UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
PROTERRA, INC., *et al.*,[1]	Case No. 23-11120 (BLS)
	Jointly Administered
Debtors.	**Hearing Date: January 23, 2024 at 11:00 a.m. (ET)** **Obj. Deadline: January 16, 2024 at 4:00 p.m. (ET)**

OBJECTION OF CYRESS JAM, COURT-APPOINTED SECURITIES CLASS ACTION LEAD PLAINTIFF, TO (A) ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION; (C) THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULE OF CERTAIN DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF

Cyress Jam (the "Lead Plaintiff"), in his capacity as Court-appointed lead plaintiff in the consolidated securities class action proceedings pending in the United States District Court for the Northern District of California under the caption, *Jeremy Villanueva, individually and on behalf of all others similarly situated v. Proterra, Inc., et al.,* Case No. 5:23-cv-03519-RFL (the "Securities Class Action"), by and through his undersigned counsel, hereby submits this limited objection (the "Objection") to the *Second Amended Joint Chapter 11 Plan of Reorganization for Proterra, Inc. and its Debtor Affiliate* [Docket No. 888] (as may be amended, the "Plan")[2] proposed by the debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") and the approval of the *Second Amended Disclosure*

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: 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 defined herein shall have the same meanings as ascribed to them in the Plan.

Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc. and its Debtor Affiliate [Docket No. 889] (the "Disclosure Statement") on the grounds that the Plan's "Releases by the Releasing Parties" and "Discharge; Injunction" (the "Release and Injunction Provisions") described in the Disclosure Statement (Article V.H., Docket No. 889 at 93-97 of 390) are, as to the claims asserted by Lead Plaintiff in the Securities Class Action, impermissible non-consensual releases, violative of due process, and contrary to established Third Circuit law. In support of this Objection, the Lead Plaintiff respectfully states as follows:

Lead Plaintiff objects to the Disclosure Statement[3] to the extent that the Release and Injunction Provisions described therein unlawfully release and eviscerate the securities fraud claims asserted against Proterra Inc. (after reorganization) ("Proterra") and Proterra's former directors and officers (the "Third-Party D&O Defendants") in the Securities Class Action. These sweeping and virtually unlimited releases and injunction provisions prey on unwitting Class members who are likely entirely unaware of their securities fraud claims or the pending Securities Class Action Proceedings in which they are asserted. Class members will forfeit hundreds of millions of dollars in securities law-based claims, which include damages incurred as a result of an alleged fraud by the Third-Party D&O Defendants and are not dischargeable under the Bankruptcy Code. 11 U.S.C. § 523(a)(19); *see also Dastinot v. Kamara (In re Kamara)*, No. 10-12766 (BLS), 2012 Bankr. LEXIS 5403, at *24 (Bankr. D. Del. Nov. 20, 2012) ("The purpose of this exception is to help defrauded investors recoup their losses 'and to hold accountable those who violate securities laws after a government unit or private suit results in a judgment or settlement against the wrongdoer.'" (quoting *Smith v. Gibbons (In re Gibbons)*, 289 B.R. 588, 592 (Bankr. S.D.N.Y. 2003)). The Plan provides no consideration to Class members to recoup those

[3] Lead Plaintiff reserves his right to object to the Plan and, if necessary, will file an objection timely under the schedule set forth by the Court.

damages in connection with these securities claims against Proterra or the Third-Party D&O Defendants.

The Disclosure Statement, as written, contains the Plan's proposed Release and Injunction Provisions which should not be approved in light of the Securities Class Action's claims. The Plan, Disclosure Statement, and solicitation materials – particularly, the Opt-Out Election Form for Impaired Non-Voting Status Claims and Interests – fail to adequately notify Proterra's shareholders of their claims in the Securities Class Action against Proterra and the Third-Party D&O Defendants or the facts that (i) the Release and Injunction Provisions attempt to release their claims in the Securities Class Action, (ii) Lead Plaintiff will Opt-Out of the Release and Injunction Provisions on their behalf, (iii) the Debtors revised the Plan to subrogate shareholder claims under Section 510(b) of the Bankruptcy Code only ***after*** receiving a draft of Lead Plaintiff's forthcoming consolidated complaint in the course of settlement negotiations, and (iv) shareholders may take further action to preserve their claims by opting out of such release, individually. In short, the opt-out process deprives shareholders with claims in the Securities Class Action (*i.e.*, Class 9 under the Plan) of due process and does not create actual and informed consent, and the circumstances fall far short of meeting the standards necessary to approve the nonconsensual Release and Injunction Provisions. As the Lead Plaintiff in the Securities Class Action (*see* ¶¶ 11 and 18 *infra*), and despite the Debtors' engineering with respect to the Release and Injunction Provisions, Lead Plaintiff is compelled to stand up on behalf of Class members whose rights are being stripped away for no consideration.

RELEVANT BACKGROUND

A. Securities Class Action

The Securities Class Action was filed in the United States District Court for the Northern District of California ("District Court") before these bankruptcy proceedings began. The initial complaint in the Securities Class Action alleged claims for violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against Proterra, Inc. ("Proterra"), Gareth Joyce, and Karina Franco Padilla. Mr. Jam has been appointed by the District Court as the Lead Plaintiff, and is responsible for overseeing the prosecution of the Securities Class Action.

As required by a scheduling order entered in the District Court, Lead Plaintiff will file a consolidated complaint against non-Debtors by January 31, 2024.[4] On December 22, 2023, in the context of settlement negotiations, Lead Plaintiff provided counsel for Proterra Inc. and the Third-Party D&O Defendants in the Securities Class Action with an early draft of the forthcoming consolidated complaint. On January 2, 2024, Debtors amended the Plan to include the "Class 9" classification of Claims and Interests pursuant to the Plan, stating that Class 9 Claims are Section 510(b) Claims that are impaired and not entitled to vote under the plan (*i.e.*, deemed to reject).

B. The "Opt-Out" Notice and Procedures

The Plan places claims held by Proterra's shareholders in the Securities Class Action in Class 9, "Section 510(b) Claims". The Plan defines Class 9 to "mean[] Claims against any Debtor arising under section 510(b) of the Bankruptcy Code," Docket No. 888 at 23 of 182, which Bankruptcy Code provision defines as any claim "arising from recission or a purchase or sale of a security of the debtor…for damages arising from the purchase or sale of such a security…." The Plan states that Section 510(b) Claims are "Impaired," and "Not Entitled to Vote." *Id.* at 36 of

[4] Lead Plaintiff has advised the District Court that claims against Proterra (the only Debtor-defendant) are stayed. In respect of the stay, Proterra will not be named as a defendant in the forthcoming consolidated complaint.

182. The Plan further states that "On the Effective Date, Allowed Section 510(b) Claims, if any, shall be canceled and released without any distribution on account of such Section 510(b) Claims" and that "Holders of Allowed Section 510(b) Claims in Class 9 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan." *Id.*

On January 2, 2024, Debtors filed a motion seeking to approve the Disclosure Statement, along with solicitation and notice procedures and ballots. Docket No. 793 (the "Approval Motion"). Defendants' Approval Motion will be heard on January 23, 2024 at 11:00 a.m. According to the Approval Motion, "Holders of … Claims in Class 9 (Section 510(b) Claims) are receiving no distribution under the Plan and therefore are deemed to reject the Plan and will receive a notice, substantially in the form attached to the Proposed Order as **Exhibit 4-B**, in lieu of a Solicitation Package." *Id.* at 23.

Exhibit 4-B that Debtors propose to send to Class 9 claimants is entitled "Opt-Out Election Form" (the "Opt-Out Form"). Debtors filed an updated version of Exhibit 4-B on January 15, 2024. Dkt. No. 890 at 74 of 298. It purports to place an affirmative burden on holders of claims in Class 9 requiring them, in order that they not forfeit any claims that they have against vaguely defined "Released Parties," to complete and return the form notwithstanding that they would receive no consideration under the Plan. The Opt-Out Form does not reference the Securities Class Action, that Lead Plaintiff is opting out on behalf of shareholders with claims in the Securities Class Action, or that Class 9 claim holders are at risk of losing individual rights in the Securities Class Action unless they opt out. Additionally, the Opt-Out Form does not purport to accurately inform recipients; instead it acknowledges there may be "discrepancies" between that form and the Plan,

which recipients are left to their own to attempt to figure out – an impossible task for a lay investor given the exceptionally unclear wording of the provisions in question.

According to the Opt-Out Form, "the holders of all Claims or Interests who vote, or are deemed to vote, to reject the Plan but do not opt out of granting the releases set forth herein" "will be deemed to consent to giving the Third Party Release provided in Article IX.C of the Plan," even though they have received no consideration. The form and its instructions cover five pages, with an abundance of complicated rules and restrictions, which are traps for all but the most sophisticated and diligent; and indeed, even those holders of Class 9 claims who submitted an Opt-Out Form might end up with the Debtors rejecting it for technical and arbitrary reasons. For example, if a recipient returns the Opt-Out Form – itself a clear indication that it did not intend to grant Releases – but inadvertently fails to check a box on the form, the recipient would be "deemed" nonetheless to have granted the Releases. The risks a recipient would run in submitting an insufficient Opt-Out Form – and thereby granting releases he, she, or it did not intend to provide – are exacerbated by intentionally restrictive procedures, including that an Opt-Out Form would be deemed invalid if transmitted by facsimile or email even though actually received.

If these hoops were not enough to discourage someone who was not receiving any distributions under the Plan to forgo the effort to slog its way through the Opt-Out Form and Plan (to attempt to locate discrepancies, in which case the Plan controls), the Debtors added the warning that it was up to the recipient to choose the delivery method – but with the Debtors prohibiting the use of email or facsimile, the two methods providing the greatest assurance of actual receipt; and

if for any reason the Opt-Out Form was not actually received by the Notice and Claims Agent, the sender would nonetheless be deemed to have granted the Releases.[5]

C. The Release and Injunction Provisions

The Debtors' proposed Opt-Out Form purportedly contains the "Releases by the Releasing Parties" that appears in the Disclosure Statement and Plan; the "Discharge; Injunction" provision is not included. The Debtors then include the relevant defined terms and rules of interpretation set out in the Plan (again, with the caveat that recipients had to find out for themselves at their own peril whether there were any discrepancies in replication). The Debtors defined the entities who were to grant third-party releases as the "Releasing Parties." Opt-Out Form at 1-2. The definition contains no specific reference to those classes of holders of claims who are to give Releases, actual or "deemed," and does not mention the Securities Class Action and the claims shareholders have in the Securities Class Action. *Id*. These claims, which belong to certain Class 9 holders, appear to be swept in through definition (g), which states that Releasing Parties include "the holders of all Claims or Interests who vote, or are deemed to vote, to reject the Plan but do not opt out of granting the releases set forth herein." *Id.* There is no direct or conspicuous statement explaining either that the Lead Plaintiff is opting out of the Release and Injunction Provisions on behalf of Class 9 holders in the Securities Class Action or that shareholders need to opt-out in order to preserve individual claims.

And, not only does the Plan attempt to manipulate Class 9 holders into "deeming" to release parties which they have no economic reason to release, but also claims that tens of

[5] This provision contravenes the well-established "mail-box" rule which presumes that a letter "'reached its destination at the regular time and was received by the person to whom it was addressed'" if "'proved to have been either put into the post-office or delivered to the postman…'' *Lupyan v. Corinthian Colleges Inc.*, 761 F.3d 314, 319 (3rd Cir. 2014) quoting *Rosenthal v. Walker*, 111 U.S. 185, 193, 4 S. Ct. 382 (1884). Under this rule, once a party proves it mailed the relevant document, the addressee is presumed to have received it. *Id.*

thousands of undefined persons who have even a slight relationship with Class 9 holders are somehow "deemed" to make a similar release. This includes their "each of their Affiliates," a term the Opt-Out Form capitalizes but doesn't bother to define, and "each of their and their Affiliates' predecessors, successors, assigns, subsidiaries, affiliates, current and former officers and directors, principals, equity holders, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Persons' respective heirs, executors, estates, and nominees, in each case in their capacity as such." Neither the Plan, Disclosure Statement, nor the Opt-Out Form specify who such persons are or how they will be identified or provided notice of the purported Third-Party Release to which Debtors seek to bind them.

Debtors' definition of "Released Parties" is equally as sweeping. According to the Opt-Out Form, "Released Parties" "means, collectively, the Releasing Parties; provided that, in each case, an Entity shall not be a Released Party if it: (a) elects to opt out of the releases contained in the Plan, (b) files with the Bankruptcy Court an objection to the Plan that is not consensually resolved before Confirmation or supports any such objection or objector, or (c) is an LG Party." Debtors' decision to deprive recipients of the Opt-Out Form with a concrete definition of Released Persons deprives them of the opportunity to make an informed and meaningful determination of whether to opt out of the Third-Party Releases. Inexplicably, the Opt-Out Form does not even mention the Securities Class Action – the most substantial proceeding against non-Debtors that it might impact – or plainly state whether it releases those claims.

Nor do the Debtors provide an explanation as to what the Third-Party D&O Defendants in the Securities Class Action, among others, did to warrant any release. Debtors assert in the Plan

that the Release and Injunction Provisions are "essential to the Confirmation of the Plan," Docket No. 888 at 78 of 182, but provide no reason why. On its face that statement is untrue, as the Plan does not suggest that allowing persons to opt out of the release would compromise the Plan in any respect. The Release and Injunction Provisions have nothing whatsoever to do with the viability of the Plan, but rather to immunize unlawful conduct by non-Debtors in violation of the Bankruptcy Code and settled law. *See* 11 U.S.C. § 523(a)(19); *see also Dastinot*, 2012 Bankr. LEXIS 5403, at *24.

Debtors' naked assertion that the Release and Injunction Provisions are "given in exchange for the good and valuable consideration and substantial contributions provided by the Released Parties," *id.,* is equally untrue. Neither the Opt-Out Form, Plan, nor Disclosure Statement identify ***any*** consideration given by Released Parties, and they certainly do not identify sufficient consideration to immunize the perpetrators of the fraud alleged in the Securities Class Action from the liability compelled by federal securities law.

Debtors have no basis for representing that the Release and Injunction Provisions are "fair, equitable, and reasonable"; "given and made after due notice and opportunity for hearing"; "a good faith settlement and compromise of the Causes of Action released by the Third-Party Release"; or are "consensual". Debtors provide no mechanism for notifying the many thousands of putative class members in the Securities Class Action of the springing release. They do not show how the release of the Securities Class Action satisfies the applicable and controlling standards for releasing a class action. And, Debtors simply attempt to gin up "consent" when none has been given.

ARGUMENT

I. THE THIRD-PARTY RELEASES AS APPLIED TO INVESTORS COVERED BY THE SECURITIES CLASS ACTION ARE NON-CONSENSUAL AND VIOLATE THIRD CIRCUIT LAW.

A. The Third-Party Releases Are Contrary to Established Law in the Third Circuit

Whether a plan of reorganization can include third party releases forcing creditors (and even non-creditors) of a debtor to grant releases to non-debtors was first addressed by the Third Circuit in *Gillman v. Continental Airlines Holdings, Inc. (In re Continental Airlines Holdings, Inc.)*, 203 F.3d 203 (3rd Cir 2000) [hereafter "*Continental*"] ["We have not ruled previously on the validity of provisions in chapter 11 plans of reorganization releasing and permanently enjoining third party actions against nondebtors." *Id.* at 211]. After reviewing decisions from other Circuits, the Third Circuit came to the "inescapable conclusion that…the release and permanent injunction [in the debtors' plan] of Plaintiffs' lawsuits are legally and factually insupportable." *Id.* at 211-12. The Third Circuit noted that the appellants had not asked the Court to adopt a rule banning all third-party non-consensual releases, and so the Court declined to address this broader issue. *Id.* "Given the manner which the issue has been presented to us, we need not establish our own rule regarding the conditions under which non-debtor releases and permanent injunctions are appropriate or permissible." *Id.* As to the third-party releases before it, the Third Circuit found that they did "not pass muster under the most flexible tests for the validity of non-debtor releases." *Id.* at 214. But while not adopting a specific rule, the Court identified three requirements for a non-consensual third-party release: (i) it must be fair; (ii) it must be essential to the reorganization; and (iii) it must be accompanied by specific factual findings supporting its fairness and essential nature. *Id.* at 214.

The Third Circuit reversed the District Court's affirmance of the Bankruptcy Court confirmation order to the extent that it approved the third-party releases in the *Continental* plan. It did so because, as here, the releases were unfair, no factual record existed to support the releases, and because the entities upon whom the releases were imposed received no consideration. Further, as is the case here, the Third Circuit noted that there was no evidence in the record that the releasees "provided a critical financial contribution in exchange…" for the releases. *Id.*

Following *Continental*, bankruptcy courts in the Third Circuit have viewed requests by debtors to approve third-party releases with considerable skepticism. *See infra*. Lead Plaintiff is unaware of any opinion in the Third Circuit that has upheld a third-party release, either non-consensual or "deemed consensual," from disenfranchised creditors who have already notified Debtors of their objection to any third-party releases[6], and were deemed to have rejected the plan. In this case, the Debtors have not provided and cannot provide the factual bases, as dictated by *Continental*, necessary for the Court to approve the Release and Injunction Provisions over the objection of Lead Plaintiff or other Class 9 holders. The Release and Injunction Provisions are without doubt severely prejudicial to the Securities Class Action because they stand to release their claims without any consideration in exchange and in violation of the Bankruptcy Code's rules against the non-dischargeability of fraud claims. Moreover, the Debtors cannot in good faith argue, let alone prove, that if Lead Plaintiff opts out of the Release and Injunction Provisions on behalf of plaintiffs in the Securities Class Action or if Class 9 holders opt out to protect their individual claims, the Plan will fail. Violating *Continental*, the Debtors have not provided the Court with any evidence that could possibly justify releasing any non-Debtor in the Securities Class Action.

[6] On December 12, 2023, Lead Plaintiff notified counsel for Proterra and the Third-Party D&O Defendants of his objection to the releases, as initially provided in various Plan Support Agreements (Doc. No. 565). Attorneys from both Paul Weiss Rifkind Wharton & Garrison LLP (bankruptcy counsel) and Cleary Gottlieb Steen & Hamilton LLP (Securities Class Action counsel) were present.

Cases decided by the United States Bankruptcy Court for this District have declined to approve third-party releases under facts far less egregious than here. Likewise, these decisions have characterized the releases in the respective cases to be non-consensual even as to creditors who were receiving distributions under the plan. For example, in *In re Zenith Electronics Corp.*, 241 B.R. 92 (Bankr. D. Del. 1999), the Court refused to approve a plan provision that deemed any creditor who accepted the plan or received a distribution under the plan to have provided a release. *Id.* at 111. The Court viewed these releases as non-consensual, holding that third-party releases could not "be accomplished without the affirmative agreement of the creditor affected." *Id.*

In *In re Genesis Health Ventures, Inc.*, 266 B.R. 591 (Bankr. D. Del. 2001), the Court rejected a plan provision which sought to grant certain of the debtors' lenders a non-consensual release of claims held by the debtors' creditors and equity security holders; and it did so after acknowledging that perhaps these releases might have "marginally satisfied" the *Continental* tests of fairness to the releasors and of being essential to the reorganization. *Id.* at 608. But because *Continental* cautioned against using "unfettered discretion" to grant third-party releases in the absence of "exceptional circumstances," and even though the creditors were receiving consideration under the plan, the releases were rejected. *Id.* The Court disallowed these releases even though, unlike here, "[t]here is nothing in this record to suggest that any causes of action actually exist against the Senior lenders, or that any non-consenting creditors or equity security holders would pursue such causes." *Id.* Here, the existence of the Securities Class Action and the Lead Plaintiff's active prosecution of it demonstrates the existence of tangible claims that would be released. Further, as explained above, no aspect of the Release satisfies any part of the *Continental* test and the Debtors do not even attempt to demonstrate fairness. Thus, as in *Genesis*, the third-party releases should be rejected.

In *In re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011), the debtors submitted several third party release iterations for Court approval, all of which were rejected. First, they filed a plan that had all of the debtors' creditors and shareholders providing releases, but which included an opt-out provision on the ballots to be delivered to impaired creditors. *Id*. at 351. The first plan did not appear to address whether entities deemed to have rejected the plan would also be providing non-consensual releases, however the plan proponents apparently recognized that such a provision would not be approved and in a subsequent version limited the release. *Id.* at 353 ("The Plan Supporters modified the release language and now contend that there is no release of direct claims against any third party that maybe held by shareholders or anyone who is not getting a distribution under the Plan.").

Washington Mutual contains several holdings relevant to the third-party releases in the Plan. First, the Court ruled that the opt-out procedure did cure the illegality of the proposed third-party releases. "However, the Court concludes that the opt out mechanism is not sufficient to support the third party releases anyway, particularly with respect to parties who did not return a ballot (or are not entitled to vote in the first place). Failing to return a ballot is not a sufficient manifestation of consent to a third party release[.]" *Id.* at 355. Second, the Court reiterated that it "previously held that is does not have the power to grant a third-party release of a non-debtor." *Id.* at 352.

Third, in further explaining why it was not sanctioning the third-party releases, the Court held:

> [T]he third party releases are too broad and should not extend to any affiliates of the Debtors. There is no evidence of who the affiliates are or why they should be getting a discharge without filing their own bankruptcy cases. Further, there is no basis for granting third-party releases of the Debtor's officers and directors, even if it is limited to their post-petition activity. The only "contribution" made by them was in the negotiation of the Global Settlement and the Plan. Those

> activities are nothing more than what is required of directors and officers of debtors in possession (for which they have received compensation and will be exculpated); they are insufficient to warrant such broad releases of any claims third parties may have against them.

Id. at 354; *see also In re Spansion, Inc.*, 426 B.R. 114 (Bankr. D. Del 2010) [refusing to approve third-party releases required of parties "not receiving anything under the Plan"]; *In re Corum Healthcare Corp.*, 315 B.R. 321 (Bankr. D. Del. 2004) [third-party releases rejected.].

The Debtors can make no credible argument that the Release and Injunction Provisions are permitted by applicable law, and it is not a close call. The Debtors' Plan treats Class 9 holders, which include Lead Plaintiff and the other shareholders with claims in the Securities Class Action, as out-of-the-money creditors deemed to have rejected the Plan. They did not have the right to vote on the Plan, and they will receive no consideration under the Plan. Forcing these creditors to release valuable claims would be profoundly unfair and characterizing the releases as equitable would be a mockery. No case has imposed a non-consensual release on a class of creditors who have been deemed to reject a plan. These releases fail to meet the first test of *Continental,* that they be fair and equitable, a conclusion moreover which must be supported by specific factual findings (the third *Continental* test).

The Debtors over-reach by proposing a Plan that purports to have out-of-the-money creditors grant non-consensual releases; and for the reasons stated in *Washington Mutual*, the Release and Injunction Provisions should be stricken from the Plan as they relate to the Securities Class Action. As explained above, the Debtors have not and will not be able to provide credible evidence showing that the thousands of unidentified Releasees have made material financial contributions in connection with the confirmation of the Plan or that releases to each of these entities are essential to confirmation. To the extent that any of the Third-Party D&O Defendants in the Securities Class Action made any post-petition "contributions" they did no more than what

they were compensated to do in their capacities as officers or directors. The Debtors have done nothing to establish that those routine activities support a broad third-party release for any or all of these individuals; the Third-Party Release is simply a windfall to provide an unearned personal benefit to these Defendants.

Moreover, the Plan's treatment of the plaintiffs in the Securities Class Action as out-of-the-money creditors deemed to have rejected the Plan means that no benefit is being conferred on them. That makes the Release and Injunction Provisions patently unfair and in violation of the first test in *Continental*. *See, e.g., In re Exide Holdings, Inc.*, 2021 U.S. Dist. LEXIS 138478, at *45-*47 (D. Del. July 26, 2021) [finding a third-party release to satisfy *Continental* because the non-parties made substantial financial contributions to the estate that resulted in the creditor objecting to the third-party release being entitled to $2.6 million under the plan].

Likewise, providing a blanket release to thousands of unnamed and unidentified individuals and entities who have played no role in these cases would violate the holding of *Continental*, which requires that with respect to each Releasee, the Court make factual findings that the releasee made a material financial contribution to the Debtors' reorganizations. Under the best of circumstances this would be a tall order, but where as here the Releasees number in the thousands, are largely anonymous, and include individuals and entities who were effectively strangers to the Debtors' reorganization, it is impossible. And, as to the Third-Party D&O Defendants in the Securities Class Action that may have performed some services as part of their compensated positions, they are not entitled to releases for just doing the job they were paid to do. *Washington Mutual, Inc.*, 442 B.R. at 354. Performing your post-petition fiduciary duty does not entitle you to a release of pre-petition wrongs you have committed, particularly from creditors who do not benefit from these purported "good and valuable" post-petition services, and especially

when those pre-petition wrongs constitute violations of the federal securities laws and are non-dischargeable. It is simply double-paying wrongdoers who have already perpetrated fraud on investors.

B. The Release and Injunction Provisions Are Not Consensual

Lead Plaintiff expects that the Debtors will try to distinguish *Continental* and the other cases cited *supra* by arguing that they involved non-consensual releases. By allowing Class 9 out-of-the-money creditors the right to "opt-out" of giving a release to the thousands of Releasees who provided no consideration for a release in the first instance, the Debtors will no doubt claim that these releases are consensual.

Such argument is wrong in general, and as applied to the Securities Class Action it is frivolous. When filing the claim on behalf of Proterra's shareholder class in the Securities Class Action, Lead Plaintiff explicitly stated: "By filing this claim, Mr. Jam and the Class do not consent to any third-party release that may ultimately be proposed in this bankruptcy. Mr. Jam and the Class hereby object to the inclusion in any plan or confirmation order any release of any non-debtor third-parties who are defendants in *Villanueva v. Proterra Inc.*, No. 23-3519 (N.D. Cal.), or *Tirado v. Proterra Inc.*, No. 23-4528 (N.D. Cal.), on the grounds that such release is without consent, that such release is not consistent with the bankruptcy code, and that the underlying conduct of which such individuals are charged is not dischargeable under the bankruptcy code." Lead Plaintiff Proof of Claim dated November 10, 2023, Attachment, p. 3.[7] Counsel for Lead Plaintiff repeated the objection directly to the Debtors' counsel during a conference call on December 12, 2023. *See supra* 11 n.7. There is no good faith basis for Debtors to argue that Lead Plaintiff or the shareholders he represents in the Securities Class Action consent to the Release and

[7] A true and correct copy of Lead Plaintiff's Proof of Claim filing is attached hereto as Exhibit A.

Injunction Provisions, whether or not they jump through additional hurdles designed to manufacture consent without any manifestation thereof.

Even without the clear opposition already communicated by Lead Plaintiff on behalf of shareholders with claims in the Securities Class Action and already received by Debtors, such attempts to manufacture consent fail. *See, e.g., In re Emerge Energy Services LP*, 2019 WL 7634308 (Bankr. D. Del. Dec. 5, 2019). *Emerge Energy* provided that creditors and out-of-the-money equity holders would be deemed to have provided releases to a large number of third parties unless they completed an opt-out form and returned it to the debtors or their claims agent. *Id.* at *17-18. The debtors' rejoinder in *Emerge Energy* to the objections of the United States Trustee, the Securities and Exchange Commission, and the creditors committee, that these releases were contrary to established law, was that the releases were consensual. *Id.* at *18.

The *Emerge Energy* court rejected this argument and held that, notwithstanding the opt-out provision, the releases were non-consensual. *Id.* at *18 ("[I]t cannot be said with certainty that those failing to return a ballot or Opt-Out Form did so intentionally to give the third-party release, and that is what the Court must find under the law to approve a third-party release absent the satisfaction of the Continental standard."). Moreover:

> For the Court to infer consent from the nonresponsive creditors and equity holders, the Debtors must show under basic contract principles that the Court may construe silence as an acceptance because (1) the creditors and equity holders accepted a benefit knowing that the Debtors, as offerors, expected compensation; (2) the Debtors gave the creditors and equity holders reason to understand that assent may be manifested by silence or inaction, and the creditors and equity holders remained silent and inactive intending to accept the offer; or (3) acceptance by the creditors and equity holders can be presumed due to previous dealings between the parties. The Debtors cannot do so. The Class 6 creditors and the Class 9 equity holders are receiving no distribution under the Plan and no previous dealings between the parties are in evidence….the Court cannot on the record before it find that the failure of a creditor or equity holder to return a ballot or Opt-Out Form manifested their intent to provide a release.

> Carelessness, inattentiveness, or mistake are three reasonable alternative explanations. *Id.*[8]

Emerge Energy cites three cases in support of its holding that the releases were non-consensual: *In re Washington Mutual, Inc.*, *supra*; *In re Sun Edison, Inc.*, 576 B.R. 453 (Bankr. S.D.N.Y. 2017);[9] and *In re Chassix Holdings, Inc.*, 533 B.R. 64 (Bankr. S.D.N.Y. 2015).

In *Sun Edison*, the issue before the Court was whether it should approve a plan provision which provided that any entity entitled to vote on the plan, but who did not vote to reject the plan, was deemed to have given a third-party release. *Id.* at 455, 458. Chief Judge Bernstein *sua sponte* raised the issue of whether the plan's prolix and broad releases in favor of innumerable third parties, and which the plan proponents claimed were consensual, should be approved.[10] He refused, holding that the releases were not permissible as to "Non-Voting Releasors" who did not affirmatively agree to grant them. *Id.* at 461.[11] The debtors in Sun Edison argued that the warnings they provided to parties entitled to vote on the plan were sufficient to find that "Non-Voting Releasors should be deemed to have consented" to have granted the releases. *Id*. at 468. The Court, citing abundant authority, applied general contract principles, and held that deemed consent cannot be construed from the failure to complete and return an opt-out form. *Id*. at 458 ["Absent a duty to speak, silence does not constitute consent"]. "'An offeror has no power to transform an offeree's

[8] Although Judge Owen noted that her decision is a "minority amongst judges in this District," the opinion did not reference any case in which any court in the District of Delaware found that out-of-the-money creditors or equity holders, whose acceptances were not solicited, could be deemed to have provided a third-party release because of a failure to return an opt-out form, and in that respect, the opinion is fully in line with other cases in this District.

[9] As explained above, *Washington Mutual* in fact supports Lead Plaintiff's position that Class 9 creditors cannot be deemed to grant releases.

[10] Much like this case, Judge Bernstein characterized the release provisions as "hard to digest in one sitting." *Id*. at 457.

[11] The third-party releases in *Sun Edison* were in at least one material respect more limited than what the Debtors are asking the Court to approve in this case, covering only holders of claims entitled to vote on the plan, and those who were to receive a distribution under the plan. 576 B.R. at 457. In other words, the debtors in *Sun Edison* implicitly understood that creditors who receive nothing like Lead Plaintiff or the plaintiffs in the Securities Class Action should not be subject to third-party releases.

silence into acceptance when the offeree does not intend to accept the offer.'" *Id*. at 458 (quoting *Karlin v. Avis*, 457 F.2d 57, 62 (2d Cir. 1972)).

Sun Edison discusses two cases decided by the bankruptcy court for the District of Delaware which appear to sanction third-party releases through an opt-out procedure. *See In re Indianapolis Downs, LLC*, 486 B.R. 286 (Bankr. D. Del 2013); *In re Spansion*, *supra*. A fair reading of both cases reveals that neither decision supports the Releases in the Plan. In Spansion, the Court approved the opt-out mechanism only as to unimpaired creditors whose claims were fully satisfied. That makes sense, because requiring an entity whose claim has been fully paid to provide a release could be fair depending on the circumstances. As to disenfranchised creditors, such as Lead Plaintiff and the putative class he represents in the Securities Class Action, *Spansion* held the opposite: "The objecting parties, however, are not receiving anything under the Plan. For these reasons the proposed non-consensual Third Party Release does not pass muster under *Continental*." *Id.* at 145.

Similarly, *Indianapolis Downs*, *supra*, does not support a plan provision which would have out-of-the-money creditors providing "deemed consent" for third-party releases; in fact, it stands for the opposite proposition. In its opinion, the Court refused to consider one party's objection to the third-party releases on standing grounds, finding it could not provide a release because it was deemed to have rejected the plan. "[T]he Oliver Parties [have] been deemed to reject the Plan by virtue of [their] status as an out-of-the-money creditor not receiving a distribution….and [are] therefore not subject to the release provisions…." *Id*. at 304. The parties who were subject to the deemed consent fiction were limited to those who voted for the plan, unimpaired creditors who were deemed to accept the plan, and those creditors eligible to vote but who abstained. *Id*. at 304.

None of those exceptions apply to the plaintiffs in the Securities Class Action or any other Class 9 holder.

Finally, in *In re Chassix Holdings, Inc.*, 533 B.R. 64 (Bankr. S.D.N.Y. 2015), the Court limited the third-party release to creditors who voted for the plan. *Id*. at 80-81. As to creditors who were deemed to reject the plan, the Court held as follows: "If (as the Court of Appeals held in Metromedia) a Bankruptcy Court should be wary of imposing third party releases on creditors, then a Bankruptcy Court should be equally wary of approving voting procedures that effectively would impose those same releases on creditors who have not affirmatively manifested their consent to them." *Id*. at 79. The Court went on to make the following observations:

> As to creditors who might vote to reject the Plan … it was difficult to understand why any other action should be required to show that the creditor also objected to the proposed third party releases. …The additional "opt-out" requirement …would have been little more than a Court-endorsed trap for the careless or inattentive creditor. . . . . As to creditors and interest holders who were deemed to reject the Plan…it would defy common sense to conclude that those parties had "consented" to releases.

Id. at 80-81.

Lead Plaintiff and the class members in the Securities Class Action that he represents are not receiving any consideration under the Plan. They have not been provided with a solicitation package or, for many, even the Opt-Out Form. Nor have they been provided with any information about the basis for the releases, the facts that Debtors contends satisfy *Continental*, or important details such as who and what they will release and the consequences of granting releases. Yet the Debtors' Plan construes any disenfranchised creditor who fails to navigate the opt-out process as intending to grant a release for no consideration. To do so would be contrary to *Continental*. It would be unprecedented, it would be error, and it would "defy common sense."

II. THE BANKRUPTCY COURT LACKS SUBJECT MATTER JURISDICTION TO RESOLVE THE CLAIMS OF SECURITIES CLASS ACTION PLAINTIFFS

The Debtors' Disclosure Statement and Plan also misinform Class 9 holders, including Lead Plaintiff and the Securities Class Action claimants he represents, about their ability to have their claims adjudicated in an Article III court. Federal courts are courts of limited jurisdiction. A federal court may adjudicate a case or controversy "only if there is both Constitutional authority and statutory authority for federal jurisdiction." *In re Midway Gold US, Inc.*, 575 B.R. 475, 517 (Bankr. D. Colo. 2017) (citation omitted). With respect to Article XI, section F, which purports to confer broad jurisdiction upon this Court to adjudicate disputes among non-Debtors involving the Third-Party Release, the Bankruptcy Court has neither.[12]

Section 1334(b) of title 28 of the U.S. Code provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." The terms "arising under," "arising in," and "related to" are terms of art. *In re Excel Storage Products, L.P.*, 175, 181 (Bankr. M.D. Pa. 2011). A proceeding "arises under" the Bankruptcy Code "if it asserts a cause of action created by the Code," such as the various causes of action created by chapter 5. *In re Sunbridge Capital, Inc.*, 454 B.R. 166, 169 (Bankr. D. Kan. 2011) (citation omitted). Proceedings "arising in" a bankruptcy case are those that could not exist outside of the bankruptcy case but are not causes of action created by the Bankruptcy Code itself. *Midway Gold US*, 575 B.R. at 517 (citation omitted). The Securities Class Action claims against the Third-Party D&O Defendants arise neither under nor in the Chapter 11 Cases.

[12] Article XI, Section F of the Plan purports to provide jurisdiction to this Court to: "adjudicate, decide, or resolve any and all matters related to Causes of Action, including any claims that may be brought against, or on behalf of, any Debtor, any director, officer, employee, creditor, member, interest holder, or other Released Party or Exculpated Party of a Debtor in their capacity as such (including to enforce the release and exculpation provisions of this Plan).

The third category of proceedings over which bankruptcy courts may have jurisdiction – proceedings "related to" the bankruptcy case – are proceedings whose outcome "could conceivably have any effect on the estate being administered in bankruptcy." *Power Plant Entm't Casino Resort Ind., LLC v. Mangano*, 484 B.R. 290, 295 (Bankr. D. Md. 2012) (citation omitted). The party asserting that a bankruptcy court has subject matter jurisdiction over a matter bears the burden of proving by a preponderance of the evidence that jurisdiction exists. *In re SunEdison, Inc.*, 576 B.R. 453, 461 (Bankr. S.D.N.Y. 2017).

Further, not only must the Court have subject matter jurisdiction over the Securities Class Action, but it must also have constitutional authority to determine any aspect of the merits of such claims and any defenses that the Third-Party D&O Defendants may have, including whether the claims have been released. As Article I courts, bankruptcy courts do not have the authority to enter final orders on matters "that are not integral to the restructuring of the debtor-creditor relationship." *In re Kirwan Offices S.a.r.l.*, 592 B.R. 489, 510 (Bankr. S.D.N.Y. 2019) (internal quotations omitted). Practically speaking, "resolving claims *against a debtor* will nearly always be integral to resolving a bankruptcy process, while claims *against third parties* will be integral only in 'rare cases.'" *Id.* at 511 (quoting *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005)) (emphasis added). Non-debtor claims against non-Debtor defendants are proceeding and belong in Article III courts, not here. The Debtors' Disclosure Statement and Plan make no mention of this or otherwise alert Class 9 holders that their claims are at risk of being extinguished through unconstitutional measures.

III. DEBTORS' PROPOSED PROCEDURES DEPRIVE SECURITIES CLASS ACTION PLAINTIFFS OF DUE PROCESS

Debtors' procedures ensure that Class 9 holders, *i.e.*, shareholders who possess claims in the Securities Class Action, will not receive the Opt-Out Form in sufficient time to digest and

respond pursuant to its instructions, thereby depriving attempting to release their viable Third-Party claims without due process of law. Debtors indicate that they will seek approval of the Opt-Out Form on January 23, 2024, at 11:00 a.m. *See* Docket No. 793; *see also* Docket No. 890. The Opt-Out Form indicates that Debtors will assume consent if it is not filled out properly and returned by February 27, 2024 at 4:00 p.m., consent will be "deemed." This is not sufficient time to print the form if approved, mail to Class 9 holders, correct any wrong addresses, or allow the recipients sufficient time to review, ingest, or respond to the Opt-Out Form.

As an initial matter, Debtors do not yet have a list of shareholders who have claims under the Securities Class Action to which the Opt-Out Forms could be mailed, because no such list currently exists. While Lead Plaintiff will opt out on their behalf and protect their right to participate in the Securities Class Action, these Class 9 holders deserve the right to opt out on their own and protect their individual rights against the Debtor and Third-Party D&O Defendants. While these Class 9 holders (*i.e.*, Proterra shareholders) are reasonably ascertainable, the steps to do so take time. In securities class actions, class members are identified through a lengthy claims process in which Class Period transfer records are obtained, nominees are requested to provide address information for the majority of investors who hold securities in street name, and upon receipt the mailing is provided to the names received from the nominees, with robust address correction procedures at each step of the way. The process generally takes 90 days or more, and it is unheard of to accomplish in less than five weeks as Debtors claim they will do.

Debtors cannot skip the steps necessary to provide reasonable notice to Securities Class Action class members. Under both class action law and bankruptcy precedent, due process requires that such reasonably ascertainable members be provided notice even if it would take a few months. *See Chemetron v. Jones,* 72 F.3d 341, 346 (3rd Cir. 1995) (citing *Tulsa Professional*

Collection Serv., Inc. v. Pope, 485 U.S. 478, 490, 108 S. Ct. 1340, 1347 (1988); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). "A creditors identity is 'reasonably ascertainable' if that creditor can be identified through 'reasonably due diligent efforts.'" *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 798 n.4, 103 S. Ct. 2706, 2711 n.4 (1983).

Moreover, even robust notice procedures may not provide sufficient due process to release third-party claims. *See In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 724 (Bankr. S.D.N.Y. 2019) (raising numerous concerns, including jurisdictional ones, with third-party releases and noting third-party releases in bankruptcy lack the procedural protections of class actions); *see also In re FirstEnergy Sols. Corp.*, 606 B.R. 720, 738 (Bankr. N.D. Ohio 2019) (agreeing with *Aegean Marine's* concerns "that such [third-party] releases often lack legal justification or procedural safeguards"). The *Aegean Marine* court explained:

> it is worth pausing for a minute to note just what an extraordinary thing it is for a court to impose an involuntary third-party release and how different that is from what courts ordinarily do.
>
> ***
>
> In other contexts, the Supreme Court has made clear that as a matter of due process, notice is not enough to confer personal jurisdiction over a party, or over its claims, or to give the court power over those claims. Instead, a formal service of process is required. *See, e.g. , Martin v. Wilks*, 490 U.S. 755, 763-64, 109 S.Ct. 2180, 104 L.Ed.2d 835 (1989) ("a party seeking a judgment binding on another cannot obligate that person to intervene; ... Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree") (citations omitted); *see also Chase Nat'l. Bank v. City of Norwalk, Ohio*, 291 U.S. 431, 54 S.Ct. 475, 78 L.Ed. 894 (1934) ("[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger").

599 B.R. at 723-24. The claims of the Securities Class Action class members against the Third-Party D&O Defendants have nothing to do with bankruptcy, and due process neither allows this Court to exercise judgment over them nor extinguish them.

IV. THE RELEASES SOUGHT ALSO VIOLATE THE LETTER AND SPIRIT OF THE BANKRUPTCY CODE

The Debtors' proposed Release and Injunction Provisions are not sanctioned by any provision of the Bankruptcy Code to the extent they seek to discharge violations under the federal securities laws. Congress made clear that the Bankruptcy Code was not intended to shield individuals from liability under federal securities laws, prohibiting such claims from discharge. *See* 11 U.S.C. § 523(a)(19)(A)(i). As this Court stated in reference to the discharge exceptions in Section 523(a), "[t]he purpose of this exception [Subsection 19] is to help defrauded investors recoup their losses and to hold accountable those who violate securities laws after a government unit or private suit results in a judgment or settlement against the wrongdoer." *Dastinot*, 2012 Bankr. LEXIS 5403, at *24 (internal quotations omitted). No provision states otherwise. And it is even more egregious here given the Release and Injunction Provisions do not even provide for a carve out for fraud, willful or malicious misconduct, or gross negligence (a carve-out the Debtors are providing for the Wind-Down Debtors with respect to indemnification claims). *See* Plan, Arts. V.E. and VIII.B.

Excepting fraud claims from discharge is commonplace. *See In re Modell's Sporting Goods, Inc., et al.*, Case No. 20-14179-VFP (Bankr. D.N.J. Nov. 13, 2020) [Docket No. 827, Ex. A., Art. VIII.D.2.] [confirmed plan including a third-party release provision that states "the foregoing releases shall have no effect on the liability of any person or [e]ntity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct"]; *In Tri Harbor Holdings Corp. (f/k/a Aceto Corp.), et al.*, Case No. 19-13448-VFP (Bankr. D.N.J. Sept. 18, 2019) [Docket No. 996, Ex. A., § 9.05] [confirmed plan including a third-party release provision with a carve out for gross negligence, willful misconduct, or fraud]; *see also* In re: SunEdison, Inc., No. 16-10992 (SMB) (Bankr. S.D.N.Y.), Doc. No. 3735, p. 138 of 342 [carving

out "Securities Litigation Actions" from releases]; *In re: AppHarvest Products, LLC*, No. 23-90745 (Bankr. S.D. Tex.), Doc. No. 471, p. 60 of 66 [confirming opt-out for "Proposed Class" in connection with "Securities Litigation"]; *In re: Lordstown Motors Corp.*, No. 23-10831 (MFW) (D. Del.), Doc. No. 657, p. 54 of 69 [excluding from releases "Putative Class Action Representatives" and "any other party in connection with the potential certification of any putative class"]; *In re: CHC Group Ltd.*, No. 16-31854 (BJH) (N.D. Tex.), Doc. No. 1701, p. 63 of 74 ["the releases provided for herein shall not release (i) any claim against any non-Debtor that has been asserted by the named plaintiff or any member of the class . . . ."]. Thus, the Debtors' and Third-Party D&O Defendants' refusal to do so here smacks of foul play, especially in light of the timing of their decision to create and subrogate Class 9 claims in the midst of ongoing settlement negotiations.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Court not approve the Debtors' Disclosure Statement, Solicitation and Notice Procedures, Opt-Out Forms, or Schedule unless: (i) the Securities Class Action is excepted from the Release and Injunction Provisions; (ii) the Disclosure Statement and Opt-Out Form explicitly disclose that the Securities Class Action is excepted from the Release and Injunction Provisions and Lead Plaintiff will opt-out of the Release and Injunction Provisions on behalf of all class members in the Securities Class Action; and (iii) Class 9 holders are properly solicited to provide them with appropriate time and opportunity to opt out of the Release and Injunction Provisions to protect their individual rights, if desired.[13]

[*Signature Page to Follow]*

[13] Lead Plaintiff respectfully requests permission to file a reply brief to respond to any opposition to this objection. Lead Plaintiff also reserves the right to object to the Plan in accordance with the Court's schedule.

Dated: January 16, 2024

Respectfully submitted,

/s/ Michael J. Joyce

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Counsel for Lead Plaintiff
and Lead Counsel for the Class
in the Securities Class Action

EXHIBIT A

Fill in this information to identify the case:

Debtor Proterra Inc

United States Bankruptcy Court for the: _____ District of Delaware (State)

Case number 23-11120

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Cyress Jam, Individually and on behalf of Securities Litigation Class
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 2123637500	Contact phone _____
Contact email aapton@zlk.com	Contact email _____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____

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Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 330000000. **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Violations of the federal securities laws as described in the attached addendum.

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

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12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/10/2023
MM / DD / YYYY

/s/Adam M. Apton
Signature

Print the name of the person who is completing and signing this claim:

Name: Adam M. Apton
First name Middle name Last name

Title: Attorney

Company: Levi Korsinsky, LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

2311120231110000000000024

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 251-3076 | International (310) 751-2617

Debtor:
23-11120 - Proterra Inc

District:
District of Delaware

Creditor:
Cyress Jam, Individually and on behalf of Securities Litigation Class
Adam M. Apton, Esq.
33 Whitehall Street, 17th Floor
New York, New York, 10004
Phone:
2123637500
Phone 2:
Fax:
2123637171
Email:
aapton@zlk.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
Violations of the federal securities laws as described in the attached addendum.

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
330000000

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Adam M. Apton on 10-Nov-2023 2:44:44 p.m. Eastern Time
Title:
Attorney
Company:
Levi Korsinsky, LLP

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PROTERRA INC, *et al.*,	Case No. 23-11120 (BLS)
	(Jointly Administered)

ATTACHMENT TO CLASS PROOF OF CLAIM

I. Basis of Claim

This claim arises from Proterra Inc. ("Proterra")'s violations of Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5). Court-appointed Lead Plaintiff Cyress Jam asserts this claim on behalf of himself and all persons and entities who purchased or otherwise acquired the publicly traded common stock of Proterra between August 11, 2021 and August 7, 2023, inclusive (the "Class Period"), and who suffered damages by Proterra's alleged violations of the federal securities laws (the "Class"). Attached hereto as Exhibits 1 and 2 are the class complaints pending against Debtor in the actions styled *Villanueva v. Proterra Inc.*, No. 23-3519 (N.D. Cal.), and *Tirado v. Proterra Inc.*, No. 23-4528 (N.D. Cal.). The allegations in these complaints are incorporated by reference herein as if fully set forth below. Attached hereto as Exhibit 3 is the District Court order confirming Mr. Jam as the Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a).

As alleged in the *Villanueva* and *Tirado* actions, Proterra and its senior officers made false and misleading statements concerning Proterra's financial condition, including *inter alia*, the impact of the company's cash usage on constructing its new factory in Greer, South Carolina. Specifically, the complaints allege that Proterra falsely assured investors that despite facing supply chain and inflation headwinds and suffering from production inefficiencies, Proterra retained a healthy balance of cash and equivalents to support its significant cash burn on inventory investments and the construction of the Greer facility.

Contrary to Proterra's representations, it faced severe financial issues regarding its balance sheet and gross margins. On March 15, 2023, Proterra announced it had a net loss of $81 million and a gross loss of $20.3 million in the fourth quarter of its fiscal year 2022. In addition, the company announced that it was in violation of a liquidity clause in their secured convertible notes,

and as a result, Proterra expected the audit report included in its annual report filed on Form 10-K with the SEC would contain a "going concern" qualification. Proterra's stock price plummeted as investors and analysts re-evaluated the company's financial stability. In the span of just a day, Proterra's stock price substantially dropped from $2.51 per share on March 15, 2023, to $1.16 per share at the close of March 16, 2023, staggering loss of $1.35 per share representing nearly 53% of its value. The volume of shares traded that day was more than ten times as high as the daily average volume during the Class Period.

On August 7, 2023, after market hours, Proterra announced that it had filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. In response to this news, Proterra's stock price plummeted. On August 7, 2023, Proterra's stock price closed at $1.43 per share. The following day, on August 8, 2023, Proterra's stock price declined to $0.17 per share.

The *Villanueva v. Proterra Inc.*, No. 23-3519 (N.D. Cal.), and *Tirado v. Proterra Inc.*, No. 23-4528 (N.D. Cal.), actions have been consolidated into the *Villanueva* action. The *Tirado* action has been administratively closed. A consolidated complaint will be filed on or before January 8, 2024.

II. General Unsecured Claim and Amount

Mr. Jam and the Class assert that this Claim is a general unsecured claim in an amount in excess of $330 million for damages in connection with all causes of action set forth in the securities litigation. This does not include interest or reasonable costs and expenses incurred including counsel and expert fees.

III. Reservation of Rights

Mr. Jam and the Class reserve the right to amend, supplement or supersede this Claim at any time and as may be necessary during Proterra's bankruptcy proceedings. In addition, Mr. Jam

and the Class reserve all rights with respect to any indebtedness owed to them by Proterra or any other defendants in the securities litigation including but not limited to certain officers and/or directors of Proterra as set forth in the securities litigation.

By filing this claim, Mr. Jam and the Class do not consent to any third-party release that may ultimately be proposed in this bankruptcy. Mr. Jam and the Class hereby object to the inclusion in any plan or confirmation order any release of any non-debtor third-parties who are defendants in *Villanueva v. Proterra Inc.*, No. 23-3519 (N.D. Cal.), or *Tirado v. Proterra Inc.*, No. 23-4528 (N.D. Cal.), on the grounds that such release is without consent, that such release is not consistent with the bankruptcy code, and that the underlying conduct of which such individuals are charged is not dischargeable under the bankruptcy code.

Nothing contained in this Claim shall be construed as limiting any of rights, remedies and interests with respect to the subject matter contained herein on behalf of Mr. Jam or the Class.

IV. Name and Address of Where Notices Should be Sent

All communications in connection with this proof of claim should be sent to:

LEVI & KORSINSKY, LLP
Adam M. Apton
33 Whitehall Street, 17th Floor
New York, New York 10004
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EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEREMY VILLANUEVA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. PROTERRA INC., GARETH T. JOYCE, and KARINA FRANCO PADILLA, Defendants.	Case No. 3:23-cv-03519 **CLASS ACTION** **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** Demand for Jury Trial

Plaintiff Jeremy Villanueva ("Plaintiff") alleges the following upon information and belief, except as to those allegations concerning himself, which are alleged upon personal knowledge. Plaintiff's information and belief is based on the investigation of his undersigned counsel, which included, among other things, review and analysis of: (a) public statements made by or on behalf of Proterra Inc. ("Proterra" or the "Company"), including public filings with the U.S. Securities and Exchange Commission ("SEC"); (b) press releases; (c) reports of securities and financial analysts; (d) news articles; and (e) industry reports. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE CLAIM

1. Plaintiff brings this action pursuant to of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78a, et seq., and Rule 10b-5 promulgated thereunder, on behalf of

himself and all persons similarly situated who purchased or otherwise acquired Proterra securities between August 2, 2022 to March 15, 2023, inclusive (the "Class Period").

2. Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle solutions for commercial applications.

3. On August 2, 2022, Chief Financial Officer Karina Franco Padilla described the company's strong financial position by stating "we have . . . the balance sheet to not only ride out potential economic turbulence over the next year," and said the company had $523 million of cash and cash equivalents on their balance sheet. On March 15, 2023, just seven months later, Proterra announced the company was in violation of a liquidity clause in their secured convertible notes. The company also announced they may have to qualify an audit report with a "going concern" clause.

4. During the Class Period, Plaintiff and other similarly situated investors bought Proterra securities at artificially inflated prices due to Defendants' false and/or materially misleading statements. When the truth concerning the company's liquidity issues emerged, Proterra's stock price decreased resulting in significant losses to investors. This action seeks to compensate those investors and recover the damages they sustained because of Defendants' fraudulent conduct.

JURISDICTION AND VENUE

5. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

6. This Court has subject matter jurisdiction over this action under Section 27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

7. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b) because certain of the acts alleged herein, including the preparation and dissemination of materially false and/or misleading information, occurred in this District.

PARTIES

9. Plaintiff purchased Proterra securities at artificially inflated prices during the Class Period and was damaged upon the revelation of Defendants' fraud. Plaintiff's certification evidencing his transaction(s) in Proterra is attached hereto.

10. Defendant Proterra was founded in 2004 and is incorporated in the State of Delaware. Its principal executive offices are located at 1815 Rollins Road, in Burlingame, California 94010. During the Class Period, Proterra's securities traded in an efficient market on the Nasdaq under the symbol "PTRA".

11. Defendant Gareth Joyce ("Joyce") is the Company's Chairman and Chief Executive Officer. Joyce has 10 years of experience across the transportation sector. Joyce started at Daimler AG in 2004 and rose to president and Chief Executive Officer of Mercedes-Benz Canada before leaving Delta Cargo in 2016. At Delta Air Lines, Inc., Joyce became Chief Sustainability Officer before leaving to join Proterra in November 2020, and he has been the Chief Executive Officer of Proterra since September 2021.

12. Defendant Karina Franco Padilla ("Padilla"), was the Company's Chief Financial Officer in August of 2022. Prior to joining Proterra in 2022, Padilla served as Senior Vice President of Finance and North America Chief Financial Officer at JELD-WEN. Padilla also held leadership positions at Ingersoll Rand, including as interim Chief Financial Officer of the Latin America business unit and Vice President of Finance, Corporate Planning, and Analysis.

13. Defendants Joyce and Padilla are collectively referred to herein as the "Individual Defendants."

14. Each of the Individual Defendants:

(a) directly participated in the management of Proterra;

(b) was directly involved in the day-to-day operations of Proterra at the highest levels;

(c) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(d) was directly or indirectly involved in the oversight or implementation of Proterra's business and/or finances;

(e) was aware of or deliberately recklessly disregarded the fact that the false and misleading statements were being issued concerning Proterra; and/or

(f) approved or ratified these statements in violation of the federal securities laws.

15. Because of the Individual Defendants' positions within Proterra, they had access to undisclosed information about the true issues with the company's balance sheet and gross margins.

16. As officers of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the federal securities laws of the United States, the Individual Defendants each had a duty to disseminate prompt, accurate and truthful information with respect to the Company's financial status and to correct any previously-issued statements that had become materially misleading or untrue.

17. The Individual Defendants, because of their positions with Proterra, possessed the power and authority to control the contents of Proterra's reports to the SEC, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors, *i.e.*, the market. Each Individual Defendant had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

18. Each of the Individual Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Proterra's securities by disseminating materially false and misleading statements and/or concealing material adverse facts. This scheme caused Plaintiff and other shareholders to purchase Proterra's securities at artificially inflated prices.

FACTUAL BACKGROUND

19. Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle solutions for commercial applications.

20. In December of 2021, Proterra announced their plans to open a new factory in Greer, South Carolina that would begin production in the second half of 2022. The factory would manufacture battery systems for Proterra Powered customers' electric vehicles, including buses, industrial equipment, delivery and work trucks.

21. On August 2, 2022, Proterra announced their earnings for the second quarter of 2022. In that announcement, the company stated they had $523 million in cash and cash equivalents on hand and stated "we have . . . the balance sheet to not only ride out potential economic turbulence over the next year but to emerge as a central player of this developing market."

22. The day those earnings were announced, the company had an earnings call. During that call, CFO Karina Franco Padilla said the company achieved "sequential gross margin improvement." Padilla also stated "we retain a healthy balance of cash and equivalents on our balance sheet of more than $520 million as of June 30. While this year's investment in our new factory accelerates our cash usage in 2022, the new Greer, South Carolina facility will allow us to multiply our existing battery production capacity several times. This positions us for growth on revenue, improved margins and cash flow in the years ahead." Padilla made additional comments regarding the company's improving margins and the strength of the company's balance sheet.

23. Contrary to these statements during the Class Period, the company faced severe financial issues regarding their balance sheet and their gross margins. On March 15, 2023, Proterra announced their quarterly earnings. In that announcement, the Company stated they were in

violation of a liquidity clause in their secured convertible notes and that they may have to qualify an audit report with a "going concern" clause. The financial issues stemmed from an increase in cash burn because of a decrease in gross margin and an increase in accounts receivable during the relevant quarter.

24. In response to the announcement, Proterra's stock price plummeted as investors and analysts reevaluated the Company's financial stability. Throughout the Class Period, Proterra's stock price lost some value, but when the truth was finally revealed, the bottom fell out. In the span of just a day, Proterra's stock price substantially dropped from $2.51 per share to $1.16 per share, eliminating approximately $118 million in market capitalization in one day.

SUBSTANTIVE ALLEGATIONS

A. *False and/or Materially Misleading Statements*

August 2, 2022 – Quarterly Letter

25. On August 20, 2022, Proterra released their quarterly earnings for the second quarter of 2022 in a quarterly letter. Chief Executive Officer Gareth Joyce signed the quarterly letter on behalf of the Company. The "Highlights" section of the earnings release stated the company had "$523M in cash, cash eq, and short term investments." The Company said the new factory was "on target for start of production before the end of 2022," and "we expected it to provide greater scale and production efficiency to support better margins." The Company described their financial stability by saying:

> With $523 million of cash, cash equivalents, and short-term investments as of the end of Q2 2022, our new Greer factory adding multiple GWh of new battery manufacturing capacity, Proterra Powered partnerships to develop or supply battery systems with more than a dozen OEMs across 20 vehicle programs, and approximately $1.3 billion in federal grant programs available to the industry for zero emission transit buses and chargers in fiscal year 2022, we believe we have the technology, the product, the competitive positioning and the balance sheet to not only ride out potential economic turbulence over the next year but to emerge as a central player of this developing market.

August 2, 2022 – Earnings Call

26. On the same day the Company released their earnings for the second quarter of 2022, they had an earnings call that included Chief Financial Officer Gareth Joyce and Chief Financial Officer Karina Padilla. Joyce touted the company's growth and execution "while sustaining a strong balance sheet with more than a $0.5 billion in cash and equivalents as of June 30." Joyce described the company's approach in 2022 by saying "early on this year, we began assessing a strategy of operational and capital disciplines throughout the organization focused on enduring growth that prioritizes margin improvement over revenue growth, cash preservation without sacrificing our growth investments and focusing on core growth opportunities that can provide the highest return on capital as well as the fastest return of capital. We continue to be supported by a healthy balance sheet with more than $520 million in cash and equivalents as of June 30 and I reassure you it's not one we take for granted in any way, shape, or form."

27. During that earnings call, Padilla touted the company's sequential gross margin improvement and said "we retain a healthy balance of cash and equivalents on our balance sheet of more than $520 million as of June 30." Padilla also the Company's new factory would "allow us to multiply our existing battery production capacity several times. This positions us for growth on revenue, improved margins and cash flow in the years ahead." Padilla also said "our underlying gross margin should continue to improve in the years ahead from higher pricing that balances our cost, greater production volumes and scale benefits and improvement in our labor efficiency, more effective supply chain and greater manufacturing efficiencies overall as we bring our new manufacturing capacity online."

28. Padilla discussed the strength of the company's balance sheet at length during the call by saying:

> Lastly, on the cash front. Our balance sheet remains strong with $523 million in cash and equivalents as of June 30 sets us apart from others. The health of our balance sheet is not coincidental. Liquidity is a priority, it always has been and will continue to be. But we will continue to invest responsibly in battery capacity expansion, product research and development and across our operations to support our growth strategy for the years to come…I cannot emphasize enough that we understand the importance of

> prudent cash management especially in such volatile times. Despite the challenging environment we are all currently facing, I believe we are in an excellent position to ride out any potential economic downturn on the horizon and have ample room to improve our gross margins over time as supply chain and inflation headwinds normalize and as we ramp up our new capacity to full production.

November 2, 2022 – Quarterly Letter

29. On November 2, 2022, the Company released quarterly earnings for the third quarter of 2022 in a quarterly letter. Chief Executive Officer Gareth Joyce signed the quarterly letter on behalf of the Company. The "Highlights" section of the earnings release stated the company had "$409M in cash, cash equivalents, and short-term investments." The company said "the third quarter of 2022 was a breakthrough quarter for Proterra. We reported record quarterly revenue surpassing $96 million, representing growth of 55% compared to Q3 2021 and 29% compared to our prior record in Q2 2022." The Company also said "we are trimming our guidance for 2022 capital expenditures to a range of $70 million to $80 million, as we approach completion of the first phase of our Powered 1 factory."

November 2, 2022 – Earnings Call

30. On the same day the Company released their earnings for the third quarter of 2022, they had an earnings call that included Chief Financial Officer Gareth Joyce and Chief Financial Officer Karina Padilla. Joyce said "Q3 2022 was a breakthrough quarter for Proterra. Not only did we report record quarterly revenue of $96 million, almost 30% above our prior record in Q2 2022, but this was driven by new highs in revenue across both our business units, along with record production and deliveries at Proterra Transit."

31. During the call, Joyce continued to describe the company's financial strength:

> All in, as you can see, Q3 was a breakthrough quarter for us all round. Based on our performance through the first 3 quarters and our current views on Q4, which has 17% fewer working days than Q3 due to the holidays, and downtime for year-end inventory, we are maintaining our 2022 revenue guidance range of $300 million to $325 million, representing growth of 24% to 34% year-over-year.

32. Chief Financial Officer Padilla also described the Company's "record-breaking revenue:

> Consolidated revenue was $96.2 million, representing growth of 55% year-over-year and 29% sequentially. Proterra Powered and Energy grew 239% year-over-year and 68% sequentially to reach $39.9 million in quarterly revenue for the first time. Proterra Powered and represented more than 40% of total revenue in the quarter, more than doubling its 19% contribution in Q3 of the prior year. For perspective, we reported more revenue in the third quarter of 2022 than we did through the first 3 quarters of 2021 combined.

33. Padilla also emphasized the importance of liquidity for the Company by saying "we continue to be supported by [a] strong balance sheet, ending the quarter with $408 million in cash, cash equivalents and short-term investments." Padilla went on:

> Cash and liquidity is a top priority for us, and it will continue to be. We are allocating our cash to the areas we believe are most critical to reinforcing our market leadership and position us for growth in the years ahead. Ending the quarter with a cash and cash equivalents balance of more than $400 million, we believe we have the flexibility to navigate these times of economic uncertainty and capital market volatility in an advantageous competitive position just as electric commercial vehicle adoption begins to accelerate.

34. Defendants' statements referenced in ¶¶ 25 - 33 constituted violations of the securities laws because the statements were false and/or misleading as well as failed to disclose material adverse facts about one of the Company's financial status. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company repeatedly stated the $523 on their balance sheet meant the company had abundant liquidity and financial stability; and, (ii) the new factory would continue to improve production efficiency and gross margins.

B. *The Truth Emerges*

March 15, 2023

35. On March 15, 2023, Proterra released quarterly earnings for the fourth quarter of 2022 in a quarterly letter. The Company announced they had a net loss of $81 million and a gross loss of $20.3 million in the fourth quarter of 2022.

36. The Company also announced that they expected the audit report included in the 10-K annual report would contain a going concern qualification, which would be an event of default under Company debt agreements. The Company also announced they had obtained a limited waiver under their convertible notes for violating a minimum liquidity covenant.

37. When the smoke cleared at the end of the trading day, Proterra's stock price had dropped from March 15th's closing price of $2.51 to March 16th's closing price of $1.16—***a staggering loss of $1.35 per share representing nearly 53% of its value***. The volume of shares traded that day was more than ten times as high as the daily average volume during the Class Period.

C. *Loss Causation*

38. The market for Proterra common stock was open, well-developed, and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Proterra stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Proterra stock relying upon the integrity of the market of Proterra, and market information related to the Company and have been damaged thereby.

39. During the Class Period, Defendants named in this Action materially misled the investing public, thereby inflating the price of Proterra stock, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make their own statements, as set forth herein, not false and/or misleading. Said statements and omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about Proterra's business, operations, and prospects as alleged herein.

40. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Proterra's financial issues. These material misstatements and/or omissions had

the cause and effect of creating and/or maintaining in the market an unrealistically positive assessment of the Company and its operations, thus causing the Company's stock to be overvalued and artificially inflated at all relevant times. The materially false and/or misleading statements made by Defendants named in this Action during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

41. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that caused the price of Proterra stock to be artificially inflated by failing to disclose and/or misrepresenting the adverse facts detailed herein. As Defendants' misrepresentations and fraudulent conduct were gradually disclosed and became apparent to the market, the artificial inflation in the price of Proterra's stock was removed, and the price of Proterra stock fell.

42. As a result of their purchases of Proterra stock during the Class Period at artificially inflated prices, Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws.

43. The timing and magnitude of the price decline in Proterra stock negate any inference that the loss suffered by Plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to the Proterra Defendants' fraudulent conduct.

D. *Presumption Of Reliance; Fraud-On-The-Market*

44. At all relevant times, the market for Proterra stock was an efficient market for the following reasons:

(a) Proterra stock met the requirements for listing, and was listed and actively traded on the Nasdaq, a highly efficient and automated market;

(b) As a regulated issuer, Proterra filed periodic public reports with the SEC and the Nasdaq;

(c) Proterra communicated with public investors via established market communication mechanisms, including through regular dissemination of

press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) During the Class Period, on average, millions of Proterra shares were traded on a weekly basis. On news days, the Company's trading volume increased into the millions, reflecting an active trading market for Proterra stock and investors' expectations being impounded into the stock price.

45. As a result of the foregoing, the market for Proterra's securities promptly digested current information regarding Proterra from all publicly available sources and reflected such information in Proterra's stock price. Under these circumstances, all purchasers of Proterra securities during the Class Period suffered similar injury through their purchase of Proterra securities at artificially inflated prices, and a presumption of reliance applies.

46. Alternatively, reliance need not be proven in this action because the action involves omissions and deficient disclosures. Positive proof of reliance is not a prerequisite to recovery pursuant to ruling of the United States Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered the omitted information important in deciding whether to buy or sell the subject security.

E. *No Safe Harbor; Inapplicability of Bespeaks Caution Doctrine*

47. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the material misrepresentations and omissions alleged in this Complaint.

48. To the extent certain of the statements alleged to be misleading or inaccurate may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

49. Defendants are also liable for any false or misleading "forward-looking statements" pleaded because, at the time each "forward-looking statement" was made, the speaker knew the "forward-looking statement" was false or misleading and the "forward-looking statement" was authorized and/or approved by an executive officer of Proterra who knew that the "forward-looking statement" was false. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions.

50. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Class Action Complaint. The statements alleged to be false and misleading herein all relate to then- existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Proterra who knew that the statement was false when made.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action on behalf of all individuals and entities who purchased Proterra securities on the public market during the Class Period, and were damaged, excluding Proterra, the Individual Defendants and each of their immediate family members, legal representatives, heirs, successors or assigns, and any entity in which any of the Defendants have or had a controlling interest (the "Class").

52. The Class members are so numerous that joinder of all members is impracticable. Throughout the Class Period, shares of Proterra common stock were actively traded on the Nasdaq. While the exact number of Class members is unknown at this time and can be ascertained only

through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other Class members may be identified from records maintained by Proterra or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions. As of the filings of its most recent annual report—on March 13, 2023, Proterra had over 226.4 million shares of common stock outstanding. Upon information and belief, these shares are held by thousands of individuals located throughout the entire world. Joinder would be highly impracticable.

53. Plaintiff's claims are typical of the claims of the Class members as all Class members are similarly affected by the Defendants' respective wrongful conduct in violation of the federal laws complained of herein.

54. Plaintiff has and will continue to fairly and adequately protect the interests of the Class members and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

55. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by the Defendants' respective acts as alleged herein;

(b) whether the Defendants acted knowingly or with deliberate recklessness in issuing false and misleading statements concerning Proterra's financial status;

(c) whether the price of Proterra's securities during the Class Period was artificially inflated because of the Defendants' conduct complained of herein; and

(d) whether the Class members have sustained damages and, if so, what is the proper measure of damages.

56. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the

damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

Violation of Section 10(b) and Rule 10b-5 Against All Defendants

57. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

58. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other Class members to purchase Proterra securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, each of the Defendants took the actions set forth herein.

59. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of Proterra securities in an effort to maintain artificially high market prices for Proterra securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

60. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Company's financial status as specified herein.

61. These Defendants employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Proterra's value, performance, and continued substantial growth, which included the making of, or participation in the making of,

untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Proterra's financial status under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of Proterra securities during the Class Period.

62. Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (1) Individual Defendants were high-level executives, directors, and/or agents at Proterra during the Class Period and members of Proterra's management team or had control thereof; (2) each Individual Defendant, by virtue of his responsibilities and activities as a senior officer and/or director of Proterra, was privy to and participated in the creation, development and reporting of Proterra's SEC filings and public statements concerning Proterra's financial status; (3) each Individual Defendant enjoyed significant personal contact and familiarity with the other Individual Defendants and was advised of and had access to other members of Proterra's management team, internal reports, and other data and information about Proterra's financial status, at all relevant times; and (4) each Individual Defendant was aware of Proterra's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

63. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing fundamental problems with Proterra's financial status that led to disappointing results from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by Defendants' misrepresentations concerning the fundamental problems and risks inherent in Proterra's financial status throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

64. As a result of the dissemination of materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Proterra securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Proterra securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the common stock trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other Class members acquired Proterra securities during the Class Period at artificially high prices and were or will be damaged thereby.

65. At the time of said misrepresentations and omissions, Plaintiff and other Class members were ignorant of their falsity and believed them to be true. Had Plaintiff and the other Class members and the marketplace known the truth regarding the risks and flaws inherent in Proterra's financial status, which was not disclosed by Defendants, Plaintiff and other Class members would not have purchased or otherwise acquired their Proterra securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

66. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

67. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with their respective purchases and sales of Proterra securities during the Class Period.

68. This action was filed within two years of discovery of the fraud and within five years of each plaintiff's purchases of common stock giving rise to the cause of action.

COUNT II

The Individual Defendants Violated Section 20(a) of the Exchange Act

69. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

70. The Individual Defendants acted as controlling persons of Proterra within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, ownership and contractual rights, and participation in and/or awareness of Proterra's operations and/or intimate knowledge of the false information filed by Proterra with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Proterra, including the content and dissemination of the various statements that Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of Proterra's financial statements, reports, press releases, public filings and other statements alleged by Plaintiff to have been misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

71. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Proterra and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein and exercised the same.

72. As set forth above, Proterra and the Individual Defendants each violated Section 10(b), and Rule 10b-5 promulgated thereunder, by their acts and omissions as alleged in this Complaint.

73. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other Class members suffered damages in connection with their purchases of Proterra's common stock during the Class Period.

74. This action was filed within two years of discovery of the fraud and within five years of each Plaintiff's purchases of common stock giving rise to the cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

(a) Determining that this action is a proper class action, certifying Plaintiff as class representative under Federal Rule of Civil Procedure 23 and Plaintiff's counsel as class counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of the Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

In accordance with Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial of all issues involved, now, or in the future, in this action.

Dated: July 14, 2023

Respectfully submitted,

LEVI & KORSINSKY, LLP

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TANYA TIRADO, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. PROTERRA INC., GARETH T. JOYCE, KARINA FRANCO PADILLA, and AMY E. ARD, Defendants.	Case No. CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS DEMAND FOR JURY TRIAL

Plaintiff Tanya Tirado ("Plaintiff") alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based on the investigation of Plaintiff's undersigned counsel, which included, among other things, review and analysis of: (a) public statements made by or on behalf of Proterra Inc. ("Proterra" or the "Company"), including public filings with the U.S. Securities and Exchange Commission ("SEC"); (b) press releases; (c) reports of securities and financial analysts; (d) news articles; and (e) industry reports. Plaintiff believes that substantial,

additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78a, *et seq.*, and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and all persons similarly situated who purchased or otherwise acquired Proterra securities between August 11, 2021 to August 7, 2023, inclusive (the "Class Period").

2. Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle ("EV") solutions for commercial applications. Following its merger with ArcLight Clean Transition Corp. ("ArcLight"), Proterra billed itself to investors as a promising, market-leader in EV technology. It claimed to have raised a sufficient amount of cash from its special purpose acquisition company ("SPAC")-related operations to support its growth and scaling-up to profitability. Despite these claims, Proterra collapsed under the weight of its own expansion operations. It did not have enough cash or revenue to comply with its liquidity covenants and, as a result, ultimately filed for bankruptcy. During the Class Period, Defendants repeatedly concealed Proterra's increasing risk of insolvency despite analyst concerns and commentary.

3. At the start of the Class Period, on August 11, 2021, Proterra issued an investor letter describing its financial earnings and operations for the quarter ended June 30, 2021. In pertinent part, Proterra represented that it had "[a]mple cash to fund our growth plans" and "[a]s a result of the additional capital raised in our [merger transaction with ArcLight], we do not expect these investments to have a material impact on our cash needs in the years ahead. With an unrestricted cash and short-term investment balance of $762 million as of June 30, 2021, we believe we are amply capitalized to fund our growth opportunities until we achieve our goal of positive free cash flow in a few years." Similarly, Proterra's Chief Financial Officer ("CFO") at

the time told investors, "[a]ll in, we ended the quarter with over $750 million in cash, and we continue to believe we have more than sufficient capital to fund our business until we achieve positive free cash flow within our 5-year planning period."

4. Defendants made similar representations about Proterra's liquidity and ability to scale-up throughout the Class Period. For example, on August 2, 2022, Proterra's CFO described the Company's strong financial position by stating "we have . . . the balance sheet to not only ride out potential economic turbulence over the next year," and said the company had $523 million of cash and cash equivalents on their balance sheet.

5. Contrary to these claims and representations, on March 15, 2023, Proterra announced it was in violation of a liquidity clause in their secured convertible notes. The Company also announced they may have to qualify an audit report with a "going concern" clause. Although analysts believed at the time that Proterra would be able to secure amendments and/or waivers to the liquidity covenants with their debt holders, the Company failed to do so. On August 7, 2023, after market hours, Proterra announced it had filed for bankruptcy.

6. During the Class Period, Plaintiff and other similarly situated investors bought Proterra securities at artificially inflated prices due to Defendants' false and/or materially misleading statements. When the truth concerning the company's liquidity issues emerged, Proterra's stock price decreased resulting in significant losses to investors. This action seeks to compensate those investors and recover the damages they sustained because of Defendants' fraudulent conduct.

JURISDICTION AND VENUE

7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

8. This Court has subject matter jurisdiction over this action under Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b) because certain of the acts alleged herein, including the preparation and dissemination of materially false and/or misleading information, occurred in this District.

10. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

11. Plaintiff, as set forth in the attached Certification, acquired Proterra securities at artificially inflated prices during the Class Period and was damaged upon the revelation of Defendants' fraud.

12. Defendant Proterra[1] was founded in 2004 and is incorporated in the State of Delaware. Its principal executive offices are located at 1815 Rollins Road, in Burlingame, California 94010. During the Class Period, Proterra's securities traded in an efficient market on the Nasdaq ("NASDAQ") under the symbol "PTRA".

13. Defendant Gareth Joyce ("Joyce") is the Company's Chairman and Chief Executive Officer ("CEO"). Joyce has 10 years of experience across the transportation sector. Joyce started at Daimler AG in 2004 and rose to president and CEO of Mercedes-Benz Canada before leaving Delta Cargo in 2016. At Delta Air Lines, Inc., Joyce became Chief Sustainability Officer before

[1] Plaintiff names Proterra as a defendant only to the limit of any applicable insurance coverage that may be liable to satisfy all or part of a possible judgment in the action. *See In re Allied Dig. Techs. Corp.*, 306 B.R. 505, 513 (Bankr. D. Del. 2004) (holding D&O policy proceeds not part of estate and, in any event, stay should be lifted).

leaving to join Proterra in November 2020, and he has been the CEO of Proterra since September 2021.

14. Defendant Karina Franco Padilla ("Padilla") was the Company's CFO in August of 2022. Prior to joining Proterra in 2022, Padilla served as Senior Vice President of Finance and North America CFO at JELD-WEN. Padilla also held leadership positions at Ingersoll Rand, including as interim CFO of the Latin America business unit and Vice President of Finance, Corporate Planning, and Analysis.

15. Defendant Amy E. Ard ("Ard") was the Company's CFO from May 2017 until October 23, 2021 when she resigned. Ard previously served as CFO for Le Tote, Inc., an online clothing rental subscription company. She also held roles at AMG Advanced Metallurgical Group N.V., a global specialty metals and engineering company, including as the Executive Vice President and CFO from April 2013 to January 2016 and as the Senior Vice President and Corporate Controller from October 2005 to April 2013. She also previously worked as a Division Controller at Precision Castparts Corp., an industrial goods and metal fabrication company, a Treasurer at PQ Corporation, a manufacturer of specialty chemicals and catalysts, and a Manager at PricewaterhouseCoopers LLP, a public accounting firm.

16. Defendants Joyce, Padilla, and Ard are collectively referred to herein as the "Individual Defendants."

17. Each of the Individual Defendants:

(a) directly participated in the management of Proterra;

(b) was directly involved in the day-to-day operations of Proterra at the highest levels;

(c) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(d) was directly or indirectly involved in the oversight or implementation of Proterra's business and/or finances;

(e) was aware of or deliberately recklessly disregarded the fact that the false and misleading statements were being issued concerning Proterra; and/or

(f) approved or ratified these statements in violation of the federal securities laws.

18. Because of the Individual Defendants' positions within Proterra, they had access to undisclosed information about the true issues with the Company's balance sheet and gross margins.

19. As officers of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the federal securities laws of the United States, the Individual Defendants each had a duty to disseminate prompt, accurate and truthful information with respect to the Company's financial status and to correct any previously-issued statements that had become materially misleading or untrue.

20. The Individual Defendants, because of their positions with Proterra, possessed the power and authority to control the contents of Proterra's reports to the SEC, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors, *i.e.*, the market. Each Individual Defendant had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive

representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

21. Each of the Individual Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Proterra's securities by disseminating materially false and misleading statements and/or concealing material adverse facts. This scheme caused Plaintiff and other shareholders to purchase Proterra's securities at artificially inflated prices.

SUBSTANTIVE ALLEGATIONS

Background

22. ArcLight was a SPAC founded in July 2020. On September 25, 2020, ArcLight completed its initial public offering ("IPO"). ArcLight had not selected any business combination target in advance of its IPO and had not commenced any substantive discussions with any targets prior to that point in time.

23. On or around October 5, 2020, Arclight was introduced to Proterra when an ArcLight director, Ja-Chin Audrey Lee, introduced ArcLight to Proterra's Chief Technology Officer. Due diligence and negotiations ensued after that point over the course of the next several months.

24. On January 11, 2021, ArcLight and Proterra entered into a merger agreement.

25. On June 15, 2021, the merger closed and Proterra began trading publicly on NASDAQ.

26. While the above negotiation and merger process was occurring, Proterra (while it was still a private company) entered into a Note Purchase Agreement for the issuance of Secured

Convertible Promissory Notes. The Convertible Notes had an aggregate principal amount of $200.0 million, with a cash interest of 5.0% per annum payable at each quarter end and a paid-in-kind interest of 4.5% per annum payable by increasing the principal balance at each quarter end. The Convertible Notes had a maturity date of August 2025. Importantly, the Note Purchase Agreement contained covenants that required Proterra to maintain liquidity at quarter end of not less than the greater of (i) $75.0 million and (ii) four times of cash burn for the three-month period then ended.

Materially False and Misleading Statements Issued During the Class Period

27. On August 11, 2021, Proterra issued an investor letter describing its financial earnings and operations for the quarter ended June 30, 2021. In pertinent part, Proterra represented that it had "[a]mple cash to fund our growth plans" and "[a]s a result of the additional capital raised in our [merger transaction with ArcLight], we do not expect these investments to have a material impact on our cash needs in the years ahead. With an unrestricted cash and short-term investment balance of $762 million as of June 30, 2021, we believe we are amply capitalized to fund our growth opportunities until we achieve our goal of positive free cash flow in a few years."

28. On the same day, Proterra held an investor conference call to discuss its financial earnings for the quarter ended June 30, 2021. During the call, Proterra's CFO at the time, Defendant Ard, told investors, "[a]ll in, we ended the quarter with over $750 million in cash, and we continue to believe we have more than sufficient capital to fund our business until we achieve positive free cash flow within our 5-year planning period."

29. On December 14, 2021, Proterra issued a press release titled, "Proterra Announces EV Battery Factory in South Carolina as Demand for Commercial Electric Vehicles Grows." In pertinent part, the press release stated that:

> As demand for commercial electric vehicles continues to grow across the United States and around the world, Proterra Inc (NASDAQ: PTRA), a leading innovator in commercial vehicle electrification technology, today announced plans to open a new EV battery system manufacturing plant in South Carolina to produce the company's industry-leading battery systems for Proterra Powered customers' commercial electric vehicles, including delivery and work trucks, industrial equipment, buses, and more.
>
> * * *
>
> Proterra has committed to a minimum investment of at least $76 million, with additional investments planned over the next several years, and expects to create more than 200 new jobs over the next several years at the 327,000 square foot battery system production plant. The factory is expected to launch in the second half of 2022 with multiple gigawatt hours of annual production capacity for Proterra's battery systems. By 2025, the factory is expected to support additional battery system production capacity, as well as the production of ancillary systems incorporated into electric medium- and heavy-duty electric vehicles and equipment.

30. On August 20, 2022, Proterra released its quarterly earnings for the second quarter of 2022 in a quarterly letter. Defendant Joyce signed the quarterly letter on behalf of the Company. The "Highlights" section of the earnings release stated the Company had "$523M in cash, cash eq, and short term investments." The Company said the new factory was "on target for start of production before the end of 2022," and "we expected it to provide greater scale and production efficiency to support better margins." The Company described its financial stability by stating:

> With $523 million of cash, cash equivalents, and short-term investments as of the end of Q2 2022, our new Greer factory adding multiple GWh of new battery manufacturing capacity, Proterra Powered partnerships to develop or supply battery systems with more than a dozen OEMs across 20 vehicle programs, and approximately $1.3 billion in federal grant programs available to the industry for zero emission transit buses and chargers in fiscal year 2022, we believe we have the technology, the product, the competitive positioning and the balance sheet to not only ride out potential economic turbulence over the next year but to emerge as a central player of this developing market.

31. On the same day the Company released their earnings for the second quarter of 2022, they had an earnings call that included Defendants Joyce and Padilla. Defendant Joyce touted the Company's growth and execution "while sustaining a strong balance sheet with more than a $0.5 billion in cash and equivalents as of June 30." Defendant Joyce described the

Company's approach in 2022 by saying "early on this year, we began assessing a strategy of operational and capital disciplines throughout the organization focused on enduring growth that prioritizes margin improvement over revenue growth, cash preservation without sacrificing our growth investments and focusing on core growth opportunities that can provide the highest return on capital as well as the fastest return of capital. We continue to be supported by a healthy balance sheet with more than $520 million in cash and equivalents as of June 30 and I reassure you it's not one we take for granted in any way, shape, or form."

32. During that earnings call, Defendant Padilla touted the Company's sequential gross margin improvement and said "we retain a healthy balance of cash and equivalents on our balance sheet of more than $520 million as of June 30." Defendant Padilla also stated the Company's new factory would "allow us to multiply our existing battery production capacity several times. This positions us for growth on revenue, improved margins and cash flow in the years ahead." Defendant Padilla also said "our underlying gross margin should continue to improve in the years ahead from higher pricing that balances our cost, greater production volumes and scale benefits and improvement in our labor efficiency, more effective supply chain and greater manufacturing efficiencies overall as we bring our new manufacturing capacity online."

33. Defendant Padilla discussed the strength of the Company's balance sheet at length during the call by stating:

> Lastly, on the cash front. Our balance sheet remains strong with $523 million in cash and equivalents as of June 30 sets us apart from others. The health of our balance sheet is not coincidental. Liquidity is a priority, it always has been and will continue to be. But we will continue to invest responsibly in battery capacity expansion, product research and development and across our operations to support our growth strategy for the years to come . . . . I cannot emphasize enough that we understand the importance of prudent cash management especially in such volatile times. Despite the challenging environment we are all currently facing, I believe we are in an excellent position to ride out any potential economic downturn on the horizon and have ample room to improve our gross margins over time as supply

> chain and inflation headwinds normalize and as we ramp up our new capacity to full production.

34. On November 2, 2022, the Company released quarterly earnings for the third quarter of 2022 in a quarterly letter. Defendant Joyce signed the quarterly letter on behalf of the Company. The "Highlights" section of the earnings release stated the Company had "$409M in cash, cash equivalents, and short-term investments." The Company stated "the third quarter of 2022 was a breakthrough quarter for Proterra. We reported record quarterly revenue surpassing $96 million, representing growth of 55% compared to Q3 2021 and 29% compared to our prior record in Q2 2022." The Company also stated "we are trimming our guidance for 2022 capital expenditures to a range of $70 million to $80 million, as we approach completion of the first phase of our Powered 1 factory."

35. On the same day the Company released its earnings for the third quarter of 2022, Defendants had an earnings call that included Defendants Joyce and Padilla. Defendant Joyce stated "Q3 2022 was a breakthrough quarter for Proterra. Not only did we report record quarterly revenue of $96 million, almost 30% above our prior record in Q2 2022, but this was driven by new highs in revenue across both our business units, along with record production and deliveries at Proterra Transit."

36. During the call, Defendant Joyce continued to describe the Company's financial strength:

> All in, as you can see, Q3 was a breakthrough quarter for us all round. Based on our performance through the first 3 quarters and our current views on Q4, which has 17% fewer working days than Q3 due to the holidays, and downtime for year-end inventory, we are maintaining our 2022 revenue guidance range of $300 million to $325 million, representing growth of 24% to 34% year-over-year.

37. Defendant Padilla also described the Company's "record-breaking" revenue:

> Consolidated revenue was $96.2 million, representing growth of 55% year-over-year and 29% sequentially. Proterra Powered and Energy grew 239% year-over-year and 68% sequentially to reach $39.9 million in quarterly revenue for the first

> time. Proterra Powered and represented more than 40% of total revenue in the quarter, more than doubling its 19% contribution in Q3 of the prior year. For perspective, we reported more revenue in the third quarter of 2022 than we did through the first 3 quarters of 2021 combined.

38. Defendant Padilla also emphasized the importance of liquidity for the Company by stating "we continue to be supported by [a] strong balance sheet, ending the quarter with $408 million in cash, cash equivalents and short-term investments." Defendant Padilla went on:

> Cash and liquidity is a top priority for us, and it will continue to be. We are allocating our cash to the areas we believe are most critical to reinforcing our market leadership and position us for growth in the years ahead. Ending the quarter with a cash and cash equivalents balance of more than $400 million, we believe we have the flexibility to navigate these times of economic uncertainty and capital market volatility in an advantageous competitive position just as electric commercial vehicle adoption begins to accelerate.

39. Defendants' statements referenced in ¶¶ 27-38 constituted violations of the securities laws because the statements were false and/or misleading as well as failed to disclose material adverse facts about the Company's financial status. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company was not adequately funded to support the expansion and scaling plans it pursued; (ii) the Company's cash and cash equivalents it had on its balance sheet did not provide the Company with abundant liquidity and financial stability; (iii) the Company's expansion initiatives, including the new South Carolina factory, would not continue to improve production efficiency and gross margins; (iv) the Company's revenue was insufficient to support its expansion and scaling initiatives; and (v) as a result, the Company faced heightened insolvency and illiquidity risks, including from covenants in the Note Purchase Agreement.

The Truth Emerges

40. On March 15, 2023, Proterra released quarterly earnings for the fourth quarter of 2022 in a quarterly letter. The Company announced it had a net loss of $81 million and a gross loss of $20.3 million in the fourth quarter of 2022.

41. The Company also announced that it expected the audit report included in its 10-K annual report would contain a going concern qualification, which would be an event of default under Company debt agreements. The Company also announced it had obtained a limited waiver under its convertible notes for violating a minimum liquidity covenant.

42. When the smoke cleared at the end of the trading day, Proterra's stock price had dropped from its March 15, 2023 closing price of $2.51 to a March 16, 2023 closing price of $1.16—***a staggering loss of $1.35 per share representing nearly 53% of its value***. The volume of shares traded that day was more than ten times as high as the daily average volume during the Class Period.

43. In spite of the Company's announcement, analysts believed that Proterra would successfully avoid default under the terms of its Note Purchase Agreement. For example, on March 17, 2023, D.A. Davidson issued a report telling investors that it was "maintaining our BUY rating on PTRA" and that while the stock was "down over 70% . . . due to a technical debt default," they believed the "sell-off is far overdone, as these types of defaults are typically resolved through the least-drastic means possible." Unfortunately, the insolvency risks faced by Proterra did not dissipate but instead materialized into bankruptcy.

44. On August 7, 2023, after market hours, Proterra announced that it had filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. In pertinent part, Proterra stated as follows:

> Proterra Inc (Nasdaq: PTRA) ("Proterra" or the "Company"), a leading innovator in commercial vehicle electrification technology, today announced that the Company is taking action to maximize the value of its business and enhance the potential of each of its product lines. To do so, Proterra has voluntarily filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the District of Delaware in an effort to strengthen its financial position through a recapitalization or going-concern sale.

> The Company intends to continue to operate in the ordinary course of business as it moves through this process and plans to file the customary motions with the Bankruptcy Court to use existing capital to fund operations, including paying employee salaries and benefits, and compensating vendors and suppliers on a go-forward basis in accordance with Chapter 11 rules, all while ensuring business continuity for customers.

45. In response to this news, Proterra's stock price plummeted. On August 7, 2023, Proterra's stock price closed at $1.43 per share. The following day, on August 8, 2023, Proterra's stock price declined to $0.17 per share.

LOSS CAUSATION

46. The market for Proterra common stock was open, well-developed, and efficient at all relevant times. As a result of the materially false and/or misleading statements, and/or failures to disclose, as alleged herein, Proterra stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Proterra stock relying upon the integrity of the market of Proterra and market information related to the Company and have been damaged thereby.

47. During the Class Period, Defendants named in this action materially misled the investing public, thereby inflating the price of Proterra stock, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make their own statements, as set forth herein, not false and/or misleading. Said statements and omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about Proterra's business, operations, and prospects as alleged herein.

48. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the

Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Proterra's financial issues. These material misstatements and/or omissions had the cause and effect of creating and/or maintaining in the market an unrealistically positive assessment of the Company and its operations, thus causing the Company's stock to be overvalued and artificially inflated at all relevant times. The materially false and/or misleading statements made by Defendants named in this action during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

49. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that caused the price of Proterra stock to be artificially inflated by failing to disclose and/or misrepresenting the adverse facts detailed herein. As Defendants' misrepresentations and fraudulent conduct were gradually disclosed and became apparent to the market, the artificial inflation in the price of Proterra's stock was removed, and the price of Proterra stock fell.

50. As a result of their purchases of Proterra stock during the Class Period at artificially inflated prices, Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws. Indeed, at the start of the Class Period, Proterra's stock price traded at $12.02 per share and, at the end of the Class Period, traded for only $0.17 per share. Proterra's market capitalization was almost completely eliminated, resulting in widespread investor losses.

51. The timing and magnitude of the price decline in Proterra stock negate any inference that the loss suffered by Plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to the Proterra Defendants' fraudulent conduct.

NO SAFE HARBOR; INAPPLICABILITY OF BESPEAKS CAUTION DOCTRINE

52. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Proterra who knew that the statement was false when made. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action on behalf of all individuals and entities who purchased Proterra securities on the public market during the Class Period, and were damaged, excluding Proterra, the Individual Defendants and each of their immediate family members, legal representatives, heirs, successors or assigns, and any entity in which any of the Defendants have or had a controlling interest (the "Class").

54. The Class members are so numerous that joinder of all members is impracticable. Throughout the Class Period, shares of Proterra common stock were actively traded on the NASDAQ. While the exact number of Class members is unknown at this time and can be

ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other Class members may be identified from records maintained by Proterra or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions. As of the filing of its most recent annual report on March 13, 2023, Proterra had over 226.4 million shares of common stock outstanding. Upon information and belief, these shares are held by thousands of individuals located throughout the entire world. Joinder would be highly impracticable.

55. Plaintiff's claims are typical of the claims of the Class members as all Class members are similarly affected by the Defendants' respective wrongful conduct in violation of the federal laws complained of herein.

56. Plaintiff has and will continue to fairly and adequately protect the interests of the Class members and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

57. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by the Defendants' respective acts as alleged herein;

(b) whether the Defendants acted knowingly or with deliberate recklessness in issuing false and misleading statements concerning Proterra's financial status;

(c) whether the price of Proterra's securities during the Class Period was artificially inflated because of the Defendants' conduct complained of herein; and

(d) whether the Class members have sustained damages and, if so, what is the proper measure of damages.

58. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

59. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that, at all relevant times, the market for Proterra stock was an efficient market for the following reasons:

(a) Proterra stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Proterra filed periodic public reports with the SEC and the NASDAQ;

(c) Proterra communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) During the Class Period, on average, millions of Proterra shares were traded on a weekly basis. On news days, the Company's trading volume increased

into the millions, reflecting an active trading market for Proterra stock and investors' expectations being impounded into the stock price.

60. As a result of the foregoing, the market for Proterra's securities promptly digested current information regarding Proterra from all publicly available sources and reflected such information in Proterra's stock price. Under these circumstances, all purchasers of Proterra securities during the Class Period suffered similar injury through their purchase of Proterra securities at artificially inflated prices, and a presumption of reliance applies.

61. Alternatively, reliance need not be proven in this action because the action involves omissions and deficient disclosures. Positive proof of reliance is not a prerequisite to recovery pursuant to the ruling of the United States Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered the omitted information important in deciding whether to buy or sell the subject security.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

62. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

63. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other Class members to purchase Proterra securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, each of the Defendants took the actions set forth herein.

64. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of Proterra securities in an effort to maintain artificially high market prices for Proterra securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

65. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the Company's financial status as specified herein.

66. These Defendants employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Proterra's value, performance, and continued substantial growth, which included the making of, or participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Proterra's financial status under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of Proterra securities during the Class Period.

67. The Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (1) the Individual Defendants were high-level executives, directors, and/or agents at Proterra during the Class Period and members of Proterra's management team or had control thereof; (2) each Individual Defendant, by virtue of their responsibilities and activities

as a senior officer and/or director of Proterra, was privy to and participated in the creation, development and reporting of Proterra's SEC filings and public statements concerning Proterra's financial status; (3) each Individual Defendant enjoyed significant personal contact and familiarity with the other Individual Defendants and was advised of and had access to other members of Proterra's management team, internal reports, and other data and information about Proterra's financial status, at all relevant times; and (4) each Individual Defendant was aware of Proterra's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

68. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing fundamental problems with Proterra's financial status that led to disappointing results from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by Defendants' misrepresentations concerning the fundamental problems and risks inherent in Proterra's financial status throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

69. As a result of the dissemination of materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Proterra securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Proterra securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the common stock

trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other Class members acquired Proterra securities during the Class Period at artificially high prices and were or will be damaged thereby.

70. At the time of said misrepresentations and omissions, Plaintiff and other Class members were ignorant of their falsity and believed them to be true. Had Plaintiff and the other Class members and the marketplace known the truth regarding the risks and flaws inherent in Proterra's financial status, which was not disclosed by Defendants, Plaintiff and other Class members would not have purchased or otherwise acquired their Proterra securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

71. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

72. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with their respective purchases and sales of Proterra securities during the Class Period.

73. This action was filed within two years of discovery of the fraud and within five years of each plaintiff's purchases of common stock giving rise to the cause of action.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

74. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

75. The Individual Defendants acted as controlling persons of Proterra within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level

positions, agency, ownership and contractual rights, and participation in and/or awareness of Proterra's operations and/or intimate knowledge of the false information filed by Proterra with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Proterra, including the content and dissemination of the various statements that Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of Proterra's financial statements, reports, press releases, public filings and other statements alleged by Plaintiff to have been misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

76. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Proterra and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein and exercised the same.

77. As set forth above, Proterra and the Individual Defendants each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, by their acts and omissions as alleged in this Complaint.

78. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other Class members suffered damages in connection with their purchases of Proterra's common stock during the Class Period.

79. This action was filed within two years of discovery of the fraud and within five years of each Plaintiff's purchases of common stock giving rise to the cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

(a) Determining that this action is a proper class action, certifying Plaintiff as class representative under Federal Rule of Civil Procedure 23 and Plaintiff's counsel as class counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of the Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

In accordance with Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial of all issues involved, now, or in the future, in this action.

Dated: September 1, 2023

Respectfully submitted,

POMERANTZ LLP

/s/ Jennifer Pafiti

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Attorneys for Plaintiff

DocuSign Envelope ID: EC1D79D6-C538-43F3-B863-8AC971A1F996

CERTIFICATION PURSUANT
TO FEDERAL SECURITIES LAWS

1. I, Tanya Tirado, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against Proterra Inc. ("Proterra" or the "Company") and authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire Proterra securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or otherwise acquired Proterra securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

5. The attached sheet lists all of my transactions in Proterra securities during the Class Period as specified in the Complaint.

6. During the three-year period preceding the date on which this Certification is signed, I have not served or sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

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8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed 8/28/2023
(Date)

DocuSigned by:
Tanya Tirado
(Signature) 9BF62BF764A0420...

Tanya tirado
(Type or Print Name)

Proterra Inc. (PTRAQ) **Tanya Tirado**

List of Purchases and Sales

Transaction Type	Date	Number of Shares/Unit	Price Per Share/Unit
Purchase	8/23/2021	56	$9.2600
Sale	8/19/2021	(90)	$9.0500

JS-CAND 44 (Rev. 10/2020)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

TANYA TIRADO, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Bronx County, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Jennifer Pafiti, Pomerantz LLP, 1100 Glendon Avenue, 15th Floor, Los Angeles, California 90024, Telephone: (310) 405-7190

DEFENDANTS

PROTERRA INC., GARETH T. JOYCE, KARINA FRANCO PADILLA, and AMY E. ARD

County of Residence of First Listed Defendant San Mateo County, California
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent—Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation–Transfer ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

Brief description of cause:
Violations of the federal securities laws.

VII. REQUESTED IN COMPLAINT:

✓ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE Beth Labson Freeman DOCKET NUMBER 5:23-cv-03519-BLF

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) ☐ **SAN FRANCISCO/OAKLAND** ☐ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

DATE 09/01/2023 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Jennifer Pafiti

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."

II. Jurisdiction. The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

(1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.

(2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

(3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

(4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

(1) Original Proceedings. Cases originating in the United States district courts.

(2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.

(3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

(4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

(5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

(6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.

(8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 3

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JEREMY VILLANUEVA,

Plaintiff,

v.

PROTERRA INC., et al.,

Defendants.

Case No. 23-cv-03519-BLF

ORDER APPOINTING CYRESS JAM AS LEAD PLAINTIFF AND LEVI & KORSINSKY AS LEAD COUNSEL

[Re: ECF No. 17, 21, 24, 25, 32, 36]

Before the Court are six motions for appointment of lead plaintiff and approval of selection of lead counsel. ECF Nos. 17, 21, 24, 25, 32, 36. For the reasons stated below, the Court GRANTS Plaintiff Cyress Jam's motion at ECF No. 21 and DENIES the remaining motions at ECF Nos. 16, 24, 25, 32, and 36.

I. BACKGROUND

On July 14, 2023, Jeremy Villanueva filed this putative securities class action lawsuit against Defendants Proterra Inc., Gareth T. Joyce, and Karina Franco Padilla (collectively "Defendants"). *See* ECF No. 1 ("Compl."). Proterra designs and manufactures zero-emission electric transit vehicles and electric vehicle solutions for commercial applications. *Id.* ¶ 2. The complaint alleges that between August 2, 2022 to March 15, 2023, Defendants issued false and/or materially misleading statements and omissions about Proterra's balance sheet and gross margins. *Id.* ¶¶ 25–37. The complaint alleges that when Proterra released its quarterly earnings for the fourth quarter of 2022, which reflected a net loss of $81 million and a gross loss of $20.3 million, the company's stock price fell from $2.51 to $1.16. *Id.* ¶¶ 35–37. As a result of Defendants' actions, the complaint alleges that "Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws." *Id.* ¶ 42. As a result, Villaneuva filed this

lawsuit for violations of the Securities Exchange Act of 1934 on behalf of all persons who purchased Proterra securities during the Class Period. *Id.* ¶ 51.

About six weeks after the complaint in this case was filed, another securities fraud suit was filed against Proterra alleging substantially the same facts and legal theory. *See Tirado v. Proterra, Inc.*, No. 5:23-cv-04528-BLF. On October 23, 2023, the Court ordered that *Tirado* is related to this case. ECF No. 56. Jam's motion to appoint lead plaintiff and lead counsel has adopted the broader Class Period identified in *Tirado*: August 11, 2021 to August 7, 2023. *See* ECF No. 21 at 6 n.1.

On the date that the complaint in this case was filed, July 14, 2023, a Private Securities Litigation Reform Act of 1995 ("PSLRA") early notice was issued advising potential class members of the claims alleged in the action and the 60-day deadline for class members to move to be appointed as lead plaintiff. *See* ECF No. 21-4 at 2–3. On September 12, 2023, six plaintiffs filed a motion for appointment as lead plaintiff and approval of selection of counsel: (1) Michael and Linda Wade, ECF No. 17; (2) Cyress Jam, ECF No. 21; (3) Ernesto Hachey, ECF No. 24; (4) Melih Karamikoglu and Ilker Karakaya, ECF No. 25; (5) Harold Weber, ECF No. 32; and (6) Luong Du, ECF No. 36. Between September 20 and September 26, 2023, all plaintiff movants with the exception of Jam withdrew their motions or filed statements of non-opposition to the Court appointing the lead plaintiff movant with the largest financial interest. *See* ECF No. 42 (Du); ECF No. 43 (Hachey); ECF No. 44 (the Wades); ECF No. 45 (Weber); ECF No. 46 (Karamikoglu and Karakaya).

II. LEGAL STANDARD

A. Lead Plaintiff

The PSLRA governs the procedure for selection of lead plaintiff in all private class actions under the Exchange Act. 15 U.S.C. § 78u-4(a)(3). Pursuant to the PSLRA, the court shall appoint as lead plaintiff "the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members," also referred to as the "most adequate plaintiff." *Id.* § 78u-4(a)(3)(B)(i).

The PSLRA "provides a simple three-step process for identifying the lead plaintiff." *In re*

Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002). First, the pendency of the action, the claims made, and the purported class period must be publicized in a "widely circulated national business-oriented publication or wire service." *Id.* (citing 15 U.S.C. § 78u-4(a)(3)(A)(i)). This notice must be published within 20 days of the filing of the complaint. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i). It must also alert members of the purported class that they have 60 days to move for appointment as lead plaintiff. *See id.* § 78u-4(a)(3)(A)(i)(II).

Second, the court must identify the presumptive lead plaintiff. To do so, the court "must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit." *Cavanaugh*, 306 F.3d at 730. In calculating financial stakes, "the court may select accounting methods that are both rational and consistently applied." *Id.* at 730 n.4. The court must then determine whether the individual with the largest financial stake, "based on the information he has provided in his pleadings and declarations," satisfies the requirements of Rule 23(a), "in particular those of 'typicality' and 'adequacy.'" *Id.* at 730. If the plaintiff with the largest financial interest satisfies these requirements, he or she becomes the "presumptively most adequate plaintiff." *Id.*; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Finally, the other plaintiffs must have "an opportunity to rebut the presumptive lead plaintiff's showing that [he or she] satisfies Rule 23's typicality and adequacy requirements." *Cavanaugh*, 306 F.3d at 730. Unless a member of the purported plaintiff class provides proof that the presumptive plaintiff "(aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class," the court must appoint the presumptively most adequate plaintiff as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see also Cavanaugh*, 306 F.3d at 732.

B. Lead Counsel

Under the PSLRA, the lead plaintiff has the right, subject to court approval, to "select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v). "[T]he district court should not reject a lead plaintiff's proposed counsel merely because it would have chosen differently." *Cohen v. U.S. Dist. Court*, 586 F.3d 703, 711 (9th Cir. 2009) (citation omitted). "[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that

choice." *Id.* at 712 (citations omitted).

III. DISCUSSION

A. Request to Consolidate Cases

All six of the lead plaintiff movants also moved for the Court to consolidate this action with *Tirado*. The PSLRA provides that "[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed," the Court shall not make the determination of the most adequate plaintiff until "after the decision on the motion to consolidate is rendered." 15 U.S.C. § 77z-1(a)(3)(B)(ii). "As soon as practicable after [the consolidation] decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions." *Id.*

"If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). District courts have "broad discretion under [Rule 42(a)] to consolidate cases pending in the same district." *Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of California*, 877 F.2d 777, 777 (9th Cir. 1989). "In determining whether or not to consolidate cases, the Court should weigh the interest of judicial convenience against the potential for delay, confusion and prejudice." *Bodri v. Gopro, Inc.*, 2016 WL 1718217, at *1 (N.D. Cal. Apr. 28, 2016) (quotation marks omitted) (quoting *Zhu v. UCBH Holdings, Inc.*, 682 F.Supp.2d 1049, 1052 (N.D. Cal. 2010)).

This case and *Tirado*, which are both pending before the Court, present similar factual and legal issues, as they each involve the same subject matter and are based on the same alleged wrongful course of conduct. *Compare* Compl., *with Tirado* ECF No. 1 ("*Tirado* Compl."). Both cases bring claims under the Securities Exchange Act of 1934 and SEC Rule 10b-5 against Proterra, Gareth Joyce, and Karina Franco Padilla. In addition, *Tirado* raises these claims against Amy E. Ard. *Tirado* Compl. ¶ 15. Although *Tirado* defines the class using a broader time period, both cases arise from the same set of facts and circumstances (namely, public statements about Proterra's balance sheet and gross margins), involve the same subject matter, and the same class (persons who purchased Proterra stock during the class period). As such, the same discovery and similar class certification issues will be relevant to both actions. Accordingly, the Court finds that

Tirado is related to this action and CONSOLIDATES this case with *Tirado*.

B. Procedural Requirements

Pursuant to the PSLRA, Levi & Korsinsky published notice of the pending action on July 14, 2023, the same date the complaint was filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i); ECF No. 21-4 at 2–3. The notice announced the pendency of this action, listed the claims, specified the class period, and advised putative class members that they had 60 days from the date of the notice to file a motion to seek appointment as lead plaintiff in the lawsuit. *Id.* Thus, the notice complied with the PSLRA's requirements. *See* 15 U.S.C. § 78u-4(a)(3)(A). All six plaintiffs filed motions for appointment as lead plaintiff on September 12, 2023, the last day within the 60-day deadline. All plaintiffs have met the statutory notice requirements.

C. Greatest Financial Loss

In considering which movant for lead plaintiff appointment in a securities class action has the greatest financial interest, courts generally consider a four-factor test: "(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered." *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK, 2011 WL 566814, at *7 (N.D. Cal. Feb. 15, 2011) (citations omitted). Courts place the most emphasis on the final factor—the approximate losses suffered. *See id.*

Jam has submitted a "loss chart" setting forth calculations of his alleged losses, totaling approximately $1,093,258.16 under a LIFO and *Dura* LIFO analysis. ECF No. 21-3 at 2. Because Jam's motion is unopposed, Jam is necessarily the prospective lead plaintiff with the greatest financial interest in the litigation. *See* ECF No. 42 (Du Notice of Non-Opposition); ECF No. 43 (Hachey Withdrawal of Motion); ECF No. 44 (the Wades Notice of Non-Opposition); ECF No. 45 (Weber Notice of Non-Opposition); ECF No. 46 (Karamikoglu and Karakaya Notice of Non-Opposition); *see also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 WL 2368059, at *3 (N.D. Cal. May 29, 2013) ("Without access to financial information from other parties, the Court is constrained to conclude that the [proposed plaintiff's] alleged loss best qualifies it to serve as lead plaintiff.") (quoting

Bassin v. Decode Genetics, Inc., 230 F.R.D. 313, 316 (S.D.N.Y. 2005))).

D. Rule 23 Requirements

Upon determining the movant with the largest financial interest, the court "must then focus its attention on *that* plaintiff and determine . . . whether he [or she] satisfies the requirements of Rule 23(a)." *Cavanaugh*, 306 F.3d at 730; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) requires satisfaction of four factors to serve as a class representative:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The typicality and adequacy requirements of Rule 23 are the main focus of this determination. *See Cavanaugh*, 306 F.3d at 730. Examination of the remaining requirements is deferred until the lead plaintiff moves for class certification. The movant with the largest financial interest "need only make a prima facie showing [of its] typicality and adequacy." *Veal v. LendingClub Corp.*, No. 18-cv-02599-BLF, 2018 WL 5879645, at *4 (N.D. Cal. Nov. 7, 2018) (citing *Cavanaugh*, 306 F.3d at 731).

In determining whether typicality is satisfied, the Court inquires "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *In re Twitter Inc. Sec. Litig.*, 326 F.R.D. 619, 629 (N.D. Cal. 2018) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). In this case, like all other members of the purported class, Jam purchased Proterra stocks during the Class Period, when Proterra's stock prices were allegedly artificially inflated by Defendants' misrepresentations and/or omissions, and Jam allegedly suffered damages when those misrepresentations and/or omissions came to light. *See* ECF No. 21 at 8. Jam's claims thus appear to be typical, if not identical, to the claims of other members of the putative class.

In determining whether the lead plaintiff will adequately represent the class, the Court must resolve two questions: "(1) do the named plaintiffs and their counsel have any conflicts of

interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Twitter*, 326 F.R.D. at 626 (quoting *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)). In this case, there are no indications of conflicts of interest between Jam and other class members. The Court is also satisfied that Jam will prosecute this action vigorously. Jam is motivated to prosecute the case due to his large financial interest. *See* ECF No. 21-3 at 2; ECF No. 21 at 9. Jam also an experienced investor in securities. He is the sole owner of Star Alliance, LLC, an investment vehicle used for his personal investments. ECF No. 21-5 ¶ 2. Jam has also invested in securities for twenty-four years. *Id.* ¶ 3. Finally, Jam has experience hiring and overseeing attorneys because he has had attorneys on retainer for personal and business matters for the last thirty years. *Id.* The Court also notes that Jam has been diligent in seeking appointment as lead plaintiff. Therefore, the Court concludes that Jam will adequately represent the class.

The Court must then "give other plaintiffs an opportunity to rebut the presumptive lead plaintiff's showing that it satisfies Rule 23's typicality and adequacy requirements." *Cavanaugh*, 306 F.3d at 730 (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)). The presumption of adequacy "may be rebutted only upon proof . . . that the presumptively most adequate plaintiff" does not satisfy the adequacy or typicality requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *Cavanaugh*, 306 F.3d at 729 n.2. Other plaintiffs have been afforded an opportunity to rebut Jam's showing that he as the presumptive lead plaintiff satisfies Rule 23's typicality and adequacy requirements. However, Jam's motion is unopposed, and no member of the purported plaintiff class has provided proof that Jam "will not fairly and adequately protect the interests of the class" or that Jam "is subject to unique defenses that render [him] incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Accordingly, the Court APPOINTS Jam to serve as Lead Plaintiff.

E. Lead Counsel

No parties have objected to Jam's selection of Levi & Korsinsky LLP as counsel. The Court has reviewed the firm's resume, ECF No. 21-6, and is satisfied that Jam has made a reasonable choice of counsel. *See also* ECF No. 21 at 10. Accordingly, the Court APPROVES

Jam's selection of Levi & Korsinsky as Lead Counsel.

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. *Villanueva v. Proterra Inc.*, No. 23-3519, and *Tirado v. Proterra Inc.*, No. 23-4528, are CONSOLIDATED. All future filings in the consolidated action will be filed in *Villanueva*. The Court ORDERS that the Clerk of the Court administratively close *Tirado*.

2. Cyress Jam is APPOINTED as Lead Plaintiff;

3. Levi & Korsinsky LLP is APPOINTED as Lead Counsel; and

4. All other Motions to Appoint Lead Plaintiff and Lead Counsel are DENIED.

5. Lead Plaintiff shall advise the Court whether he intends to file a consolidated amended complaint.

Dated: October 23, 2023

BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, I caused a true and correct copy of the foregoing *Objection of Cyress Jam, Court-Appointed Securities Class Action Lead Plaintiff, to (A) Adequacy of the Disclosure Statement; (B) Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization; (C) the Forms of Ballots and Notices in Connection Therewith; (D) Schedule of Certain Dates with Respect Thereto; and (E) Granting Related Relief* to be electronically filed the with the Clerk of Court in Case No. 23-11120 (BLS) and served on the parties below via electronic and first-class mail.

Dated: January 16, 2024

/s/ Michael Joyce
Michael J. Joyce

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