

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11  
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EMERGE ENERGY SERVICES LP, et al.,<sup>1</sup> : Case No. 19-\_\_\_\_\_ (\_\_\_\_\_)  
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Debtors. : (Joint Administration Requested)  
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**DEBTORS’ MOTION FOR ENTRY OF ORDERS UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (this “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (respectively, the “**Interim Order**” and the “**Final Order**”), under sections 105(a), 345, 363, 503(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”): (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank

<sup>1</sup> 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.



account and related requirements of the Office of the United States Trustee (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions (as defined below); (v) authorizing the Debtors to open and close bank accounts; and (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**Gaston Declaration**”).<sup>2</sup> In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion under 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. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Gaston Declaration.

## **BACKGROUND**

2. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Gaston Declaration and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

4. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

## **RELIEF REQUESTED**

5. By this Motion, the Debtors request entry of the Interim Order and Final Order (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) authorizing, but not directing, the Debtors to continue the Intercompany Transactions (as defined herein); (v) authorizing the Debtors to open and close Bank Accounts (as defined

herein); and (vi) according administrative expense status to postpetition Intercompany Claims (as defined herein) arising from Intercompany Transactions among the Debtors. The Debtors also request that the Court authorize all banks with which the Debtors maintain their accounts to continue to maintain, service, and administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors.

### **BASIS FOR RELIEF**

#### **A. The Debtors' Cash Management System and the Bank Accounts**

6. The Debtors' primary source of cash is revenues generated from the mining, production, and sale of their sand products. The Debtors oversee the collection, disbursement, and movement of cash these operations through a cash management system (the "**Cash Management System**") that manages the Debtors' cash inflows and outflows through a number of bank accounts. To provide an overview of the movement of cash through the Cash Management System, a schematic diagram illustrating the flow of funds through the Cash Management System as of the Petition Date is attached hereto as Attachment 1. The Cash Management System is critical to the Debtors' operations as it enables the Debtors to, among other things, (i) monitor cash receipts and ensure payment of necessary disbursements, (ii) track various intercompany transfers and transactions, and (iii) ensure accurate cash forecasting and reporting.

7. The Debtors' Cash Management System is managed by the Debtors' management at their headquarters in Fort Worth, Texas. As of the Petition Date, the Cash Management System includes a total of seven bank accounts (together with any accounts opened after the Petition Date, the "**Bank Accounts**"), all of which are held at PNC Bank N.A. ("**PNC Bank**").

A schedule of the Bank Accounts is annexed hereto as Attachment 2. A summary of the Bank Accounts is included in the chart below.<sup>3</sup>

Account Name	Debtor Account Holder	Account Description
<u>SSS Collection Account</u> <b>PNC Bank – 5688</b>	Superior Silica Sands LLC	<p>The SSS Collection Account is funded by customer payments generated by the sale of the Debtors’ sand products. Account funds are automatically swept to the Master Funding Account on a daily basis. Because customer payments are deposited into the SSS Collection Account at various times during the day, the SSS Collection Account may maintain a balance depending on when payments are made and when funds are swept into the Master Funding Account.</p> <p>Funds from the SSS Collection Account are swept daily into the Master Funding Account.</p>
<u>Master Funding Account</u> <b>PNC Bank – 5725</b>	Emerge Energy Services LP	<p>Funds from the Master Funding Account are used to fund (i) the Payroll Account, (ii) the Emerge Energy Operating Account, (iii) the SSS Operating Account, and (iv) the SSS AP Account, each on an as-needed basis.</p> <p>The Master Funding Account also received advances under the Debtors’ prepetition secured revolving loan facility and will receive funds under the Debtors’ proposed postpetition secured revolving loan facility.</p> <p>Payments from the Master Funding Account are made through various funds-transfer mechanisms, including wires and automated clearing house transfers (“<b>ACH Transfer</b>”).</p>

<sup>3</sup> The Debtors believe, and have undertaken reasonable efforts to ensure, that Attachment 2 lists all of the bank accounts that comprise the Debtors’ Cash Management System. In the event that any bank account has been inadvertently omitted from Attachment 2, the Debtors request that the relief sought by this Motion be deemed to apply to such account.

Account Name	Debtor Account Holder	Account Description
<p><b><u>Payroll Account</u></b>  <b>PNC Bank – 5012</b></p>	<p>Emerge Energy Services GP LLC</p>	<p>The Payroll Account is used to (i) fund and process employee payroll, and (ii) fund and process the various employee compensation and benefits programs which are maintained by the Debtors and which are described in detail in the Debtors’ Wages Motion.<sup>4</sup></p> <p>The Payroll Account is funded on an as-needed basis, every two weeks from the Master Funding Account in an amount sufficient to cover the Debtors’ employee payroll and benefits obligations.</p> <p>Payments from the Payroll Account are made through various funds-transfer mechanisms, including checks, wires and ACH Transfer.</p>
<p><b><u>Emerge Energy Operating Account</u></b>  <b>PNC Bank – 7237</b></p>	<p>Emerge Energy Operating LLC</p>	<p>The EmERGE Energy Operating Account is used to (i) make compensation payments to the Debtors’ directors, (ii) pay premiums associated with the Debtors’ directors and officers liability insurance policies, (iii) pay filing fees in connection with documents filed by the Debtors with the Securities and Exchange Commission, and (iv) pay the Debtors’ attorney and auditor fees.</p> <p>The EmERGE Energy Operating Account is funded manually by the Master Funding Account on an as-needed basis.</p> <p>Payments from the EmERGE Energy Operating Account are made via check and ACH Transfer.</p>

<sup>4</sup> The “**Wages Motion**” is the Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing (A) Payment of Certain Prepetition Workforce Obligations, and (B) Continuation of Workforce Programs on Postpetition Basis, (II) Authorizing Payment of Payroll-Related Taxes, (III) Confirming the Debtors’ Authority to Transmit Payroll Deductions, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators, and (V) Directing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments, filed concurrently herewith.

Account Name	Debtor Account Holder	Account Description
<b><u>SSS Operating Account</u></b> <b>PNC Bank – 5661</b>	Superior Silica Sands LLC	<p>The SSS Operating Account is used to (i) make payments to the vendors of Superior Silica Sands LLC and (ii) pay other operating expenses of Superior Silica Sands LLC. Funds from the SSS Operating Account may be used to pay certain vendors of other Debtors who only accept payment via wire; the corresponding Intercompany Claims are recorded and reconciled via journal entry.</p> <p>The SSS Operating Account is funded manually by the Master Funding Account on an as-needed basis. The Debtors maintain a \$2 million minimum balance in the SSS Operating account as adequate assurance for PNC Bank.</p> <p>Payments from the SSS Operating Account are made via ACH Transfer or wire.</p>
<b><u>SSS AP Account</u></b> <b>PNC Bank – 5653</b>	Superior Silica Sands LLC	<p>The SSS AP Account is used to (i) make payments to the vendors of Superior Silica Sands LLC, and (ii) pay other the operating expenses of Silica Sands LLC.</p> <p>The SSS AP Account is funded manually by the Master Funding Account on an as-needed basis.</p> <p>Payments from the SSS Operating Account are made via check.</p>
<b><u>Escrow Account</u></b> <b>PNC Bank – 6242</b>	Emerge Energy Services LP	<p>The Escrow Account is a dormant account that was opened in conjunction with the Debtors’ first lien revolving loan facility.</p> <p>The Escrow Account maintains a balance of \$0.00</p>

8. The Cash Management System has two main components: cash collection and cash disbursement.

#### A. Cash Collections

9. The Debtors’ revenues (and their expected future revenues) are primarily generated by sand sales and related services performed by Debtor Superior Silica Sands LLC (“**SSS**”). The Debtors’ sales receipts are deposited directly into the SSS Collection Account with PNC Bank (account no. 5688). The SSS Collection Account is, in turn, swept on a daily basis

into the Master Funding Account held by Debtor Emerge Energy Services LP (“**Emerge LP**”) at PNC Bank (account no. 5725). The Master Funding Account also received advances under the Debtors’ prepetition secured revolving loan facility and will receive funds under the Debtors’ proposed postpetition secured revolving loan facility.

## **B. Cash Disbursements**

10. Cash concentrated in the Master Funding Account is used by the Debtors to satisfy various financial obligations. In particular, funds in the Master Funding Account are transferred into one or more of the Debtors’ payroll and disbursement accounts from which the Debtors issue or initiate payments by check, wire, or ACH Transfer, as described below:

- (a) Payroll Account (PNC Bank, Account No. 5012): Debtor Emerge Energy Services GP LLC (“**Emerge GP**”) administers the payroll and benefits payments on behalf of all the Debtors through the Payroll Account. The Payroll Account is funded on a bi-weekly basis by transfers from the Master Funding Account.
- (b) Emerge Energy Operating Account (PNC Bank, Account No. 7237): Debtor Emerge Energy Services Operating LLC maintains the Emerge Energy Operating Account. The Emerge Energy Operating Account is used to (i) make compensation payments to the Debtors’ directors, (ii) pay premiums associated with the Debtors’ directors and officers liability insurance, (iii) pay filing fees in connection with documents filed by the Debtors with the Securities and Exchange Commission, and (iv) pay the Debtors’ attorney and auditor fees. The Emerge Energy Operating Account is funded manually by the Master Funding Account on an as-needed basis.
- (c) SSS Operating Account (PNC Bank, Account No. 5661) and SSS AP Account (PNC Bank, Account No. 5653): Debtor SSS uses the SSS Operating Account to pay its vendor and other operating expenses via ACH Transfer and wire. SSS uses the SSS AP Account to pay its vendor and other operating expenses via check. Each account is funded on a daily basis by transfers from the Master Funding Account.

## **C. Bank Fees**

11. The Debtors pay fees to PNC Bank related to the costs of administering the Bank Accounts (the “**Bank Fees**”) on a monthly basis. Specifically, the Bank Fees for the Bank

Accounts held at PNC Bank, other than the dormant Escrow Account,<sup>5</sup> total approximately \$50,000 per month and are automatically deducted from the Master Funding Account on a monthly basis. The Debtors estimate that approximately \$50,000 of accrued but unpaid Bank Fees and Expenses are outstanding as of the Petition Date. By this Motion, the Debtors seek authority to pay outstanding prepetition Bank Fees and to continue to pay the Bank Fees as they become due in the ordinary course.

**B. The Debtors Should Be Authorized to Maintain and Continue Ordinary Course Intercompany Transactions and Postpetition Intercompany Claims Among the Debtors Should Be Accorded Administrative Expense Status**

12. The Debtors also maintain relationships with each other in the ordinary course of business (collectively, the “Intercompany Transactions”) that may result in intercompany receivables and payables (the “Intercompany Claims”). The Intercompany Transactions are frequently conducted pursuant to the Debtors’ arrangements (both formal and informal) relating to the gathering, transportation, and processing of sand. The Intercompany Transactions are made through wire or book transfers to (i) reimburse certain Debtors for various expenditures associated with their businesses, (ii) fund the Bank Accounts for general corporate and capital expenditures, or (iii) transfer funds to or from the Master Fund Account.

13. In connection with the daily operation of the Cash Management System, as funds are disbursed throughout the Cash Management System and as business is transacted between the Debtors, at any given time there may be an Intercompany Claim owed by one Debtor to another Debtor. For example, on occasion, funds from the SSS Operating Account, which is maintained by SSS, are used to pay the vendors of the other Debtors who only accept payment via wire. The Intercompany Claims are generally reflected as journal entry receivables and

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<sup>5</sup> There are no Bank Fees associated with the dormant Escrow Account.

payables. Further, the Debtors track all fund transfers in their respective accounting systems and can ascertain, trace, and account for all Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Debtors' operations would be disrupted unnecessarily to the detriment of the Debtors, their creditors, and other stakeholders. The Debtors seek the authority to continue the Intercompany Transactions in the ordinary course of business consistent with past practice.

14. To ensure that each individual Debtor will not fund the operations of another entity at the expense of such Debtor's creditors, the Debtors request that all postpetition Intercompany Claims be accorded administrative claim status. If postpetition Intercompany Claims are accorded administrative claim status, then each individual Debtor on whose behalf another Debtor has utilized funds or incurred expenses will continue to bear ultimate repayment responsibility, thereby protecting the interests of each individual Debtor's creditors. Accordingly, the Court should grant status to postpetition Intercompany Claims.<sup>6</sup>

**C. The Debtors Should Be Authorized to Continue to Use Their Existing Cash Management System and the Bank Accounts**

15. The Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during the Chapter 11 Cases and the Debtors' goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection and disbursement of funds as currently implemented

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<sup>6</sup> Nothing herein constitutes a request to validate the nature or amount of any Intercompany Transaction or Intercompany Claim, whether arising prepetition or postpetition.

would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value and repay their creditors. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of the Debtors' knowledge, the Bank Accounts are held at financially stable institutions insured by the FDIC. For the aforementioned reasons, maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and their stakeholders. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of the Bank Accounts.

16. As part of the relief requested herein, and to ensure that their transition into chapter 11 is as smooth as possible, the Debtors seek an order authorizing the Debtors to (i) maintain and continue to use the Bank Accounts in the same manner and with the same account numbers, styles, and document forms as are currently employed; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including, without limitation, checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Bank Accounts, including prepetition Bank Fees and Expenses; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

17. If the relief requested herein is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this Court. To prevent the possible

inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by the Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being honored absent this Court's approval and to ensure that no third party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations.

18. The Debtors request that if any Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, that the Bank be deemed not liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. The Debtors believe that such flexibility accorded to the Banks is necessary to induce the Banks to continue providing cash management services to the Debtors.

19. Additionally, in each instance in which the Debtors hold one or more accounts at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days of the date of entry of an Interim Order or a Final Order granting this Motion, the Debtors will (i) contact such Bank, (ii) provide such Bank with the Debtors' employer identification numbers, and (iii) identify each of their accounts as held by a debtor-in-possession in a bankruptcy case. Where the Debtors hold one or more accounts at a bank that is not a party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors will use their good faith efforts to cause such bank to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee within forty-five days of the date of entry of an Interim Order or a Final Order granting this Motion, to the extent that such Bank is a domestic bank.

20. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of the Chapter 11 Cases, the Debtors request that all Banks be authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the ordinary course (including making deductions for Bank Fees and Expenses), and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date.

21. The Debtors further request that they be authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any Bank Account and opening any additional bank accounts following the Petition Date (the “New Accounts”) wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, any New Accounts that the Debtors open will be at one of the Debtors’ current Banks or at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such an agreement, and any New Account that the Debtors open in the United States will be (i) at one of the existing Banks or with a bank that is organized under the laws of the United States of America or any state therein and that is insured by the FDIC, and (ii) designated a “Debtor-in-Possession” account by the relevant bank. The Debtors request that the relief sought by this Motion extend to any New Accounts and that any order approving this Motion provide that the New Accounts are deemed to be Bank Accounts that are similarly subject to the rights, obligations, and relief granted in such order. The Debtors will provide the U.S. Trustee with prompt notice of the closing of any Bank Accounts and the opening of any

New Accounts. In furtherance of the foregoing, the Debtors also request that the relevant banks be authorized to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s) or New Account(s).

**D. The Debtors Should Be Granted Authority to Continue to Use Existing Checks and Business Forms**

22. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtor-in-Possession" and use its existing bank accounts. However, once the debtor's existing checks have been used, the debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

23. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession; *provided, however*, that in the event the Debtors generate new checks during the pendency of the Chapter 11 Cases other than from their existing stock of checks, such checks will include a legend referring to the Debtor as "Debtor-in-Possession." The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors' status as debtors-in-possession.<sup>7</sup>

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<sup>7</sup> Although the operating guidelines established for debtors-in-possession by the U.S. Trustee would require the Debtors to obtain and use new checks bearing the "Debtor-in-Possession" designation, the Debtors do not believe that such guidelines impose any limitation on the Debtors' other correspondence and business forms. Nevertheless, out of an abundance of caution, the Debtors seek explicit authority to continue using their existing correspondence and business forms without reference to the Debtors' status as debtors-in-possession.

24. Changing the Debtors' existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors. For these reasons, the Debtors request that they be authorized to use their existing check stock, correspondence, and other business forms without being required to place the label "Debtor-in-Possession" on any of the foregoing.

**E. The Debtors Should Be Granted a Waiver of Certain Requirements of the U.S. Trustee**

25. The Debtors further request, pursuant to sections 105(a) and 363 of the Bankruptcy Code, that this Court grant a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors' existing practices under the Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

26. To supervise the administration of chapter 11 cases, the U.S. Trustee has established certain operating guidelines for debtors-in-possession (the "**UST Requirements**"). The UST Requirements require chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks for all debtor-in-possession accounts that bear (a) the designation "Debtor-in-Possession," (b) the bankruptcy case number, and (c) the type of account. The UST Requirements are designed to demarcate clearly prepetition transactions and operations from postpetition transactions and operations, and to prevent the inadvertent postpetition payment of

prepetition claims. As set forth above, the Debtors submit that (i) they are able to work with the Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed, and (ii) enforcement of certain of these UST Requirements would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates.

27. It would be onerous, unnecessarily inconvenient, and would fail to produce any realizable benefits to the Debtors' estates to require the Debtors to close all of the Bank Accounts and open new debtor-in-possession accounts.

28. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor-in-possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred), whether associated with the Debtors' payroll or other tax obligations. The Debtors can pay their tax obligations most efficiently in accordance with their existing practices. Any diversion from the Debtors' existing practices will complicate payment of the Debtors' tax obligations. Further, the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts. The creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessarily burdensome.

**F. The Debtors Should Be Authorized to Continue Their Deposit Practices**

29. As part of the Cash Management System, the Debtors routinely deposit funds into the Bank Accounts (the "**Deposit Practices**"). The Debtors request (i) authorization to continue to deposit funds in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System, and (ii) a waiver of the deposit requirements of section 345(b) of the Bankruptcy Code, on an interim basis, to the extent that such requirements are inconsistent with the Deposit Practices.

For the avoidance of doubt, to the extent any Bank Account may be classified as an investment account, or to the extent any of the Debtors' routine deposits into the Bank Account may be regarded as investment activity, the Debtors hereby seek authorization to continue to deposit funds into such Bank Accounts in accordance with existing practices, notwithstanding the requirements of section 345(b) of the Bankruptcy Code.

#### **APPLICABLE AUTHORITY**

##### **A. The Bankruptcy Code Permits the Debtors to Continue to Use the Cash Management System and the Bank Accounts**

30. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor-in-possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The authority granted by section 363(c)(1) extends to a debtor-in-possession's continued use of its customary cash management system and, thus, supports the relief requested. *See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that an order authorizing the debtor to employ a cash management system that was “usual and customary in the past” was “entirely consistent” with section 363(c)(1) of the Bankruptcy Code).

31. Section 105(a) of the Bankruptcy Code also authorizes this Court to permit the Debtors to continue to use the Cash Management System, including maintenance of their existing Bank Accounts. Specifically, section 105(a) of the Bankruptcy Code vests in this Court the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The continuation of the Cash Management System, including the continued use of the Bank Accounts, is essential to the efficient administration of the Chapter 11 Cases and to the Debtors' efforts to maximize estate value for all parties in interest. Indeed, this Court, in another context, has recognized that a centralized

cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part* and *rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). Therefore, the relief requested is appropriate under section 105(a).

32. In addition, numerous courts, have authorized debtors to continue to use their existing cash management systems. *See, e.g., In re Samuels Jewelers, Inc.*, Case No. 18-11818 (KJC) (Bankr. D. Del. Aug. 8, 2018 and Sept. 13, 2018) (granting interim and final relief); *In re Claire’s Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018 and Apr. 17, 2018) (granting interim and final relief); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Dec. 20, 2017 and Jan. 17, 2018) (granting interim and final relief); *In re Aerogroup Int’l, Inc.*, Case No. 17-11962 (KJC) (Bankr. D. Del. Sept. 18, 2017 and Oct. 16, 2017) (granting interim and final relief); *In re True Religion Apparel, Inc.*, Case No. 17-11460 (LSS) (Bankr. D. Del. July 6, 2017 and July 31, 2017) (granting interim and final relief); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2016, July 26, 2017, Aug. 9, 2017, Aug. 30, 2017, and Sept. 12, 2017) (granting various interim orders and final relief); *In re Nuverra Envtl. Sols., Inc.*, Case No. 17-10949 (KJC) (Bankr. D. Del. May 2, 2017 and June 5, 2017) (granting interim and final relief). The Debtors submit that the present circumstances warrant similar relief in the Chapter 11 Cases.

**B. This Court Should Waive the UST Requirements to Permit the Debtors to Continue to Use the Cash Management System**

33. The continuation of the Cash Management System, as requested in this Motion, is consistent with the Debtors’ authority to use property of the estate in the ordinary course of business pursuant to section 363(c)(1) of the Bankruptcy Code. Accordingly, this Court should

grant the Debtors a waiver of the UST Requirements to the extent that such requirements conflict with the Debtors' existing practices under the Cash Management System or any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

34. Moreover, compelling the Debtors to alter their current cash management practices and to modify the Cash Management System to comply with the UST Requirements would risk severe disruption to the Debtors' businesses and jeopardize the Debtors' ability to maximize value for all parties in interest. *Cf. In re Gaylord Container Corp.*, 1993 WL 188671, at \*3, 13 (E.D. La. 1993) (adopting the bankruptcy court's findings of fact and conclusions of law, which included a finding that the banking requirements of the Office of the United States Trustee for the District of Louisiana "represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such rules placed on the debtor's treasury functions"). This fact alone justifies the relief that the Debtors are seeking. *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").

**C. This Court Has the Authority to Permit the Debtors to Continue Their Deposit Practices**

35. Section 345(a) of the Bankruptcy Code authorizes a debtor-in-possession to make deposits of estate money in a manner "as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit." 11 U.S.C. § 345(a). If a deposit is not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the

Bankruptcy Code provides that the debtor must require that the entity with which the deposit is made obtain a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety. *See* 11 U.S.C. § 345(b).

36. This Court has discretion to waive the requirements of section 345(b) of the Bankruptcy Code “for cause.” 11 U.S.C. § 345(b). In *In re Service Merchandise Co., Inc.*, the court indicated that the existence of “cause” should be determined based upon the totality of the circumstances taking account of factors such as: (i) the sophistication of the debtor’s business; (ii) the size of the debtor’s business; (iii) the amount of investments involved; (iv) the ratings of the financial institutions at which the debtor’s funds are held; (v) the complexity of the case; (vi) the safeguards in place within the debtor’s own business to ensure the safety of funds; (vii) the debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions; (viii) the benefit to the debtor; (ix) the harm, if any, to the estate; and (x) the reasonableness of the debtor’s request for relief from the section 345(b) requirements in light of the overall circumstances of the case. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

37. The Debtors submit that causes exists to waive the requirements of section 345(b) of the Bankruptcy Code because the Debtors are sophisticated entities with a complex Cash Management System that relies on the Bank Accounts on a daily basis. As noted above, the Debtors’ material bank accounts are held at a stable financial institution that is insured by the FDIC and, thus, the Debtors’ funds in those accounts are safe (up to applicable FDIC limits). Furthermore, in light of the regular deposits to, and disbursements from, the various Bank Accounts, it would be especially disruptive, unnecessary, and wasteful to require the posting of a

bond to the extent that the balance of the Bank Accounts exceed the applicable FDIC insurance limits at a given time.

38. Nonetheless, the Debtors propose to engage with the U.S. Trustee to determine what modifications, if any, to the Bank Accounts and Cash Management System would be appropriate under the circumstances. Accordingly, the Debtors request, pursuant to Local Rule 2015-2(b), a waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis to permit them to confer with the U.S. Trustee regarding their compliance with section 345(b) of the Bankruptcy Code or to make other arrangements that would be acceptable to the U.S. Trustee.

39. This Court and other courts have granted requests to approve the use of deposit practices that do not comply strictly with section 345(b) of the Bankruptcy Code. *See, e.g., In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. June 12, 2018 and July 2, 2018) (granting interim and final relief); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018 and Apr. 17, 2018) (granting interim and final relief); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Dec. 20, 2017 and Jan. 17, 2018) (granting interim and final relief); *In re Aerogroup Int'l, Inc.*, Case No. 17-11962 (KJC) (Bankr. D. Del. Sept. 18, 2017 and Oct. 16, 2017) (granting interim and final relief); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2016, July 26, 2017, Aug. 9, 2017, Aug. 30, 2017, and Sept. 12, 2017) (granting various interim orders and final relief).

40. In light of the above, the Debtors respectfully request that this Court (i) authorize the Debtors to continue to make deposits in accordance with the Deposit Practices, and (ii) exercise its discretion to waive the requirements of section 345(b) of the Bankruptcy Code,

on an interim basis, to the extent that such requirements are inconsistent with the Deposit Practices. The Debtors submit that the circumstances of the Chapter 11 Cases warrant such relief.

**D. The Bankruptcy Code Permits the Debtors to Continue to Engage in the Intercompany Transactions and Permits this Court to Accord Administrative Expense Status to Certain Postpetition Intercompany Claims**

41. As noted above, the Debtors routinely engaged in the Intercompany Transactions prior to the Petition Date in the ordinary course of business. Thus, court approval of these transactions is not required pursuant to section 363(c)(1) of the Bankruptcy Code. Nevertheless, out of an abundance of caution, the Debtors seek court approval of the relief requested herein, in the event this Court finds that the Intercompany Transactions are outside the ordinary course of business.

42. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to use property of the estate other than in the ordinary course of business after notice and a hearing. Courts have held that there must be some articulated business justification for using, selling, or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under section 363(b). *See, e.g., The Dai-Ici Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate . . . courts require the debtor to show that a sound business purpose justifies such actions.”). In the event an order permitting the Debtors to continue to engage in the Intercompany Transactions is necessary, the Debtors believe that their business judgment to continue the Intercompany Transactions is sound because, among other reasons discussed herein, the Intercompany Transactions reduce the administrative costs incurred by the Debtors, facilitate the satisfaction of the Debtors’ obligations, and are integral to the uninterrupted continuation of the Debtors’

operations. If the Debtors are unable to continue entering into the Intercompany Transactions on a postpetition basis they will lose critical administrative and operational functions, which would significantly and detrimentally affect their ability to operate on an uninterrupted basis going forward. Thus, the Debtors submit that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and the Debtors' creditors.

43. Courts frequently have authorized debtors to continue their prepetition intercompany practices after commencement of chapter 11 cases. *See, e.g., In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. July 2, 2018); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del Apr. 17, 2018); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Jan. 17, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018); *In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017); *In re Aerogroup Int'l, Inc.*, No. 17-11962 (KJC) (Bankr. D. Del. Sept. 18, 2017); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. Sept. 12, 2017).

44. In order to ensure that each individual Debtor will not, at the expense of its respective creditors, fund the operations of another entity, the Debtors also seek authority, pursuant to sections 503(b) and 507(a) of the Bankruptcy Code, to afford administrative expense status on account of the postpetition Intercompany Claims between and among the Debtors resulting from the operation of the Cash Management System and/or the Intercompany Transactions. If postpetition Intercompany Claims between each respective Debtor are accorded administrative expense status, each Debtor will continue to bear the ultimate repayment responsibility for its respective obligations.

45. Courts have granted administrative expense status to postpetition intercompany claims between Debtors in other chapter 11 cases. *See, e.g., In re Mission Coal Co., LLC*, Case.

No. 18-04177-TOM11 (Bankr. N.D. Ala. Nov. 21, 2018); *In re Pac. Drilling S.A.*, Case No. 17-13193 (MEW) (Bankr. S.D.N.Y. May 23, 2018); *In re GST AutoLeather, Inc.*, Case No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017); *In re Aspect Software Parent, Inc.*, Case No. 16-10597 (MFW) (Bankr. D. Del. Apr. 1, 2016).

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

46. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

47. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**CONSENT TO JURISDICTION**

48. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

### RESERVATION OF RIGHTS

49. Nothing contained herein is or should 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 the proposed Interim Order and Final Order once entered. Nothing contained in the Interim Order and 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.

### NOTICE

50. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (iv) counsel to the DIP Agent and the Prepetition Agents; (v) counsel to Insight Equity; (vi) PNC Bank; and (vii) all parties entitled to notice pursuant to Local Rule 9013-1(m) (collectively, the "**Initial Notice Parties**"). The Debtors submit that, under the circumstances, no other or further notice is required.

51. In the event the Court enters an Interim Order granting this Motion, within forty-eight hours thereafter, the Debtors propose to serve notice of such entry on the Initial Notice Parties. The notice will provide that any objections to the relief granted in the Interim Order

must be filed with the Court and served upon counsel for the Debtors no later than seven days prior to the final hearing to be held on the Motion (the “**Objection Deadline**”). If an objection is timely filed and served prior to the Objection Deadline, such objection will be heard at the final hearing on the Motion. If no objections are timely filed and served, the Debtors’ counsel will file a certification of counsel to that effect attaching a final form of order.

52. A copy of this Motion is available on (i) the Court’s website: [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (ii) the website maintained by the Debtors’ proposed Claims and Noticing Agent, Noticing Agent, Kurtzman Carson Consultants LLC, [www.kccllc.net/EmergeEnergy](http://www.kccllc.net/EmergeEnergy).

**NO PRIOR REQUEST**

53. No previous request for the relief sought herein has been made to this Court or any other court.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed Interim and Final Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: July 15, 2019  
Wilmington, Delaware

/s/ John H. Knight

**RICHARDS, LAYTON & FINGER, P.A.**

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- and -

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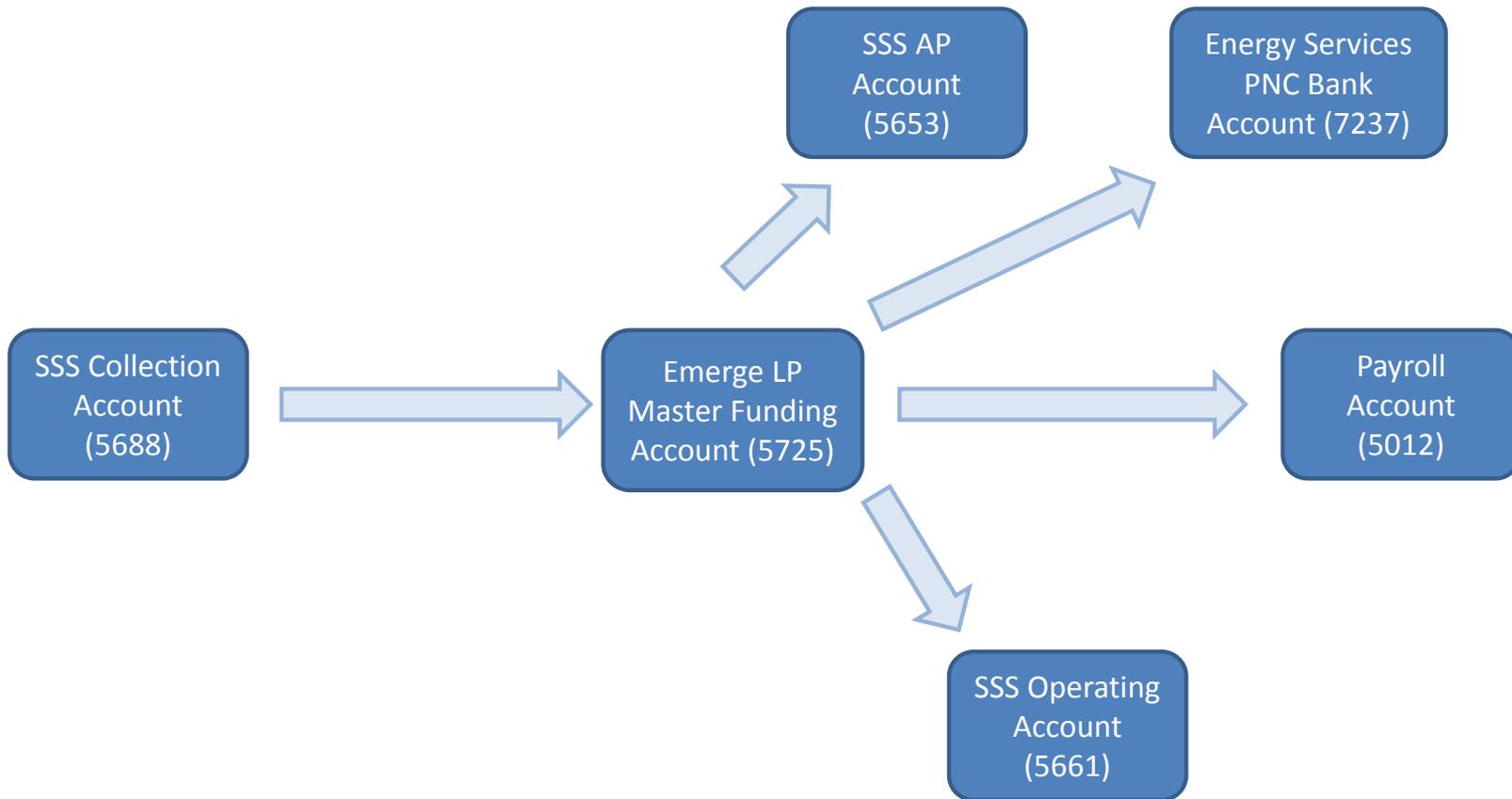
George A. Davis (*pro hac vice* admission pending)  
Keith A. Simon (*pro hac vice* admission pending)  
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*Proposed Counsel for Debtors and Debtors-in-Possession*

**ATTACHMENT 1**

**Diagram of Cash Management System**

# Emerge Cash Management System



**ATTACHMENT 2****Schedule of Bank Accounts**

<b>Financial Institution</b>	<b>Address</b>	<b>Account Number (last 4 digits)</b>	<b>Account Holder</b>	<b>Account Name</b>
<b>Bank Accounts</b>				
PNC Bank	200 Crescent Court Suite 400, Dallas TX 75201	5012	Emerge Energy Services GP LLC	Payroll Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	5725	Emerge Energy Services LP	Master Funding Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	6242	Emerge Energy Services LP	Escrow Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	7237	Emerge Energy Operating LLC	Emerge Energy Operating Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	5653	Superior Silica Sands LLC	SSS AP Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	5688	Superior Silica Sands LLC	SSS Collection Account
PNC Bank	2100 Ross Avenue Suite 1850, Dallas, TX 75201	5661	Superior Silica Sands LLC	SSS Operating Account

**EXHIBIT A**

**Proposed Interim Order**

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

In re:	X	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , <sup>1</sup>	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	:	
	X	

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS; AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an Interim Order under sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described in the Motion or herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use

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<sup>1</sup> 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 Operating LCC (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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; and (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; and the Court having reviewed the Motion and the Gaston Declaration; 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 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, except as set forth in the Motion with respect to entry of this Interim Order and notice of the final hearing; 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 Interim Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Interim Order. In connection with the ongoing utilization of the Cash Management System, the Debtors

shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions between Debtors on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor entity on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

4. The Debtors are authorized to (i) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account number, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees and Expenses arising prior to the Petition Date; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

5. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue

postpetition, and electronic funds transfers drawn on the Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees and Expenses outstanding as of the date hereof, if any.

6. Notwithstanding anything to the contrary in the Motion or this Interim 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.

7. In each instance in which the Debtors hold Bank Accounts at banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of this Interim Order the Debtors shall (i) contact the Banks, (ii) provide the Banks with each of the Debtors' employer identification numbers, and (iii) identify their bank accounts held as being held by a debtor-in-possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

8. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation “Debtor-in-Possession” or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the main bankruptcy case number on all checks; provided that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main case number on such items within ten days of the date of entry of this Interim Order.

9. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

10. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Interim Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees and Expenses) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; provided, however, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank

Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

11. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Interim Order (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, such Bank shall not be deemed liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Interim Order.

12. The Debtors are authorized to implement such non-material, reasonable changes consistent with this Interim Order to the Cash Management System as the Debtors may deem necessary or appropriate.

13. The Debtors may close any of the Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the "New Accounts") wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) only at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement,

and any New Account that the Debtors open shall be (i) at a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor-in-Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Interim Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors’ requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within fifteen business days after the opening or closing of any such account.

14. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Interim Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of thirty days (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the “**Extension Period**”) within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors’ right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

15. Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of who makes the disbursements.

16. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

17. The UST Requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived except as otherwise required by any applicable agreements between the Debtors and the Banks.

18. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

19. Nothing contained in the Motion or this Interim Order shall be construed to (i) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

20. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

21. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

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

23. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

24. The final hearing (the “**Final Hearing**”) on the Motion shall be held on [\_\_\_\_\_, 2019, at \_\_\_\_:\_\_\_\_ .m], prevailing Eastern Time. On or before [\_\_:\_\_ .m.], prevailing Eastern Time, on [\_\_\_\_\_, 2019], any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

25. Nothing in the Motion or this Interim Order, or the Debtors’ payment of any

claims pursuant to this Interim 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 Interim Order. Nothing contained in this Interim 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.

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Proposed Final Order**

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

In re:	x	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , <sup>1</sup>	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
	x	

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS; AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of a Final Order under sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described in the Motion or herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy

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<sup>1</sup> 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 Operating LCC (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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; and (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on \_\_\_\_\_, 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 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 Final Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on a final basis, as set forth herein. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Final Order. In connection with the ongoing utilization of the Cash Management System, the Debtors

shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions between Debtors on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor entity on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

4. The Debtors are authorized to (i) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account number, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees and Expenses arising prior to the Petition Date; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

5. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue

postpetition, and electronic funds transfers drawn on the Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees and Expenses outstanding as of the date hereof, if any.

6. Notwithstanding anything to the contrary in the Motion or this Interim 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.

7. In each instance in which the Debtors hold Bank Accounts at banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of this Final Order the Debtors shall (i) contact the Banks, (ii) provide the Banks with each of the Debtors' employer identification numbers, and (iii) identify their bank accounts held as being held by a debtor-in-possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

8. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation “Debtor-in-Possession” or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the main bankruptcy case number on all checks; *provided* that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main case number on such items within ten days of the date of entry of this Final Order.

9. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

10. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Final Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees and Expenses) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank

Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

11. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Final Order (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, such Bank shall not be deemed liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Final Order.

12. The Debtors are authorized to implement such non-material, reasonable changes consistent with this Final Order to the Cash Management System as the Debtors may deem necessary or appropriate.

13. The Debtors may close any of the Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the "**New Accounts**") wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) only at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement,

and any New Account that the Debtors open shall be (i) at a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor-in-Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors’ requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within fifteen business days after the opening or closing of any such account.

14. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Final Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of thirty days (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the “**Extension Period**”) within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors’ right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

15. Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of who makes the disbursements.

16. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

17. The UST Requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived except as otherwise required by any applicable agreements between the Debtors and the Banks.

18. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

19. Nothing contained in the Motion or this Final Order shall be construed to (i) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

20. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

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

22. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

23. 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.

24. 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

\_\_\_\_\_  
THE HONORABLE [\_\_\_\_\_] ]  
UNITED STATES BANKRUPTCY JUDGE