

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
----- X Re: Docket Nos. 5, 60 & 73

**CERTIFICATION OF COUNSEL REGARDING
FINAL ORDER UNDER 11 U.S.C. §§ 105(A), 363(B) AND 363(C) AND FED. R. BANKR.
P. 6003 AND 6004 AUTHORIZING THE DEBTORS TO
CONTINUE THEIR CUSTOMER PROGRAMS**

The undersigned hereby certifies as follows:

1. On July 15, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 363(b) and 363(c) and Fed. R. Bankr. P. 6003 and 6004 Authorizing the Debtors to Continue Their Customer Programs* [Docket No. 5] (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) and 363(c) and Fed. R. Bankr. P. 6003 and 6004 Authorizing the Debtors to Continue Their Customer Programs* [Docket No. 60] (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) and 363(c) and Fed. R. Bankr. P. 6003 and 6004 Authorizing the Debtors to Continue Their Customer Programs; and (B) Final Hearing Thereon* [Docket No.

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.



73], 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**

	x	
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. 5 & 60

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b) AND 363(c) AND FED. R. BANKR.
P. 6003 AND 6004 AUTHORIZING THE DEBTORS TO
CONTINUE THEIR CUSTOMER PROGRAMS**

Upon the motion (the “Motion”)² of the Debtors for entry of a Final Order authorizing the Debtors to continue their Customer Programs; and the Court having reviewed the Motion, 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 as of 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 the Court having

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

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.
2. The Debtors are authorized, but not directed, to continue, renew, replace, modify, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, including making all payments, honoring all discounts and credits, satisfying all obligations, and permitting and effecting all setoffs in connection therewith, in each case whether related to the prepetition period or the postpetition period.
3. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or 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.
4. The Debtors shall provide the Official Committee of Unsecured Creditors (the "**Committee**") with notice of and details regarding any new Customer Program implemented by

the Debtors throughout the duration of these Chapter 11 Cases. The Committee shall have two business days to review and object to the proposed new Customer Program.

5. The Debtors shall provide the counsel to the Committee two (2) business days' notice of any payments on account of the Customer Programs that are not made in the ordinary course of business. The Committee shall have two business days to review and object to the proposed payment. To the extent a consensual resolution to the objection cannot be reached, the Committee shall file an objection on the docket, and the Debtors shall notice the objection for hearing at the next omnibus hearing, or seek an expedited hearing, to determine the appropriateness of the proposed payment; *provided that*, nothing in this Order shall limit the Debtors from making any payments in connection with a the Customer Programs while such an objection is pending; and *provided further that*, if the Court sustains an objection with respect to a contested payment in connection with the Customer Programs, all rights are reserved with regards to any and all actions necessary to cause repayment of such amounts, including by seeking disgorgement.

6. Nothing in this Final Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors in connection with any Customer Program.

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

8. 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.

9. 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
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-~~_____~~11563 (~~_____~~KBO)
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 Debtors. : (Jointly Administered)
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 ----- x Re: Docket Nos. 5 & 60

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b) AND 363(c) AND FED. R. BANKR.
P. 6003 AND 6004 AUTHORIZING THE DEBTORS TO
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Upon the motion (the “Motion”)² of the Debtors for entry of a Final Order authorizing the Debtors to continue their Customer Programs; and the Court having reviewed the Motion, 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 as of 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 the

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

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.
2. The Debtors are authorized, but not directed, to continue, renew, replace, modify, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, including making all payments, honoring all discounts and credits, satisfying all obligations, and permitting and effecting all setoffs in connection therewith, in each case whether related to the prepetition period or the postpetition period.
3. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or 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.

4. The Debtors shall provide the Official Committee of Unsecured Creditors (the "Committee") with notice of and details regarding any new Customer Program

implemented by the Debtors throughout the duration of these Chapter 11 Cases. The Committee shall have two business days to review and object to the proposed new Customer Program.

5. The Debtors shall provide the counsel to the Committee two (2) business days' notice of any payments on account of the Customer Programs that are not made in the ordinary course of business. The Committee shall have two business days to review and object to the proposed payment. To the extent a consensual resolution to the objection cannot be reached, the Committee shall file an objection on the docket, and the Debtors shall notice the objection for hearing at the next omnibus hearing, or seek an expedited hearing, to determine the appropriateness of the proposed payment; provided that, nothing in this Order shall limit the Debtors from making any payments in connection with a the Customer Programs while such an objection is pending; and provided further that, if the Court sustains an objection with respect to a contested payment in connection with the Customer Programs, all rights are reserved with regards to any and all actions necessary to cause repayment of such amounts, including by seeking disgorgement.

6. ~~4.~~ Nothing in this Final Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors in connection with any Customer Program.

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

8. ~~6.~~ 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.

~~7. 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.~~

9. ~~8.~~ 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

Summary report:	
Litéra® Change-Pro TDC 10.1.0.400 Document comparison done on 8/9/2019 7:16:28 PM	
Style name: L&W without Moves	
Intelligent Table Comparison: Active	
Original DMS: iw://US-DOCS/US-DOCS/109988192/1	
Modified DMS: iw://US-DOCS/US-DOCS/109988192/2	
Changes:	
Add	15
Delete	11
<i>Move From</i>	0
<i>Move To</i>	0
Table Insert	0
Table Delete	0
<i>Table moves to</i>	0
<i>Table moves from</i>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	26