IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DEBTORS' MOTION FOR AN ORDER (I) GRANTING THE DEBTORS LEAVE AND PERMISSION TO FILE THE OMNIBUS REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION; (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF, AND (II) AUTHORIZING THE DEBTORS TO EXCEED THE PAGE LIMIT REQUIREMENT IN CONNECTION THEREWITH

The above-captioned debtors and debtors in possession (together, the "Debtors") hereby submit this motion (this "Motion") for the entry of an order, pursuant to the General Chambers Procedures, dated June 11, 2011, as may be supplemented, amended, or modified from time to time, and Rules 7002-2 and 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) granting the Debtors leave and permission to file the *Omnibus Reply in Support of Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the*

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

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Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and (E) Granting Related Relief, in the form attached hereto as **Exhibit 1** (the "Reply"), and (ii) authorizing the Debtors to exceed the page limit requirement in connection therewith. In support of this Motion, the Debtors respectfully state as follows:

BACKGROUND & REPLY TO THE OBJECTIONS

I. General Background

1. On August 7, 2023, each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the chapter 11 cases.

2. On August 25, 2023, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 cases [Docket No. 133]. The U.S. Trustee appointed an additional member to the Committee on September 21, 2023 [Docket No. 268].

3. On December 17, 2023, and on January 2, 2024, respectively, the Debtors filed that certain (i) *Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 738] (as may be amended, supplemented, or modified, the "Disclosure Statement");[2] and (ii) *Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With*

[2] The Debtors filed the *Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 737] (the "Plan") concurrently therewith. The Plan and the Disclosure Statement were amended on January 2, 2024, *see* Docket Nos. 795 & 796, and on January 15, 2024, *see* Docket Nos. 888 & 889, respectively.

Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and (E) Granting Related Relief [Docket No. 793] (the "Solicitation Procedures Motion" and, together with the Disclosure Statement, the "Disclosure Statement Materials"). A hearing (the "Hearing") on the Disclosure Statement Materials is scheduled for January 23, 2024.

II. The Objections and the Reply

4. The following objections to the Disclosure Statement Materials have been filed as of the date hereof: (i) *(I) Objection and Reservation of Rights of Lexon Insurance Company to the Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and (E) Granting Related Relief* [Docket No. 891]; (ii) *Limited Objection of the Southeastern Pennsylvania Transportation Authority to the Second Amended Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc. and its Debtor Affiliate* [Docket No. 892]; (iii) *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* [Docket No. 894]; (iv) *Philadelphia Indemnity Insurance Company's Limited Objection, Joinder and Reservation of Rights With Respect to the Debtors' Second Amended Disclosure Statement [Doc. No. #889]* [Docket No. 897]; and (v) *United States Trustee's Objection to Debtors' Motion for Entry of an Order (A) Approving*

the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and (E) Granting Related Relief [Docket No. 900] (collectively, the "Objections").

A. The Court Should Grant the Debtors' Request for Leave to File the Reply After the Reply Deadline

5. Pursuant to Local Rule 9029-3, "Delaware Counsel shall file the agenda in the bankruptcy case . . . with the Bankruptcy Court on or before 12:00 p.m. prevailing Eastern Time two (2) business days before the date of the hearing." The deadline to file the agenda for the Hearing was Friday, January 19, 2024 at 12:00 p.m. (ET).

6. Pursuant to Local Rule 9006-1(d), "reply papers . . . may be filed and, if filed, shall be served so as to be received by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda." Accordingly, the deadline to file the Reply was Thursday, January 18, 2024 at 4:00 p.m. (ET) (the "Reply Deadline"), one day after the U.S. Trustee filed its objection cited above.

7. Substantially contemporaneous with filing this Motion, the Debtors are also filing proposed revisions to the Plan and Disclosure Statement Materials, including a revised form of proposed order for the approval of the Solicitation Procedures Motion (the "Revised Proposed Order" and, collectively, the "Revised Plan Documents"). The Revised Plan Documents are the result of the Debtors' efforts to resolve and respond to numerous arguments or requests made in certain Objections, as applicable.

8. The Debtors have expended significant time and resources to respond to the numerous issues raised in the Objections through the revisions reflected in the Revised Plan

Documents and the Reply. The Debtors worked extensively and cooperatively to address various concerns and requests made on an informal basis. The Reply is being filed in support of the Disclosure Statement Materials and to respond to various factual and legal arguments asserted in the Objections, as applicable, including those filed as late as January 17, 2024, one day prior to the Reply Deadline. The Reply, among other things, sets forth the reasons why the Objections, to the extent that they remain unresolved by the Hearing, should be overruled and the Revised Proposed Order should be entered. Accordingly, the Debtors submit that that the Reply will assist the Court in its consideration of the Disclosure Statement Materials and the Objections filed in response thereto.

B. The Debtors Should be Permitted to Exceed the Page Limit Requirement for the Reply

9. Local Rule 7007-2 and the General Chambers Procedures[3] provide that no opening or answering brief shall exceed thirty (30) pages and no reply shall exceed fifteen (15) pages, in each instance, exclusive of any tables of contents and citations. Del Bankr. L.R. 7007-2(a)(iv). However, a reply may exceed fifteen (15) pages with leave of Court. *Id.*

10. The Debtors respectfully submit that authority to exceed the page limitations prescribed by Local Rule 7007-2 and the General Chambers Procedures in connection with the Reply is reasonable and appropriate under the circumstances. Given that the Debtors are responding to a number of issues, raised by multiple parties, in the Objections, it necessarily follows that the Reply exceeds the page limitations set forth in Local Rule 7007-2 and the General Chambers Procedures. To adequately present the Debtors' responses to the Objections and provide

[3] The General Chambers Procedures provide that, "[a]ll briefs and memoranda in main bankruptcy cases and adversary proceedings must comply with Del. Bankr. L.R. 7007-2."

the Court with a complete picture of the unresolved issues that will be before it at the Hearing, the Debtors respectfully request that the Court grant the relief sought by this Motion.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form attached hereto as **Exhibit 2**, granting them leave and permission to file the Reply after the Reply Deadline and such other and further relief as the Court deems just and proper.

Dated: January 22, 2024
Wilmington, Delaware

Respectfully submitted,

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Counsel to the Debtors and Debtors in Possession

Exhibit 1

Reply

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PROTERRA INC, *et al.*,[1]	)	Case No. 23-11120 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Ref. Docket No. 793**

OMNIBUS REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION; (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (together, the "Debtors") hereby file this reply (this "Reply") in further support of the Disclosure Statement Motion[2] and in response to certain of the Objections.[3] In support of this Reply, the Debtors respectfully state as follows:

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

[2] All capitalized terms used but not defined herein shall have the meaning ascribed to them in (i) the *Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and € Granting Related Relief* [Docket No. 793] (the "Disclosure Statement Motion").

[3] *Objection and Reservation of Rights of Lexon Insurance Company to the Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with Respect Therewith and (E) Granting Related Relief* [Docket No. 891] (the "Lexon Objection"); *Limited Objection of the Southeastern Pennsylvania Transportation Authority to the Second Amended Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc. and its Debtor Affiliate* [Docket No. 892] (the "SEPTA Objection"); *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* [Docket No.

Preliminary Statement

1. The Debtors have made tremendous progress in the five months since filing these Chapter 11 Cases. After concluding a robust, Court-approved, postpetition Marketing Process, the Debtors selected the highest and best bids on their assets, including: (a) Volvo's winning bid to purchase Proterra Powered; (b) Phoenix's winning bid to purchase Proterra Transit and the Debtors' Battery Leases; and (c) the winning bid of certain holders of approximately 98% in principal amount of the Second Lien Convertible Notes Claims (collectively, the "Plan Sponsor") to acquire Proterra Energy pursuant to a chapter 11 plan of reorganization in accordance with the terms and conditions of their plan support agreement with the Debtors (the "Reorganization Transaction").

2. In addition, the Debtors, the Committee, and the Plan Sponsor (collectively, the "Plan Sponsor Agreement Parties") have reached a comprehensive settlement to resolve, among other things, the Plan Sponsor's Liquidation Payment Claim (as defined in Disclosure Statement) and any potential Challenge (as defined in the Final Cash Collateral Order [Docket No. 422]). The settlement terms are reflected in that certain Amended & Restated Plan Support Agreement amongst the Plan Sponsor Agreement Parties [Docket No. 794] (the "A&R PSA") and embodied in the Plan, which provides for, upon the Plan Effective Date: (a) the allowance of the Settled Amounts (as defined in the Plan); (b) the Debtors and their Estates' release of Causes of Action against the Released Parties (as defined in the Plan), as set forth in Article IX.B of the Plan

894] (the "Jam Objection"); *Philadelphia Indemnity Insurance Company's Limited Objection, Joinder and Reservation of Rights with Respect to the Debtors' Second Amended Disclosure Statement* [Docket No. 897] (the "Philadelphia Objection"); and *United States Trustee's Objection to Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with respect Thereto; and (E) Granting Related Relief* [Docket No. 900] (the "UST Objection" and, together with the Lexon Objection, SEPTA Objection, Jam Objection, and Philadelphia Objection, the "Objections").

(the "Debtor Releases"); and (c) contemplates consensual third party releases of Causes of Action against the Released Parties, as set forth in Article IX.C of the Plan (the "Consensual Third Party Releases" and together with the Debtor Releases, the "Releases"). If the Debtors modify the Settled Amounts, the Debtor Releases, the Consensual Third Party Releases, or other key terms of the Plan without the consent of the Committee or the Plan Sponsor, the Committee and the Plan Sponsor may have the right to terminate their respective A&R PSA obligations pursuant to Sections 12.01(a) and 12.02(a) of the A&R PSA and no longer support the Plan.

3. As the Debtors will establish at the Confirmation Hearing, the Plan and the settlement it embodies are in the best interests of the Debtors' Estates and stakeholders and provide an efficient and value-maximizing path for the Debtors to emerge from these Chapter 11 Cases and preserve the going-concern value of Proterra Energy. Achieving that successful outcome starts with the approval of the Debtors' Disclosure Statement as containing "adequate information" for holders of claims entitled to vote to make an informed decision regarding whether to accept or reject the Plan in accordance with section 1125 of the Bankruptcy Code.

4. While a handful of parties filed Objections to the Disclosure Statement Motion, the Debtors have consensually resolved all but two of those Objections to date.[4] Indeed, with respect to the U.S. Trustee, the Debtors worked extensively and cooperatively to address various concerns and requests made on an informal basis. While the Debtors believe that the Disclosure Statement already contained more than enough information to satisfy section 1125's "adequate information" requirement, in the spirit of compromise and disclosure, the Debtors are filing, substantially contemporaneously herewith, an amended Disclosure Statement, an amended Plan, and an

[4] Attached hereto as **Exhibit A** describes the Objections in further detail and outlines their resolutions, where applicable.

amended form of proposed order granting the Disclosure Statement Motion (the "Revised Proposed Order"), each of which incorporate certain changes requested by the objecting parties. The Debtors respectfully submit that these changes address any valid concern asserted in the Objections with respect to the granting of the Disclosure Statement Motion.

5. The remaining Objections—the Jam Objection and the UST Objection—contend that the Consensual Third Party Releases are nonconsensual and warrant the Court's denial of the Disclosure Statement Motion. In doing so, the Objections prematurely assert issues to be decided at the Confirmation Hearing, at which the Debtors will seek, and provide factual support for, confirmation and approval of the Plan, including the Releases and other provisions contained therein. The Debtors submit that the only issue immediately before the Court is whether the Disclosure Statement contains "adequate information," which it does.

6. Furthermore, the Debtors will establish at the Confirmation Hearing that the Consensual Third Party Releases are a permissible feature of the Plan, consistent with a substantial body of case law supporting that releases with opt-out mechanisms, such as the Consensual Third Party Releases, are consensual.

7. The other arguments of the Jam Objection and UST Objection similarly turn on confirmation issues and are without merit. The Solicitation Procedures do not deprive the members of the putative class in the Securities Class Action (as defined in the Jam Objection) of due process, and Cyress Jam has neither standing nor authorization to non-consensually opt out of the Consensual Third Party Releases on the members' behalf. Additionally, the Court has all requisite jurisdiction to approve the Disclosure Statement and Solicitation Procedures and to confirm and approve the Plan (including the Releases contained therein). The Court should, accordingly, grant the Disclosure Statement Motion.

Background

8. On August 7, 2023, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the "Chapter 11 Cases"). The Debtors continue to manage and operate their remaining business as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

9. On August 25, 2023, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Committee in these Chapter 11 Cases [Docket No. 133]. No trustee or examiner has been appointed. The Debtors' Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

10. Information regarding the Debtors' business, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is contained in the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16].

11. On December 17, 2023, the Debtors filed the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 738]. On January 2, 2024, the Debtors filed the *First Amended Disclosure Statement for Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 796]. On January 15, 2024, the Debtors filed the *Second Amended Disclosure Statement for Second Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and Its Debtor Affiliate* [Docket No. 889]. Also on January 15, 2024, the Debtors filed the *Revised Proposed Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates with*

Respect Thereto; and (E) Granting Related Relief [Docket No. 890] (the "Proposed Order"). The Proposed Order provides for, *inter alia*, the Debtors to file the Financial Projections (as defined in the Proposed Order) with the Plan Supplement and certain revisions to the description of opting out and objecting to the Consensual Third Party Releases in the Ballots, Confirmation Hearing Notice, and the Solicitation and Voting Procedures.

12. As noted above, the Debtors have filed, or will soon file, an amended Disclosure Statement, an amended Plan, and the Revised Proposed Order, each of which incorporate certain changes to address concerns raised by the objecting parties.

Argument

I. The Disclosure Statement Meets the Applicable Standards for Approval Under Section 1125 of the Bankruptcy Code.

13. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide voting parties with "adequate information" to develop an informed judgment as to the plan. Section 1125 of the Bankruptcy Code defines "adequate information" as:

> [I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

11 U.S.C. § 1125(a)(1). Courts have construed this requirement flexibly, in light of the facts and circumstances underlying each bankruptcy case, and this determination is largely within the discretion of the Court. *See, e.g.*, *Oneida Motor Freight, Inc.* v. *United Jersey Bank*, 848 F.2d

414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.") (citations omitted). Typically, courts will require disclosures regarding certain categories of material information in assessing the adequacy of the disclosures. *See, e.g.*, *In re Phoenix Petroleum*, 278 B.R. 385, 393 n.6 (Bankr. E.D. Pa. 2001) (listing categories of information); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (S.D. Ohio 1988) (same). Because "adequate information" necessarily depends upon the facts and circumstances of each bankruptcy case, certain disclosures may prove warranted in some cases but not others. *See, e.g.*, *In re Phoenix Petroleum Co.*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case."); *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996).

14. Here, the Disclosure Statement contains adequate information for the Debtors' creditors to make an informed decision about whether to accept or reject the Plan, as required by section 1125 of the Bankruptcy Code. The Disclosure Statement provides detailed information regarding, among other things, (a) the key terms of the Plan and the estimated recoveries to creditors therein; (b) the Debtors' background and business operations; (c) key events leading to the commencement of the Chapter 11 Cases; (d) the Debtors' prepetition indebtedness; (e) the Liquidation Analysis and valuation information that would be relevant to creditors' determination to accept or reject the Plan; (f) certain United States federal income tax consequences of the transactions contemplated by the Plan; (g) certain risk factors to be considered; (h) securities disclosures with respect to the Plan; (i) instructions for voting to accept or reject the Plan; (j) a description of confirmation procedures, including details regarding requirements for Plan

confirmation; and (k) a recommendation by the Debtors that holders of Claims in the Voting Classes (Class 4 and Class 5) should vote to accept the Plan.

15. The Disclosure Statement also sets forth, in bold, conspicuous font, the Consensual Third Party Releases, as well as the definitions of "Released Parties" and "Releasing Parties." *See* Art. V(H)(3). In addition, the Plan, the Ballots, and the Opt-Out Release Form all clearly and conspicuously set forth the definitions of "Released Parties" and "Releasing Parties."

> **"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, (c) is an LG Party, or (d) is Cyress Jam, in his individual capacity (including as an individual holder of any Claims against, or Interests in, the Debtors).
>
> "**Releasing Parties**" means, collectively, and in each case solely in its capacity as such: (a) the Debtors, (b) the First Lien Agent, (c) the Second Lien Agent, (d) any Statutory Committee and each of its members, (e) the holders of all Claims or Interests who vote to accept the Plan, (f) the holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth herein, (g) 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, (h) the holders of all Claims and Interests who are Unimpaired under the Plan, (i) with respect to each of the foregoing Persons, in clauses (a) through (h), each of their Affiliates, and (j) with respect to each of the foregoing Persons in clauses (a) through (i), 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; provided that an Entity shall not be a Releasing Party if it files with the Bankruptcy Court an objection to the Plan that is not consensually resolved before Confirmation or supports any such objection or objector; *provided, further*, that Cyress Jam, in his

individual capacity (including as an individual holder of any Claims against, or Interests in, the Debtors) shall not be a Releasing Party).

16. Furthermore, while the Debtors believe that the Disclosure Statement and related materials already contain more than adequate information, in the interest of compromise and disclosure, the Debtors have agreed to make the following modifications to the Disclosure Statement and related materials in response to the UST Objection and Jam Objection, as memorialized in the Revised Proposed Order:

Location	Change
Revised Proposed Order III(A)(11)(e)	Specified the deadline for the Debtors to file the Proposed Confirmation Order (as defined in the Revised Proposed Order) shall be the later of March 1, 2024, or three business days prior to the Confirmation Hearing.
Revised Proposed Order III(E)(22)	Added that if solicitation materials are returned to the Solicitation Agent as undeliverable at least seven days prior to the Voting Deadline, the Solicitation Agent shall conduct a reasonable search to ascertain the party's address.
Notice of Confirmation Hearing	Added language in the box at the beginning of the notice advising recipients of the Consensual Third Party Releases.
Notice of Confirmation Hearing	Added the Plan's definitions of "Released Party" and "Releasing Parties."
Solicitation and Voting Procedures	Specified that, to the extent reasonably practicable, the Voting Declaration will list the amount and number of Allowed Claims of each class that returned completed Opt-Out Forms (including the identities of those that opted out; *provided*, *however*, holders of Interests may be reported using account or unique identifier information as provided by the nominees).
Form of Class 5 Ballot	Added language in the box at the beginning of the Ballot advising recipients of the Consensual Third Party Releases.
Notice of Non-Voting Status for Unimpaired Classes	Added language at the beginning of the Notice of Non-Voting Status advising recipients of the Consensual Third Party Releases.
Beneficial Holders Opt-Out Form	Modified the language describing the Consensual Third Party Release to specify that shareholders are granting releases to various third parties, including the current and former officers and directors of the Debtors, unless the shareholders return a valid Opt-Out Form by the deadline to do so.
Beneficial Holders Opt-Out Form	Added information on the Debtors' postpetition Marketing Process, A&R PSA, and the Liquidation Payment Settlement.
Registered Holders Opt-Out Form	Modified the language describing the Consensual Third Party Release to specify that shareholders are granting releases to

Location	Change
	various third parties, including the Debtors and officers and directors of the Debtors, unless the shareholders return a valid Opt-Out Form by the deadline to do so. Added information on the Debtors' postpetition Marketing Process, A&R PSA, and the Liquidation Payment Settlement.
Disclosure Statement	Added language regarding the Consensual Third Party Release in the Important Information Regarding This Disclosure Statement section.
Disclosure Statement Article V(H)(3)	Added definitions of "Released Parties" and "Releasing Parties" and incorporated certain comments from counsel to Mr. Jam.
Plan "Releasing Parties" and "Released Parties" Definitions	Revised to provide that Cyress Jam, in his individual capacity, shall not be a Releasing Party.
Plan Article IX.B & IX.C	Revised to exclude from the scope of the Releases any Cause of Action against a Released Party determined in a Final Order to be arising out of actual fraud, gross negligence, or willful misconduct of such Released Party.

17. The Debtors respectfully submit that the changes reflected in the Revised Proposed Order and Disclosure Statement sufficiently address the concerns asserted in the UST Objection and Jam Objection with respect to adequacy of information contained in the Disclosure Statement and related solicitation materials. Accordingly, the Disclosure Statement and related materials, as modified, satisfy the requirements of section 1125 of the Bankruptcy Code.

II. The Plan is Confirmable and the Remaining Objections Raise Issues to Be Considered at Confirmation Hearing.[5]

18. The fundamental purpose of a disclosure statement is to enable holders of claims and interests entitled to vote on a plan of reorganization to make an informed and intelligent decision regarding whether, and how, to vote to accept or reject the plan. The purpose of a hearing to approve a disclosure statement is to determine whether the information provided is adequate as required by section 1125 of the Bankruptcy Code. While this determination includes

[5] The Debtors reserve the right to respond to any and all objections asserted in connection with confirmation of the Plan.

considerations of accuracy and fairness, it does not include the consideration of specialized, substantive issues that certain creditors or interest holders may have with a proposed chapter 11 plan.

19. Courts have consistently held that challenges to a plan itself, like the unresolved arguments of the Objections addressed herein, should generally be addressed at the confirmation hearing after voting creditors have been informed about the proposed plan, a vote has been taken, and there is an opportunity to develop a full factual record. *See, e.g.*, *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 154–55 (3d Cir. 2012) ("Ordinarily, confirmation issues are reserved for the confirmation hearing, and not addressed at the disclosure statement.") (quoting *In re Larsen*, No. 09-02630, 2011 WL 1671538, at *2 n.7 (Bankr. D. Idaho May 3, 2011)); *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) ("[T]he Court will not look behind the disclosure statement to decide [confirmation] issues at the hearing on the adequacy of the disclosure statement."); *In re Quigley Co., Inc.*, 377 B.R., 110, 119 (Bankr. S.D.N.Y. 2007) (approving disclosure statement and holding that plan-related issues, including the scope of a release, are "confirmation issues that require an evidentiary hearing"); *In re Drexel Burnham Lambert Grp., Inc*., No. 90 B 10421, 1992 WL 62758, at *1 (Bankr. S.D.N.Y. Mar. 5, 1992) (stating that objections to a plan of reorganization's releases and injunction provisions were in the nature of confirmation objections and therefore improperly raised as objections to the disclosure statement); *In re Ellipso, Inc.*, No. 09-00148, 2012 WL 368281, at *2 (Bankr. D.D.C. Feb. 3, 2012) (holding certain disclosure statement objections were confirmation issues, including: "(i) the contention that the classification of claims is improper; (ii) a claim that the Proponents do not have the means to fund the plan; (iii) an objection to the disclosure statement's admission that if [certain] claims are allowed, there will be nothing left to pay the other creditors; and (iv) allegations that

the plan is being proposed in bad faith"); *In re Waterville Timeshare Grp.*, 67 B.R. 412, 414 (Bankr. D.N.H. 1986) (approving the disclosure statement over objections to a settlement embodied in the plan and noting such conflict would be "a prime issue" for confirmation).

20. Therefore, any substantive objections to the Plan and its confirmation should be deferred to the Confirmation Hearing and considered at that time. Requiring adjudication on confirmation issues now would effectively convert the hearing to approve the Disclosure Statement (the "Disclosure Statement Hearing") into a confirmation hearing without the benefit of the evidentiary record necessary to determine confirmation issues. *See, e.g.*, *Copy Crafters*, 92 B.R. at 980 ("[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those defects that could not be cured by voting . . . ."); *In re Monroe Well Serv., Inc.*, 80 B.R. at 333 n.10 (noting that the "disclosure statement itself is not mailed to all creditors until after court approval is obtained, *see* 11 U.S.C. § 1125(b) and Bankr. R. 3017(a); and plan proponents must be placed on notice that § 1129 issues may be considered").

21. The very limited exception and only time a court may entertain plan objections at a disclosure statement hearing is "where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable." *In re Am. Cap. Equip., LLC*, 688 F.3d at 154–55; *see also Cardinal Congregate I*, 121 B.R. at 764 (noting that disapproval of the adequacy of the disclosure statement phase may sometimes be permitted only if the proposed plan is "so fatally flawed that confirmation is impossible"); *Monroe Well Serv.*, 80 B.R. at 333 (holding that objections bearing on confirmability are only appropriate when "a court is convinced the plan could not possibly be confirmed"). A plan is not patently unconfirmable where the debtor can show that "the plan is

confirmable or that defects might be cured or involve material facts in dispute." *In re Am. Cap. Equip., LLC*, 688 F.3d at 155. Rather, "[a] plan is patently unconfirmable where (1) confirmation 'defects [cannot] be overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'" *Id.* (citing *Monroe Well Serv.*, 80 B.R. at 333).

22. None of the Objections have come close to satisfying their necessary burden to demonstrate that the Plan is patently unconfirmable, nor could they. Each of these Objections, therefore, should be addressed at the Confirmation Hearing. Nevertheless, the Debtors will briefly address the remaining confirmation Objections to demonstrate that the Plan is not so fatally flawed that confirmation is "impossible."

A. The Debtors Will Demonstrate at the Confirmation Hearing that the Consensual Third Party Release Provisions Are Appropriate and Should Be Approved.

23. The majority of the Jam Objection and UST Objection are centered on the alleged impermissibility of the Plan's proposed Consensual Third Party Release provisions, contending that (a) the releases contemplated by such provisions will be non-consensual notwithstanding creditors' and interest holders' ability to opt out and (b) the Debtors have not established that the requirements for non-consensual third party releases have been satisfied (despite it being premature to do so and that the Debtors are *not* seeking approval of non-consensual third party releases). As discussed above, arguments against the propriety of the Plan's Releases are unavailing at the disclosure statement stage, where the issue before the Court is not whether the Plan's Consensual Third Party Release provisions are ultimately valid under applicable Third Circuit law, but rather whether the existence of those provisions is adequately disclosed in the Disclosure Statement (which they are, as discussed above). In any event, as will be demonstrated

at the Confirmation Hearing, the Plan's Consensual Third Party Release provisions are valid and supported by applicable law.

24. *First*, it is generally settled that creditors and interest holders may consent to third-party releases contained within a chapter 11 plan, and that such consensual releases are not subject to the requirements for non-consensual releases set forth in *Gillman* v. *Continental Airlines Holdings, Inc.* (*In re Continental Airlines Holdings, Inc.*), 203 F.3d 203 (3d Cir. 2000).[6] In determining what constitutes consent, courts in this District have repeatedly held that third-party release structures utilizing an opt-out mechanism are consensual. *See, e.g.*, *In re Clovis Oncology, Inc.*, Case No. 22-11292 (JKS) (Bankr. D. Del. June 12, 2023) (finding that members of deemed-to-reject class consented to third party releases unless they opted out); *In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022) (same); *In Extraction Oil & Gas, Inc.*, Case No. 20-11548 (CSS) (Bankr. D. Del. Dec. 22, 2020) (same).

25. In *In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022), the plan provided for third party releases from, among others, "the Holders of all Claims or Equity Interests who vote, or are deemed to reject the Plan but do not opt out of granting the releases . . . , (e) all Holders of Claims or Equity Interests to the maximum extent permitted by law." *Id.* at 877. As the court explained, "[f]or those who were entitled to receive notice of non-voting status, such as the Class 14 shareholders, Prime Clerk sent the confirmation hearing notice, notice of non-voting status, and an opt out form." *Id.* at 878. The opt out forms provided that parties failing to return the opt out form in accordance with its instructions would forever release the released parties in accordance

[6] *See, e.g.*, Hr'g Tr. 80:22–81:7 *In re Extraction Oil & Gas Co.*, No. 20-11548 (CSS) (Bankr. D. Del. May 15, 2020) ("Very importantly, these are consensual releases, these are not nonconsensual releases. I have repeatedly ruled that you can imply consent by failing to opt out or respond to a plan, either through a ballot or on the docket that calls for a release. . . . .[I]t's the plan that serves as the mechanism to have the release take effect and, thus, it's really the rules, the Federal Rules of Bankruptcy Procedure that figure out whether someone has achieved proper notice and has, by not responding, given their implied consent.").

with the plan. *Id.* at 879. Judge Dorsey held that, under these parameters, "there is ample evidence in the record that the releasing parties were sent notices in a variety of ways that explained in no uncertain terms that action was required to preserve claims. As this Court has previously stated, shareholders and creditors have an obligation to read their mail." *Id.* at 880 (citing *In re EV Energy Partners*, No. 18-10814, Confirmation Hr'g (May 16 2018) Tr. at 214 (Bankr. D. Del. May 25, 2018)). In light of this evidence, the court held the third party releases were valid and consensual. *Id.*

26. Similarly, in *In re Clovis Oncology, Inc.*, Case No. 22-11292 (JKS) (Bankr. D. Del. June 12, 2023), Judge Stickles ruled that "[a]s a threshold matter, I find that the third-party releases are consensual because creditors and interest holders had the ability to opt out of the plan release provision. The record reflects, with respect to non-voting classes, the notice of non-voting status and combined hearing contains the full text of the injunction, exculpation, and release provisions set forth in Article 11 of the plan. . . . As I and others on this Court have previously ruled, where the disclosure is prominent and conspicuous, an opt-out mechanism is a valid means of obtaining consent." Hr'g Tr. 12:1–13:3. Indeed, Judge Stickles specifically evaluated and rejected Mr. Jam's and the UST's argument that public shareholders should not be required to grant a release if they are non-voting parties and their equity interests will be cancelled. In rejecting this argument, the Court relied on the fact that "there is no indication that equity has lost interest in these cases." *Id.* at 14:12–13. The court elaborated further that "[t]here is no principal or logical way to distinguish the use of an opt-out notice between a non-voting or voting creditor, whether in the money or not, when adequate notice has been provided. An equity security holder is a party-in-interest in a case under Section 1109." *Id.* at 14:14–18.

27. Likewise, in *In Extraction Oil & Gas, Inc.*, Case No. 20-11548 (CSS) (Bankr. D. Del. Dec. 28, 2020), Judge Sontchi overruled objections to opt-out releases by holders of claims in non-voting, deemed-to-reject classes, emphasizing "[v]ery importantly, these are consensual releases . . . I have repeatedly ruled that you can imply consent by failing to opt out or respond to a plan, either through a ballot or on the docket, that calls for a release." Hr'g Tr. 80:21–25.

28. Here, the Plan contains an intentionally crafted opt-out structure whereby all holders of claims or interests under the Plan (other than holders of intercompany claims and interests) will have the opportunity to demonstrate their consent by electing not to opt out of the Consensual Third Party Releases, regardless of whether their claim or interest is in a Voting Class.[7] Numerous plans have been confirmed by courts in this district and other districts that bind creditors and interest holders in non-voting classes that fail to make an opt-out election to third-party releases. *E.g.*, *In re Ryze Renewables II, LLC,* Case No. 23-10289 (BLS) (Bankr. D. Del. January 8, 2024) [Docket No. 367]; *In re Clovis Oncology, Inc.*, Case No. 22-11292 (JKS) (Bankr. D. Del. June 16, 2023) [Docket No. 904]; *In re Mallinckrodt PLC,* 639 B.R. 837 (Bankr. D. Del. 2022); *In re Alex and Ani, LLC,* Case No. 21-10918 (CTG) (Bankr. D. Del. Sept. 22, 2021)

[7] Holders of Second Lien Convertible Notes (Class 4) and General Unsecured Claims (Class 5) will be provided ballots and can opt out of the Consensual Third Party Releases by (a) submitting a timely ballot that votes to reject the Plan and selects the option to opt out of the Consensual Third Party Releases or (b) timely filing an objection to the Plan that is not resolved prior to confirmation or any pleading evidencing support for any such objection or objector (any such objection or pleading, a "Confirmation Objection"). Holders of Interests in TopCo (Class 8) will receive notice (the form of which will vary slightly depending on whether such Holder is a beneficial owner of Proterra Inc shares held through a Nominee or as a registered shareholder of Proterra Inc) of their non-voting status, the Consensual Third Party Release provisions, and their ability to opt out of the Consensual Third Party Releases by timely executing and submitting an opt-out election form provided to such Holders or filing a Confirmation Objection. Holders of Section 510(b) Claims (Class 9) will receive a notice of their non-voting status, the Consensual Third Party Release provisions, and their ability to opt out of the Consensual Third Party Releases by timely executing and submitting an opt-out election form provided to such Holders or filing a Confirmation Objection. Holders of Other Secured Claims (Class 1), Other Priority Claims (Class 2), and First Lien Claims (Class 3) will receive a Notice of Non-Voting Status for Unimpaired Claims, which will notify them that pursuant to the Plan, they can opt out of the Consensual Third Party Releases by filing a Confirmation Objection. Thus, all Holders of Claims and Interests will have notice of their ability to opt out of the Consensual Third Party Releases and ample opportunity to do so.

[Docket No. 472]; *In re Furniture Factory Ultimate Holding, L.P.*, Case No. 20-12816 (JKS) (Bankr. D. Del. Sept. 21, 2021) [Docket No. 507]; *RTI Holdings Company, LLC*, Case No. 20-12456 (JTD) (Bankr. D. Del. Feb. 17, 2021) [Docket No. 1144]; *In Extraction Oil & Gas, Inc.*, Case No. 20-11548 (CSS) (Bankr. D. Del. Dec. 23, 2020) [Docket No. 1509]; *In re ACAR Wind Down, Inc.*, Case No. 18-11659 (LSS) (Bankr. D. Del. March 22, 2019) [Docket No. 332]; *In re Arsenal Energy Holdings LLC*, Case No. 19-10226 (BLS) (Bankr. Feb. 13, 2019) [Docket No. 61]; *In re David's Bridal, Inc*, Case No. 18-12635 (LSS) (Bankr. D. Del. Jan. 4, 2019) [Docket No. 279]; *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. May 14, 2018) [Docket No. 487]; *In re Remington Outdoor Company, Inc.*, Case No. 18-10684 (BLS) (Bankr. D. Del. May 4, 2018) [Docket No. 248]; *General Wireless Operations Inc. DBA RadioShack*, Case No. 17-10506 (BLS) (Bankr. D. Del. Oct. 26, 2017) [Docket No. 1117]. It is incumbent on creditors and interest holders to review the pleadings sent to them and act in accordance with their clear dictates. *See Mallinckrodt*, 639 B.R. at 880–81 ("There was clear notice of the opt-out requirement in both, mailed and published notices, and, here, the released parties helped to resolve problems and issues and guided debtors through bankruptcy were very instrumental in the settlement that we have here today. And as a consequence, the releases are essential to the plan."); *see also In re TE Holdcorp LLC*, Case No. 22-1807 at 6 (3d Cir. Jan. 26, 2023) [Docket No. 35] (finding that "lack of objection (provided of course there is notice) counts as consent" for the purposes of section 363 of the Bankruptcy Code, and thus, a party that had notice and an opportunity to object to a proposed sale but failed to do so was deemed to consent under the sale order).[8]

[8] Indeed, Federal Rule of Civil Procedure 23, under which Mr. Jam seeks to eventually certify a class action, relies upon an opt-out mechanism to deem consent from putative class members in certain circumstances. Fed. R. Civ. P. 23(c)(2)(B) and (e)(4).

29. *Second*, at least two of the cases cited by the U.S. Trustee and Mr. Jam found that a failure to opt out was insufficient to deem consent under circumstances that, as the Debtors will establish at the Confirmation Hearing, are inapplicable to these Chapter 11 Cases. Such findings in *In re Emerge Energy Services LP*, Case No. 19-11563, 2019 WL 7634308 (Bankr. D. Del. Dec. 5, 2019) and *In re Sun Edison, Inc.*, 576 B.R. 453 (Bankr. S.D.N.Y. 2017) emphasized the lack of evidence of any previous dealings between the parties. *See* 2019 WL 7634308 at *18 (consent could not be inferred because there were "no previous dealings between the parties" in evidence); 576 B.R. at 457 (emphasizing that "the [d]ebtors do not contend that an ongoing course of conduct with their creditors gave rise to a duty to speak").

30. In contrast to the facts and circumstances at issue in *Sun Edison* and *Emerge Energy Services*, the shareholders of Debtor Proterra Inc are interested in, and paying attention to, the Debtors' Chapter 11 Cases. The Debtors and their professionals have received numerous informal requests and queries from an active shareholder base. Furthermore, various shareholders have requested the formation of an official equity committee at least twice and filed letters on the docket of the Chapter 11 Cases. *See, e.g.*, *Letter to the Court by Boris Senderzon re: Request for Formation of Shareholder Committee* [Docket No. 373]; *Letter to the Court by Alex Joseph re: Stocks* [Docket No. 635]; *Letter to the Court by Gwyn Norman Crump Sr. re: Compensation* [Docket No. 834]; *Response to Notice of Hearing to Consider Adequacy of Disclosure Statement* [Docket No. 835]. Moreover, according to Mr. Jam, the shareholders have allegedly valuable prepetition securities law claims against the Debtors and certain of their current and former directors and officers. As in *Clovis*, the interest and engagement of the Debtors' stakeholders, including the Debtors' shareholders, establishes a course of conduct that will further support a

finding of consent from any shareholders that decline to opt out of the Consensual Third Party Releases.

31. *Third*, Mr. Jam erroneously contends that his status as lead plaintiff in the ongoing Securities Class Action authorizes him to opt out of the Consensual Third Party Releases on behalf of all shareholders that are members of the putative class. Jam Obj. at 16–17. Nothing in the Securities Class Action or applicable law gives Mr. Jam authority to opt out on behalf of his putative class. In *In re Retail Group, Inc.*, No. 20-33113 (KRH), 2021 WL 863338 (Bankr. E.D.V.A. March 5, 2021), the court held that a lead plaintiff in an ongoing securities class action had "no authorization" with regard to the bankruptcy court and that "[i]t is well-settled that consent to being a member or the representative of a class in one piece of litigation is not tantamount to a blanket consent to any litigation the class counsel may wish to pursue." *Id.* at *5 (quoting *Lucas* v. *Dynegy Inc.* (*In re Dynegy*), 770 F.3d 1064, 1071 (2d Cir. 2014)). Therefore, "[m]ovants' fiduciary duties to the putative class members in the Securities Litigation do not confer upon the movants any status for these Bankruptcy Cases. . . . Movants have no inherent authority to opt out of the Third-Party Releases on behalf of the putative class." *Id.* at *6. Of course, Mr. Jam can opt of the Consensual Third Party Releases in his individual capacity, and in light of Mr. Jam's apparent decision to do so, the Debtors will include language in the solicitation version of the Plan that expressly carves out Mr. Jam from the Plan's definition of Releasing Parties. The Debtors, however, decline to facilitate Mr. Jam's attempts to non-consensually deprive his fellow shareholders of the ability to participate in the Consensual Third Party Release.

32. *Fourth*, in light of Mr. Jam's decision to opt out of the Consensual Third Party Releases in his individual capacity, he lacks standing to object to such release provisions. *See In re Dynegy Inc.*, 770 F.3d at 1070 (holding that lead plaintiff did not have standing to object to

release provisions on behalf of a putative securities class in the bankruptcy proceeding where the lead plaintiff personally opted out of the release); *see also In re Mallinckrodt PLC*, 639 B.R. 837, 877–78 (Bankr. D. Del. 2022) ("As a threshold matter, I find the Pension Trust does not have standing to object to the Third-Party Releases because it has opted out and is therefore not bound by them.").

33. *Fifth*, Mr. Jam's argument that the Plan's Consensual Third Party Release and injunction provisions violate the Bankruptcy Code to the extent they seek to discharge or release claims under the federal securities laws is equally flawed and premature. The exception to discharge Mr. Jam cites—section 523(a) of the Bankruptcy Code—is limited only to "individual debtors," which would not include a corporation like the Debtors. 11 U.S.C. § 523(a); *see also In re Pelkowski*, 990 F.2d 737, 742 (3d Cir. 1993) ("We believe it is evident that 'individual' debtor is used in contradistinction to 'corporate' debtor.") (citing *Garrie* v. *James L. Gray, Inc.*, 912 F.2d 808, 812 (5th Cir. 1990)). Moreover, courts have confirmed that chapter 11 plans can incorporate releases of securities class action claims against non-debtors. *See, e.g.*, *In re Charter Communs.*, Case No. 09-11435 (JMP), 2010 WL 502764, at *17–18 (Bankr. S.D.N.Y. Feb. 8, 2010) (granting motion to enforce plan injunction provisions against class action plaintiffs seeking to proceed with securities fraud litigation because such litigation was "squarely within" the scope of releases properly granted under the plan).

34. In sum, Mr. Jam's and the UST's arguments that the Disclosure Statement cannot be approved unless the Consensual Third Party Release provisions are severed from the Plan fail. The propriety of the Release provisions is an issue that should be reserved for the Confirmation Hearing, and in any event there is abundant caselaw and, as will be established at the Confirmation Hearing, factual support for the Plan's Consensual Third Party Release structure. Furthermore,

Mr. Jam lacks the authority to opt out of the Consensual Third Party Releases on behalf of his putative class, and indeed he lacks standing to challenge the Consensual Third Party Release at all.

B. The Definition of "Releasing Parties" is Appropriate and Not Overboard.

35. The U.S. Trustee also argues that the definition of "Releasing Parties" is overbroad because it includes certain related entities to the primary Releasing Parties that allegedly do not have the opportunity to demonstrate consent. UST Obj. at ¶¶ 46–48.

36. The inclusion of these parties is appropriate because they will only be granting releases in their capacity as a party related to one of the primary Releasing Parties. If the primary Releasing Party does not consent to the third-party releases, then such party's related parties would not be bound by the releases. Courts in this and other districts routinely approve plans that include a similar list of related parties in the scope of the releases. *See, e.g., In re Clovis Oncology, Inc.*, Case No. 22-11292 (JKS) (Bankr. D. Del. June 16, 2023) [Docket No. 904]; *In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022); *In re Avianca Holdings, S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. Nov. 2, 2021) [Docket No. 2300]; *In re Alex and Ani, LLC*, Case No. 21-10918 (CTG) (Bankr. D. Del. Sept. 22, 2021) [Docket No. 472]; *In re Automotores Gildemeister SpA*, Case No. 21-10685 (LGB) (Bankr. S.D.N.Y. June 1, 2021) [Docket No. 149]; *In re Frontier Communications Corp.*, Case No. 20-22476 (RDD) (Bankr. S.D.N.Y. Aug. 27, 2020) [Docket No. 1005]; *In re Centric Brands Inc.*, Case No. 20-22637 (SHL) (Bankr. S.D.N.Y. Sept. 21, 2020) [Docket No. 657]; *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. June 26, 2020) [Docket No. 2243]; *In re Cumulus Media Inc.*, No. 17-13381 (SCC) (Bankr. S.D.N.Y. March 5, 2018) [Docket No. 769].

37. The U.S. Trustee also argues the Disclosure Statement does not contain adequate information about the Released Parties because the Releases are mutual (*i.e.*, each Releasing Party receives a release from each other Releasing Party). According to the UST, mutual releases are

inappropriate because "no Releasing Party will know who they are releasing until after the deadline to opt out of the releases." UST Obj. ¶ 52. In challenging the effectiveness of a Plan provision, the UST's argument asserts a confirmation issue, which is in any event without merit. The definitions of "Releasing Parties" and "Released Parties" clearly articulate the categories of parties who are to grant and receive releases under the Plan. This provides sufficient information for parties to vote on the Plan and determine whether to opt out of a Consensual Third Party Release. If parties determine that they do not want to grant the Consensual Third Party Release to the categories of parties set forth in the definition Released Parties, then they can opt out of the Consensual Third Party Releases. The UST's objection should accordingly be overruled.

C. The Court has Jurisdiction to Confirm the Plan.

38. Mr. Jam also argues this Court lacks jurisdiction to approve the Consensual Third Party Releases. Jam Obj. at 21–22. This confirmation objection is premature and in any event ultimately should be rejected for at least three reasons.

39. *First*, section 1123 of the Bankruptcy Code provides that chapter 11 plans "shall . . . provide adequate means for the plan's implementation" and "may . . . include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." The incorporation of the Consensual Third Party Release provisions into the Plan is therefore expressly permitted by the Bankruptcy Code, and it is without question that the Court has jurisdiction to confirm and approve chapter 11 plans, the requirements for which are set forth in the Bankruptcy Code. *See* 11 U.S.C. § 1129 (requirements for plan confirmation); *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 140 (3d Cir. 2019) ("[U]nder the particular facts of this case, the Bankruptcy Court's conclusion that the release provisions were integral to the restructuring was well-reasoned and well-supported by the record. Consequently, the bankruptcy court was constitutionally authorized to confirm the plan in which those provisions appeared.");

In re Boy Scouts of America and Delaware BSA, LLC, 642 B.R. 504, 588–89 (Bankr. D. Del. 2022) ("As Debtors point out, however, this is a confirmation hearing. A confirmation hearing is a proceeding that 'by its nature, and not the particular factual circumstance, could arise only in the context of a bankruptcy case.' Bankruptcy jurisdiction exists here, therefore, as this proceeding 'arises in' in this bankruptcy case.") (quoting *In re New Century TRS Holdings, Inc.*, 505 B.R. 431, 441 (Bankr. D. Del. 2014)).

40. *Second*, as discussed above, the Consensual Third Party Release provisions provide for consensual releases amongst the Releasing Parties. They do not require the Court to adjudicate any causes of action released by the Releasing Parties, and thus whether the Court would have jurisdiction to adjudicate such causes of action is irrelevant.

41. *Third*, even if the Court's approval of the Consensual Third Party Release provisions required the Court to have jurisdiction to adjudicate any causes of action released thereby, the Debtors will be prepared to establish at the Confirmation Hearing that the causes of action asserted in the Securities Class Action could have a "conceivable effect" on the Debtors' estates and therefore are subject to the Court's "related to" jurisdiction. *See* 28 U.S.C. § 1334(b) (bankruptcy courts have "original but not exclusive jurisdiction of all of all civil proceedings . . . related to cases under title 11"); *Pacor, Inc.* v. *Higgins*, 743 F.2d 984 (3d Cir. 1985) (holding that bankruptcy court had "related to" jurisdiction over a matter if the "outcome of [the] proceeding could conceivably have any effect on the estate being administered in bankruptcy").

D. The Solicitation Procedures Do Not Deprive Putative Class Members of Due Process.

42. Mr. Jam argues the Solicitation Procedures would deprive shareholders of due process because there is insufficient time to compile a "list of shareholders who have claims under the Securities Class Action to which the Opt-Out Forms could be mailed" and that "even robust

notice procedures may not provide sufficient due process to release third-party claims." Jam Obj. 23–24. These arguments are yet another premature attempt to challenge the efficacy of the Plan's Consensual Third Party Release provisions and are similarly without merit.

43. Pursuant to the Court's Order *Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 187], the General Bar Date (as defined therein) occurred on November 13, 2023 at 4:00 p.m. (prevailing Eastern Time). Thus, the deadline for all persons and entities (other than governmental units) to file a proof of claim asserting a Section 510(b) Claim has already passed, and the Debtors expect the claims register already includes all Section 510(b) Claims that will be asserted as of the Voting Record Date. The Solicitation Procedures are therefore designed to provide the holders of such claims sufficient time to review their opt-out forms and determine whether to opt out of the Consensual Third Party Releases.

44. Similarly, the Debtors already have a list of Debtor Proterra Inc's shareholders, including certain banks, brokers, or other financial institutions (each a "Nominee") that hold equity securities in Debtor Proterra Inc in "street name" on behalf of certain Beneficial Holders.[9] Each of the Nominees will be responsible for distributing applicable opt-out forms to its Beneficial Holders. The Solicitation Procedures are therefore designed to provide shareholders sufficient time to review their opt-out forms and determine whether to opt out of the Consensual Third Party Releases.

45. The procedures and timeline contemplated by the Disclosure Statement, Disclosure Statement Motion, and Plan comply with applicable Bankruptcy Rules and Local Rules and,

[9] As set forth in the Revised Proposed Order, "Beneficial Holder" means an entity that beneficially owns Class 8 Interests in TopCo as of the Voting Record Date, as reflected in the records maintained by the Nominee.

accordingly, are consistent with due process. *See In re Arsenal Intermediate Holdings, LLC*, No. 23-10097, 2023 WL 2655592, at *6 (CTG) (Bankr. D. Del. Mar. 27, 2023) ("At the same time, the 'duty to speak' in this context arises from the fact that the provision in question is contained in a plan of reorganization that has been validly served on the creditor in accordance with the requirements of due process.").

Notice of This Reply

46. The Debtors will provide notice of this Reply to: (a) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 Attn: Linda J. Casey (linda.casey@usdoj.gov); (b) counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas New York, NY 10020, Attn: Jeffrey Cohen (jcohen@lowenstein.com) and Eric S. Chafetz (echafetz@lowenstein.com); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the state attorneys general for states in which the Debtors conduct business; (f) the Securities and Exchange Commission; (g) counsel to the First Lien Agent, Holland & Knight, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201 Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com); (h) counsel to the Second Lien Agent, Sidley Austin LLP, 787 Seventh Ave, New York, NY 10019, Attn: Thomas R. Califano (tom.califano@sidley.com) and Dennis M. Twomey (dtwomey@sidley.com); (i) counsel to Mr. Jam, Joyce, LLC, 1225 King Street, Suite 800, Wilmington, DE 19801, Attn: Michael Joyce (mjoyce@mjlawoffices.com), Levi & Korsinky, LLP, 33 Whitehall St., 17th Floor, New York, NY 10004, Attn: Adam Apton (aapton@zlk.com), and Pomerantz LLP, 10 S. LaSalle St., Ste. 3505, Chicago, IL 60603, Attn: Joshua Silverman (jsilverman@pomlaw.com) and Christopher P.T. Tourek (ctourek@pomlaw.com); (j) counsel to Lexon, The Powell Firm, LLC, 1813 N. Franklin St., P.O.

Box 289, Wilmington, DE 19899, Attn: Jason Powell (jpowell@delawarefirm.com) and Harris Beach PLLC, 333 W. Washington St., Suite 200, Syracuse, New York 13202, Attn: Lee Woodard (bkemail@harrisbeach.com) and Brian Roy (broy@harrisbeach.com); (k) counsel to SEPTA, Duane Morris LLP, 1201 N. Market St., Suite 501, Wilmington, DE 19801, Attn: Lawrence Kotler (ljkotler@duanemorris.com) and Drew McGehrin (dsmcgehrin@duanemorris.com); (l) counsel to Philadelphia, McElroy, Deutsch, Mulvaney & Carpenter, LLP, 300 Delaware Ave., Suite 1014, Wilmington, DE 19801, Attn: Gaston Loomis (gloomis@mdmc-law.com) and Manier & Herod, P.C., 1201 Demonbreun St., Suite 900, Nashville, TN 37203, Attn: Scott Williams (swilliams@manierherod.com) and S. Marc Buchman (mbuchman@manierherod.com); and any party that has requested notice pursuant to Bankruptcy Rule 2002.

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WHEREFORE, the Debtors respectfully request that the Court overrule the Objections and enter an order substantially in the form of the Revised Proposed Order and such other and further relief as the Court may deem just and proper.

Dated: January 22, 2024
Wilmington, Delaware

Respectfully submitted,

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Objection Response Chart[1]

[1] Capitalized terms used but not otherwise defined here shall have the meanings ascribed to them in the Reply, the Objections, or the Disclosure Statement Motion, as applicable.

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
Lexon Insurance Company [Docket No. 891]	Resolved	Location: Paragraphs 22–27 • Lexon objected to the adequacy of the information contained in the Disclosure Statement because neither the Disclosure Statement nor the Plan reference whether the Lexon Bond will be replaced or reaffirmed and ratified by the Plan Sponsor, Reorganized Debtors, or any other reorganized company. • Lexon asserted that to the extent the Debtors are attempting to treat the Lexon Bond and Indemnity Agreement as executory contracts, the Debtors cannot do so because they are financial accommodations. • Lexon further argued that the Lexon Collateral cannot be transferred or assigned to the Plan Sponsor, Reorganized Debtor, and/or Reorganized Proterra because the Lexon Collateral is not property of the Debtors' bankruptcy estate.	• The Debtors resolved the Lexon Objection by revising the Disclosure Statement Order to include agreed-upon language between Lexon and the Debtors. *See* Final Proposed Order ¶¶ 26–28.
SEPTA [Docket No. 892]	Resolved	Location: Paragraphs 19–22 • SEPTA objected to the Disclosure Statement because the treatment of the Contract was unclear. • SEPTA further argued it was uncertain as to what distribution it could expect on its claim.	• SEPTA and the Debtors resolved the objections contained in the SEPTA Objection with a statement to be read at the Disclosure Statement Hearing.
Philadelphia Indemnity Insurance Company [Docket No. 897]	Resolved	Location: Paragraphs 10–12 • Philadelphia joined paragraphs 1 and 22–27 of the Lexon Objection. • Philadelphia argued the treatment of its Claims is unclear because neither the Disclosure Statement nor the Plan are explicit or specific about sureties, surety collateral, bonds, and indemnity agreements.	• The Debtors resolved the Philadelphia Objection by revising the Disclosure Statement Order to include agreed-upon language between Philadelphia and the Debtors. *See* Final Proposed Order ¶¶ 26–28.

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
Cyress Jam [Docket No. 894]	Unresolved	Location: Pages 10–20 • Mr. Jam objected to the Consensual Third Party Releases, contending they are non-consensual so that they should be reviewed under the standards set forth in *In re Continental Airlines*. • Mr. Jam maintained that the Consensual Third Party Releases would violate *Continental* because the Debtors have not provided the Bankruptcy Court with evidence that would justify releasing third parties in the Securities Class Action. • Mr. Jam asserted the Release and Injunction Provisions should be struck from the Plan as they relate to the Securities Class Action. • Mr. Jam asserted on his Proof of Claim that he and the Class objected 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.* or *Tirado* v. *Proterra Inc.* • Mr. Jam further argued that the Consensual Third Party Releases are non-consensual because opt-out mechanisms cannot make a release consensual as to classes that do not receive consideration under a plan.	• As set forth in the Reply, the Debtors dispute Mr. Jam's assertions. The Consensual Third Party Releases are consistent with substantial precedent in this District. • The Debtors added certain language to the Disclosure Statement provided by Mr. Jam's counsel, which addresses any legitimate concern of Mr. Jam regarding adequacy of the information. • The Debtors will be prepared to introduce evidence to support the confirmation and approval of the Plan, including the Consensual Third Party Releases contained therein, at the Confirmation Hearing. • Mr. Jam has neither (a) authorization to non-consensually opt out of the Consensual Third Party Releases on behalf of his putative class nor (b) standing to challenge such release provisions.

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
	Unresolved	Location: Pages 21–22 • Mr. Jam objected to the language in the Disclosure Statement because he argues it misinforms holders of Claims in Class 9 about their ability to have their claims adjudicated in an Article III court. • Mr. Jam asserted the Bankruptcy Court has neither arising under nor arising in jurisdiction over the Third-Party Release. • Mr. Jam also argued that the Bankruptcy Court lacks constitutional authority to determine any aspect of the merits of claims and defenses that the Third-Party D&O Defendants may have.	• As set forth in the Reply, the Debtors dispute Mr. Jam's arguments that the Court lacks all requisite jurisdiction to confirm and approve the Plan and the Consensual Third Party Releases contained therein, which is a confirmation issue. • The Debtors added certain language to the Disclosure Statement provided by Mr. Jam's counsel, which addresses any legitimate concern of Mr. Jam regarding adequacy of the information.
	Unresolved	Location: Pages 22–24 • Mr. Jam objected to the time to solicit the opt-outs from Class 9. He argued there is insufficient time to print and mail the opt-out forms to provide holders time to review. • Mr. Jam argued that due process requires reasonable ascertainable members be provided notice even if it would take a few months. • Additionally, Mr. Jam argued even robust notice procedures may not provide sufficient due process to release third-party claims and that here, 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 does not allow the Bankruptcy Court to exercise judgment.	• As set forth in the Reply, the Debtors dispute Mr. Jam's objections. The procedures and timeline contemplated by the Disclosure Statement, Disclosure Statement Motion, and Plan comply with applicable Bankruptcy Rules and Local Rules and are robust and consistent with due process and substantial precedent in this District. • This is a confirmation issue.

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
	Unresolved	Location: Page 25 • Mr. Jam objected to the Plan's Releases "to the extent they seek to discharge violations under the federal securities laws."	• As set forth in the Reply, the Debtors proposed Consensual Third Party Releases are consensual and permissible under applicable law. • This is a confirmation issue.
	Presumed to be Resolved	Location: Pages 25–26 • Mr. Jam objected that the Plan's Releases do not excerpt claims for fraud, gross negligence, and willful misconduct.	• The Debtors revised the Plan's Release provisions to not release claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct.
UST [Docket No. 900]	Unresolved	Location: Paragraphs 25–41 • The UST objected to the Debtors' Plan containing non-consensual third-party releases as to the Debtors' public shareholders because the proposed opt-out mechanism is inappropriate. • The UST argued the shareholders will not receive a distribution under the Plan, and therefore the releases fail to meet the standard articulated in *In re Continental*, and shareholders should therefore be carved out of the definition of "Releasing Parties."	• As set forth in the Reply, the Debtors' proposed Consensual Third Party Releases are permitted under applicable law and appropriate here.
	Presumed to be Resolved	Location: Paragraph 42 • The UST asserted that the notices are written in confusing legalese and do not explicitly and clearly warn shareholders that they will be providing releases to potentially thousands of parties, including the Debtors and their officers and directors, in the absence of action.	• The Debtors revised the Opt-Out Forms sent to Beneficial Holders and Registered Shareholders to provide an overview of the Postpetition Marketing Process, the Reorganization,

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
		• The UST objected to the time period to opt out for it being truncated for beneficial holders who, under the proposed procedures, are relying on their nominee to return the master opt-out form properly and timely manner.	and the Liquidation Payment Settlement. • The Debtors revised the titles of the notices and clarified, in bold and capitalized font, that shareholders are granting third party releases, including to the Debtors and the Debtors' directors and officers.
	Unresolved	Location: Paragraph 42 • The UST objected to the Plan and Disclosure Statement not being served on all holders. • The UST objected to the time period to opt out for it being truncated for beneficial holders who, under the proposed procedures, are relying on their nominee to return the master opt-out form properly and in a timely manner.	• As set forth in the Reply, the timelines proposed are appropriate and in accordance with the Bankruptcy Rules, Local Rules, and substantial precedent in this District.
	Presumed to be Resolved	Location: Paragraphs 42–44 • The UST objected to the notices being sent to unimpaired creditors not describing the third party releases. • The UST further asserted that the Confirmation Notice does not contain the definition of Releasing Parties, and the Debtors do not intend to send the Plan or Disclosure Statement to these creditors.	• As described in the Reply, the Debtors revised the Notice of Non-Voting Status for unimpaired claims to include a box at the front further highlighting and describing the releases and to include additional information. • The Debtors similarly revised the Confirmation Notice to further highlight the Consensual Third Party Releases and incorporate the

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
			definitions of Released Parties and Releasing Parties.
	Presumed to be Resolved	Location: Paragraph 45 • The UST further objected to the Debtors proposed procedure of not serving anything on creditors who have already been paid in full to the extent that these creditors fall within the definition of "Releasing Parties."	• The Debtors confirm that to the extent a former creditor has been paid in full, and thus has no Claim against the Debtors, its former Claim would not cause it to be a Releasing Party.
	Unresolved	Location: Paragraphs 46–48 • The UST objected to the procedure where Debtors would not serve any part of the Solicitation Package, or the Confirmation Hearing Notice, on the Affiliates of Releasing Parties who are granting releases or the related parties of the Releasing Parties and their Affiliates.	• The Affiliates of Releasing Parties are granting the releases on behalf of their related persons (in each case, *solely* in their capacity as such). • Such a challenge to the Consensual Third Party Release is an issue to address at the Confirmation Hearing.
	Presumed to be Resolved	Location: Paragraphs 49–52 • The UST objected to the definition of Released Parties because it includes the Releasing Parties and the claims being released include claims for fraud, gross negligence, and intentional misconduct. • Because Released Parties are defined as Releasing Parties in the Plan, the UST argued no Releasing Party will know for certain which particular persons they are releasing until after the deadline to opt out of the releases.	• The Debtors' revised the Plan's Release provisions to not release claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct. • The Disclosure Statement and Solicitation Materials contain robust disclosures regarding the Plan's definitions to allow

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
			interested parties to determine the scope of the Consensual Third Party Releases, including the various categories of "Released Parties." • The Debtors revised the Disclosure Statement to include language noting that identities of all individual members of the various categories of Released Parties cannot be known until following the opt-out deadline.
	Presumed to be Resolved	Location: Paragraph 53 • The UST objected that there was no procedure for identifying Released Parties after the opt-out deadline. UST objected because the Debtors should be required to serve notice of (a) creditors and interest holders who have become Released Parties; and (b) the names of creditors and interest holders who have opted out of the releases and are not Released Parties.	• The Debtors will include in the Voting Report the parties that opted out of the Consensual Third Party Releases, subject to certain limitations regarding protecting personal identity.
	Presumed to be Resolved	Location: Paragraphs 54–58 • The UST asserted that the order should require the Debtors to conduct a reasonable search to ascertain a creditor's address in the event the creditor's solicitation package is returned.	• The Debtors have added language to the Disclosure Statement Order to provide that upon solicitation material being returned to the Solicitation Agent as undeliverable at least seven days prior to the Voting Deadline, the Solicitation

Objections			
Objecting Party	**Status**	**Summary of Objection**	**Debtors' Response**
			Agent will conduct a reasonable search to ascertain the party's address.

Exhibit 2

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PROTERRA INC, *et al.*,[1]	)	Case No. 23- 11120 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Ref Docket No. ___**

ORDER (I) GRANTING THE DEBTORS LEAVE AND PERMISSION TO FILE THE OMNIBUS REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION; (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF, AND (II) AUTHORIZING THE DEBTORS TO EXCEED THE PAGE LIMIT REQUIREMENT IN CONNECTION THEREWITH

Upon the *Debtors' Motion for an Order (I) Granting Debtors Leave and Permission to File Omnibus Reply in Support of Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Joint Chapter 11 Plan of Reorganization; (C) Approving the Forms of Ballots and Notices in Connection Therewith; (D) Scheduling Certain Dates With Respect Thereto; and (E) Granting Related Relief, and (II) Authorizing the Debtors to Exceed the Page Limit Requirement in Connection Therewith* (the "Motion"),[2] filed by the above-captioned debtors and debtors in possession (together, the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

"Debtors"); and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. Pursuant to Local Rule 9006-1(d), the Debtors are granted leave and permission to file the Reply, and the Reply is deemed timely filed and a matter of record in these bankruptcy cases.

3. The Debtors are authorized to file the Reply in excess of the page limitation prescribed in Local Rule 7007-2 and the General Chambers Procedures.

4. This Court shall retain exclusive jurisdiction to interpret and enforce this Order.