all applicable requirements of the Bankruptcy Code.

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

Dated: March 1, 2024

/s/ Jill Frizzley

Name: Jill Frizzley