

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

In re:

EMERGE ENERGY SERVICES, LP, *et al.*<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-11563 (KBO)

Jointly Administered

POWNALL SERVICES, LLC,

Plaintiff,

v.

SUPERIOR SILICA SANDS LLC, and  
HPS INVESTMENT PARTNERS, LLC,

Defendant.

Adversary Proceeding No. 19-50295 (KBO)

**SUPERIOR SILICA SANDS LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT**

Debtor Superior Silica Sands LLC ("**Debtor**"), by and through its undersigned counsel, respectfully submits its Answer and Affirmative Defenses to Plaintiff Pownall Services, LLC's ("**Plaintiff**" or "**Pownall**") Complaint, dated August 16, 2019 (the "**Complaint**"), and hereby answers each of the following numbered paragraphs of the Complaint.

The Complaint contains certain allegations pertaining to the conduct and/or state of mind of other named Defendants and third parties. Debtor respectfully submits that it is required to respond only to those allegations made specifically against it. Unless otherwise noted, Debtor

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<sup>1</sup> The debtors in these Chapter 11 cases (the "**Debtors**"), along with the last four digits of each of the Debtors' 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.



denies knowledge or information sufficient to form a belief as to the truth of any allegation relating to any other person or any other entity, including necessary non-parties that Plaintiff failed to join to this action. All allegations not expressly admitted are denied.

Debtor further respectfully submits that the Complaint contains numerous purported allegations that constitute legal conclusions and/or that are definitional or hypothetical in nature. As Debtor is not required to respond to such allegations in its answer, Debtor neither admits nor denies those purported allegations. To the extent a response is required, Debtor denies such allegations, unless otherwise noted.

Debtor further respectfully submits that the headings and unnumbered paragraphs used in the Complaint do not require a response, but for the avoidance of doubt, to the extent they contain allegations against Debtor, any such allegations are denied.

The Complaint is replete with purported descriptions and/or summaries of, and purported excerpts from and references to, a number of documents. Such documents speak for themselves and Debtor respectfully refers the Court to those documents for a complete and accurate statement of the contents thereof. Debtor reserves all rights and objections regarding the admissibility and/or relevance of those documents.

Debtor repeats, realleges, and incorporates this statement in each paragraph contained in this Answer as if fully set forth herein.

### **SPECIFIC RESPONSES**

1. Paragraph 1 purports to characterize Plaintiff's claims and contains legal conclusions, and therefore does not require a response. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 1 as to itself, except admits that Plaintiff purports

to seek a declaratory judgment. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1.

2. Paragraph 2 purports to characterize Plaintiff's claims and therefore does not require a response. Paragraph 2 also contains legal conclusions to which no response is required. Moreover, this adversary proceeding is the improper procedural device to assert Plaintiff's claims. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 2.

3. Paragraph 3 contains legal conclusions to which no response is required.

4. Paragraph 4 contains legal conclusions to which no response is required.

5. Paragraph 5 contains legal conclusions to which no response is required. Debtor admits that Plaintiff consents to the entry of final orders by the Court.

6. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Admitted.

8. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9. Footnote 2 is definitional in nature and therefore does not require a response. Insofar as a response is required, Debtor admits that "frac sand" is a sand used in the hydraulic fracturing process.

10. Admitted.

11. Debtor denies the allegations in Paragraph 11, except admits that Debtor and Plaintiff have had a prior business relationship. Debtor further denies that the allegations contained in Paragraph 11 present a fair and complete description of the matters addressed.

12. Debtor denies the allegations in Paragraph 12. Debtor further denies that the allegations contained in Paragraph 12 present a fair and complete description of the matters addressed.

13. Debtor denies the allegations in Paragraph 13. Debtor further denies that the allegations contained in Paragraph 13 present a fair and complete description of the matters addressed.

14. Paragraph 14 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies all the allegations contained in Paragraph 14 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 14.

15. Debtor denies the allegations in Paragraph 15 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15. Debtor respectfully refers the Court to the document referenced in Paragraph 15 for a complete and accurate statement of the contents thereof.

16. Debtor denies the allegations in Paragraph 16 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16. Debtor respectfully refers the Court to the document referenced in Paragraph 16 for a complete and accurate statement of the contents thereof.

17. Paragraph 17 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 17 as to itself and respectfully refers the Court to the document [Dkt. 281] referenced in Paragraph 17 for a complete and accurate statement of the contents thereof. Debtor denies knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17.

18. Admitted.

19. Admitted.

20. Paragraph 20 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 20 for a complete and accurate statement of the contents thereof.

21. Paragraph 21 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 22 for a complete and accurate statement of the contents thereof.

22. Admitted.

23. Admitted.

24. Paragraph 24 is definitional in nature and therefore does not require a response. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 24 for a complete and accurate statement of the contents thereof.

25. Paragraph 25 is definitional in nature and therefore does not require a response. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 25 for a complete and accurate statement of the contents thereof.

26. Paragraph 26 is definitional in nature and therefore does not require a response. Insofar as a response is required, Debtor denies the allegation and respectfully refers the Court to the document referenced in Paragraph 26 for a complete and accurate statement of the contents thereof.

27. Paragraph 27 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations in and respectfully refers the Court to the document referenced in Paragraph 27 for a complete and accurate statement of the contents thereof.

28. Admitted.

29. Paragraph 29 is definitional in nature and therefore does not require a response. Insofar as a response is required, Debtor denies the allegation and respectfully refers the Court to the document referenced in Paragraph 29 for a complete and accurate statement of the contents thereof.

30. Paragraph 30 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations as to itself. Debtor respectfully refers the Court to the document referenced in Paragraph 30 for a complete and accurate statement of the contents thereof.

31. Paragraph 31 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 31 for a complete and accurate statement of the contents thereof.

32. Debtor avers that no response is required to Paragraph 32. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-31 of the Complaint as if set forth herein.

33. Paragraph 33 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 33.

34. Paragraph 34 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 34.

35. Debtor denies the allegations contained in Paragraph 35. Debtor respectfully refers the Court to the schedules [Dkt. 281] referenced in Paragraph 35 for a complete and accurate statement of the contents thereof.

36. Paragraph 36 purports to characterize Plaintiff's claims and contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 36 as to itself.

37. Paragraph 37 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 37.

38. Debtor denies the allegations in Paragraph 38.

39. Debtor avers that no response is required to Paragraph 39. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-38 of the Complaint as if set forth herein.

40. Paragraph 40 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 40.

41. Paragraph 41 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 41.

42. Paragraph 42 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 42.

43. Debtor denies the allegations contained in Paragraph 43 and respectfully refers the Court to the schedules [Dkt. 281] referenced in Paragraph 43 for a complete and accurate statement of the contents thereof.

44. Debtor denies the allegations contained in Paragraph 44 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 44.

45. Debtor denies the allegations contained in Paragraph 45 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 45.

46. Paragraph 46 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46.

47. Debtor respectfully refers the Court to the document referenced in Paragraph 47 for a complete and accurate statement of the contents thereof. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 47.

48. Debtor denies the allegations in Paragraph 48 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 48.

49. Debtor denies the allegations in Paragraph 49 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations



in Paragraph 49. Debtor further denies Paragraph 49 as it mischaracterizes its schedules and respectfully refers the Court to the schedules [Dkt. 281] referenced in Paragraph 49 for a complete and accurate statement of the contents thereof.

50. Paragraph 50 purports to characterize Plaintiff's claims and contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 50 as to itself. Debtor further denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Paragraph 51 contains legal conclusions to which no response is required. Debtor further notes that this claim purports to improperly adjudicate Plaintiff's rights vis-à-vis non-parties to this lawsuit. Insofar as a response is required, Debtor denies the allegations in Paragraph 51.

52. Debtor denies the allegations in Paragraph 52.

53. Debtor avers that no response is required to Paragraph 53. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-52 of the Complaint as if set forth herein.

54. Paragraph 54 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 54.

55. Paragraph 55 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 55.

56. Debtor denies the allegations contained in Paragraph 56 and respectfully refers the Court to the schedules [Dkt. 281] referenced in Paragraph 56 for a complete and accurate statement of the contents thereof.

57. Paragraph 57 purports to characterize Plaintiff's claims and contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 57 as to itself.

58. Paragraph 58 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 58.

59. Debtor denies the allegations in Paragraph 59.

60. Debtor avers that no response is required to Paragraph 60. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-59 of the Complaint as if set forth herein.

61. Paragraph 61 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 61.

62. Paragraph 62 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 62 as to itself. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 62.

63. Paragraph 63 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 63.

64. Debtor denies the allegations contained in Paragraph 64 and respectfully refers the Court to the schedules [Dkt. 281] referenced in Paragraph 64 for a complete and accurate statement of the contents thereof.

65. Paragraph 65 purports to characterize Plaintiff's claims and contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 65 as to itself. Debtor further denies knowledge or

information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65.

66. Paragraph 66 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations in Paragraph 66.

67. Debtor denies the allegations in Paragraph 67.

68. Debtor avers that no response is required to Paragraph 68. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 68. Debtor reserves all rights, including to object to any untimely or improper amendments, claims, lawsuits, or other actions.

The Prayer for Relief purports to characterize the relief Plaintiff seeks and therefore Debtor avers that no response is required. Insofar as a response is required, Debtor denies the allegations contained in the Prayer for Relief.

### **AFFIRMATIVE DEFENSES**

In addition to the foregoing denials, Debtor alleges and asserts the following defenses. By pleading the following as affirmative defenses, Debtors does not admit that they are, in fact, affirmative defenses as opposed to a negation of the Plaintiff's case in chief. Further, by pleading these defenses, Debtor does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. No assertion of any defense is intended to or may be construed as a concession that any particular issue or subject matter is relevant to Plaintiff's allegations.

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief may be granted against Debtor.

**SECOND AFFIRMATIVE DEFENSE**

**(Failure to Join a Necessary Party)**

The Complaint is barred, in whole or in part, as Plaintiff failed to join necessary parties.

**THIRD AFFIRMATIVE DEFENSE**

**(Standing)**

Plaintiff lacks standing to pursue the claims asserted in the Complaint.

**FOURTH AFFIRMATIVE DEFENSE**

**(Equitable Doctrines)**

The relief sought is barred, in whole or in part, under the doctrines of estoppel, waiver, ratification, laches, acquiescence, in pari delicto, unclean hands, and/or other equitable doctrines.

**FIFTH AFFIRMATIVE DEFENSE**

**(Breach of Contract)**

Plaintiff's claims are barred as Plaintiff breached an underlying contract with Debtor.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to take appropriate and necessary steps to mitigate damages.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Invalidity, Perfection, Lien Deficiency)**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has invalid, improperly filed, and/or unperfected lien(s), or if Plaintiff has any valid and perfected liens, they are not "Senior Liens" under the Final DIP Order and/or are junior to the liens of other creditors.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Improper Procedural Mechanism)**

Plaintiff's claims are barred, in whole or in part, as this lawsuit is the improper judicial procedural mechanism to raise this dispute regarding a purported claim in the Debtor's bankruptcy case.

**NINTH AFFIRMATIVE DEFENSE**

**(Unripe Claim)**

Plaintiff's claims fail, in whole or in part, to the extent any claim is moot or not ripe for adjudication.

**TENTH AFFIRMATIVE DEFENSE**

**(Reservation of Defenses)**

As a separate affirmative defense to each alleged cause of action, the Complaint and each and every cause of action alleged therein is pleaded in a vague and conclusory fashion, and Defendants' discovery and investigation is ongoing. Defendants reserve the right to assert additional affirmative defenses and to supplement or modify this Answer upon revelation of more definitive facts and upon the undertaking of discovery and investigation in this matter.

**WHEREFORE**, Debtor prays as follows:

- A. That the Court enter judgment in favor of Debtor and dismiss the Complaint with prejudice;
- B. That Plaintiff's prayer for relief be denied;
- C. That this Court award Defendants such other relief as it may deem just and proper.

Dated: September 16, 2019  
Wilmington, Delaware

/s/ Russell C. Silberglied

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

John H. Knight (No. 3848)  
Russell C. Silberglied (No. 3462)  
Paul N. Heath (No. 3704)  
Zachary I. Shapiro (No. 5103)  
Brett M. Haywood (No. 6166)  
Travis J. Cuomo (No. 6501)  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
E-mail: knight@rlf.com  
silberglied@rlf.com  
heath@rlf.com  
shapiro@rlf.com  
haywood@rlf.com  
cuomo@rlf.com

- and -

**LATHAM & WATKINS LLP**

George A. Davis (admitted *pro hac vice*)  
Keith A. Simon (admitted *pro hac vice*)  
Blake T. Denton (admitted *pro hac vice*)  
Hugh K. Murtagh (admitted *pro hac vice*)  
Liza L. Burton (admitted *pro hac vice*)  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864  
E-mail: george.davis@lw.com  
keith.simon@lw.com  
blake.denton@lw.com  
hugh.murtagh@lw.com  
liza.burton@lw.com

*Counsel for Debtors and Debtors-in-Possession*