

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
 :
 Debtors. : Jointly Administered
 :
 ----- X Re: Docket Nos. 7, 62 & 74

**CERTIFICATION OF COUNSEL REGARDING
 FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), AND 1108 AND
 FED. R. BANKR. P. 6003 (I) AUTHORIZING DEBTORS TO PAY CERTAIN
 PREPETITION CLAIMS OF SHIPPERS, LIEN CLAIMANTS, AND ROYALTY
 INTEREST OWNERS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY
 OF UNDISPUTED AND OUTSTANDING PREPETITION ORDERS,
AND (III) GRANTING RELATED RELIEF**

The undersigned hereby certifies as follows:

1. On July 15, 2019, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Debtors to Pay Certain Prepetition Claims of Shippers, Lien Claimants, and Royalty Interest Owners, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief* [Docket No. 7] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. On July 17, 2019, the Court entered the *Interim Order Under 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Debtors to Pay Certain Prepetition Claims of Shippers, Lien Claimants, and Royalty Interest*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: EmERGE Energy Services LP (2937), EmERGE Energy Services GP LLC (4683), EmERGE Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and EmERGE Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



Owners, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief [Docket No. 62] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of Interim Order Under 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Debtors to Pay Certain Prepetition Claims of Shippers, Lien Claimants, and Royalty Interest Owners, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief; and (B) Final Hearing Thereon* [Docket No. 74], objections to the Motion were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET).

4. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee and the official committee of unsecured creditors (the “**Committee**”). The Comments were resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (“**Revised Order**”).

5. The Revised Order has been circulated to counsel to the Committee, counsel to the DIP Agent and the Prepetition Agents, and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Motion, and no objection or responsive pleading to the Motion has appeared on the Court’s docket in these chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as Exhibit B.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: August 12, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Revised Order

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

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	Re: Docket Nos. 7 & 62

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), AND 1108 AND
FED. R. BANKR. P. 6003 (I) AUTHORIZING DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF SHIPPERS, LIEN CLAIMANTS, AND ROYALTY
INTEREST OWNERS CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE
EXPENSE PRIORITY OF UNDISPUTED AND OUTSTANDING PREPETITION
ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for a Final Order (i) authorizing the Debtors to pay the Shipping Claims, Lien Claims, and Royalty Payments, as provided herein; (ii) confirming the administrative expense priority status of Outstanding Orders and authorizing the Debtors to pay prepetition amounts related to the Outstanding Orders; and (iii) granting related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and the Gaston Declaration, and the Interim Order entered on July 17, 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a

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

final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, to pay the prepetition Shipping Claims in an amount not to exceed \$1,504,000 in the aggregate (the “**Final Shipping Claims Cap**”) absent further order of the Court.
4. The Debtors are authorized, but not directed, to pay the prepetition Lien Claims in an amount not to exceed \$147,000 in the aggregate (the “**Final Lien Claims Cap**”) absent further order of the Court.
5. The Debtors are authorized, but not directed, to pay the prepetition Royalty Payments in an amount not to exceed \$211,000 in the aggregate (the “**Final Royalty Payments Cap**”) absent further order of the Court.
6. All undisputed obligations related to the Outstanding Orders for goods that are delivered after the filing of the Debtors’ petitions in the Chapter 11 Cases are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

7. The Debtors shall maintain a matrix of potential Shippers, Lien Claimants, and Royalty Interest Owners and their potential Shipping Claims, Lien Claims, and Royalty Payments summarizing (i) the name of the vendor, (ii) the amount and timing of any payment, and (iii) a summary of the payment terms (the “Schedule”). The Debtors shall provide the U.S. Trustee and the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases (the “Committee”) with the Schedule on a weekly basis.

8. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Shipping Claims, Lien Claims, and Royalty Payments are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Shipping Claims, Lien Claims, and Royalty Payments as set forth herein and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors’ Chapter 11 Cases.

10. Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of

the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as a waiver of the Committee's rights to dispute the validity of any claim or lien.

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

13. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

Blackline

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

----- X
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 :
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 : [\(KBO\)](#)
 Debtors. :
 : (Jointly Administered)
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[Re: Docket Nos. 7 & 62](#)

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enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

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8. ~~7.~~ Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Shipping Claims, Lien Claims, and Royalty Payments are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

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10. ~~9.~~ Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a

waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

~~10. Notwithstanding anything to the contrary in the Motion or this Final Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.~~

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as a waiver of the Committee's rights to dispute the validity of any claim or lien.

12. ~~11.~~ Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

13. ~~12.~~ The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. ~~13.~~ The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE