

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

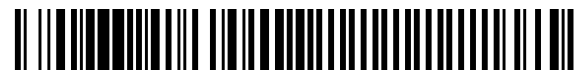
In re: EMERGE ENERGY SERVICES, LP, <i>et al.</i> ¹ Debtor.	Chapter 11 Case No. 19-11563 (KBO) Jointly Administered
MARKET & JOHNSON, INC., Plaintiff, v. SUPERIOR SILICA SANDS LLC, and HPS INVESTMENT PARTNERS, LLC, Defendant.	Adversary Proceeding No. 19-50728 (KBO)

**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 Market & Johnson, Inc.’s (“**Plaintiff**” or “**M&J**”) Complaint, dated October 25, 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

¹ 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, except admits that Plaintiff purports to seek

certain “determinations”. Debtor denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1.

2. Admitted.

3. Paragraph 3 purports to characterize Plaintiff’s claims, contains legal conclusions to which no response is required, and therefore does not require a response. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 3.

4. Admitted.

5. Admitted.

6. Debtor admits that Plaintiff consents to the entry of final orders by the Court. Pursuant to Local Rule 7012-1, Debtor consents to the entry of final orders or judgments in this proceeding if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

7. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Admitted.

9. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 9. Debtor admits the allegations contained in the second sentence of Paragraph 9.

10. Admitted.

11. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, except admits that Plaintiff and Debtor had a business relationship concerning services that Plaintiff provided to Debtor.

12. Denied, except that it is admitted that the parties had a dispute as to, among other things, payment. Debtor further denies that the allegations contained in Paragraph 12 present a fair and complete description of the matters addressed.

13. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the documents referenced in Paragraph 13 and attached as Exhibit A for a complete and accurate statement of the contents thereof.

14. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, except admits that M&J has a scheduled claim (No. 2.34) against Debtor in an amount different from the amount listed in Paragraph 14. Insofar as a response is required, Debtor denies the allegations and respectfully refers the Court to the document referenced in Paragraph 14 for a complete and accurate statement of the contents thereof.

15. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, except admits that M&J has a scheduled claim (No. 2.33) against Debtor in an amount different from the amount listed in Paragraph 15. Debtor further denies that the allegations contained in Paragraph 15 present a fair and complete description of the matters addressed.

16. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16.

17. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, except admits that M&J has a scheduled claim (No. 2.33) against Debtor in an amount different from the amount listed in Paragraph 17. Debtor

respectfully refers the Court to the documents referenced in Paragraph 17 and attached as Exhibit B for a complete and accurate statement of the contents thereof.

18. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. Debtor denies the allegations contained in Paragraph 19, except admits (a) that there was a contract between the parties and (b) Plaintiff asserts certain amounts are due in connection therewith.

20. Denied, except it is admitted that Debtor has not paid such amounts and that Plaintiff has made a demand. Debtor further denies that the allegations contained in Paragraph 20 present a fair and complete description of the matters addressed.

21. Paragraph 21 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations and further denies that the allegations contained in Paragraph 21 present a fair and complete description of the matters addressed.

22. Admitted.

23. Admitted. It is further averred that the Financing Motion speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

24. Admitted. It is further averred that the Financing Motion speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

25. Admitted. It is further averred that the Financing Motion speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

26. Admitted. It is further averred that the Financing Motion speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

27. Admitted. It is further averred that the Financing Motion speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

28. Admitted.

29. Admitted, but denied that Plaintiff's assertions were meritorious.

30. Admitted. It is further averred that the Financing Motion and Final DIP Order speak for themselves and Debtor respectfully refers the Court to the full contents thereof.

31. Denied, except that it is admitted that Plaintiff quotes a portion of § 7.2 of the DIP financing agreement and Debtor respectfully refers the Court to the full contents thereof.

32. Paragraph 32 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor admits that M&J purports to have reserved rights.

33. Paragraph 33 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 33 for a complete and accurate statement of the contents thereof.

34. Admitted.

35. Paragraph 35 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations.

36. Admitted.

37. Admitted. It is further averred that the Plan speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

38. Admitted. It is further averred that the Plan speaks for itself and Debtor respectfully refers the Court to the full contents thereof.

39. Admitted.

40. Debtor admits that Paragraph 40 accurately quotes a portion of the Plan and respectfully refers the Court to the remainder of the Plan for the full contents thereof.

41. Debtor admits that Debtors filed the solicitation version of the Disclosure Statement on September 11, 2019. The remainder of Paragraph 41 accurately quotes a portion of the Disclosure Statement and Debtor respectfully refers the Court to the remainder of the Disclosure Statement for the full contents thereof.

42. Paragraph 42 contains allegations for which a response is not required and Debtor respectfully refers the Court to the Disclosure Statement for the full contents thereof.

43. Debtor avers that no response is required to Paragraph 43. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-42 of the Complaint as if set forth herein.

44. Debtor admits that it began work on the Kingfisher Facility in late 2018 and discontinued work in January 2019 after incurring approximately \$15.3 million in expenses. Debtor denies the characterizations set forth in paragraph 44 and respectfully refers the Court to the documents referenced in Paragraph 44 for a complete and accurate statement of the contents thereof.

45. Denied.

46. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and respectfully refers the Court to the documents referenced in Paragraph 46 and attached as Exhibit C for a complete and accurate statement of the contents thereof.

47. Debtor admits that the creditors listed in paragraph 47 purport to hold liens.

48. Paragraph 48 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 48.

49. Paragraph 49 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 49.

50. Paragraph 50 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 50.

51. Paragraph 51 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 51.

52. Paragraph 52 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 52.

53. Debtor admits that M&J is attempting to assert that it has not waived its rights to challenge the validity, extent or priority of the Additional Liens. The balance of Paragraph 53 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 53.

54. Debtor admits that it filed its amended schedules on August 30, 2019 and respectfully refers the Court to the document referenced in Paragraph 54 for a complete and accurate statement of the contents thereof.

55. Paragraph 55 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor respectfully refers the Court to the entirety of the document described in paragraph 54.

56. Paragraph 56 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 56.

57. Paragraph 57 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor admits that Plaintiff has accurately quoted a portion of section 506(a).

58. Admitted. Debtor respectfully refers the Court to the Disclosure Statement and Plan for a complete and accurate statement of the contents thereof.

59. Paragraph 59 contains a legal conclusion and/or statement of what Plaintiff believes to which no response is required. Insofar as a response is required, Debtor respectfully refers the Court to the entirety of the document described in paragraph 54 and the Plan.

60. Denied.

61. Debtor admits that Plaintiff has made the contention set forth in paragraph 61 but denies that such contention is correct.

62. Admitted.

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

64. Debtor avers that no response is required to Paragraph 64. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-63 of the Complaint as if set forth herein.

65. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65.

66. Debtor denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66.

67. Paragraph 67 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 allegations in Paragraph 67.

68. Paragraph 68 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 allegations in Paragraph 68.

69. Paragraph 69 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 allegations in Paragraph 69.

70. Paragraph 70 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 70.

71. Paragraph 71 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 71.

72. Paragraph 72 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 72.

73. Paragraph 73 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 73.

74. Paragraph 74 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 74.

75. Paragraph 75 contains a legal conclusion and/or characterization to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 75 except admits that, under the Plan, no cash will be paid to M&J and respectfully refers the Court to the Plan for the full contents thereof.

76. The Debtors deny that the Plan provides such specific statements about the Bexar Facility, but admit that they intend to retain the Bexar Facility.

77. Paragraph 77 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 allegations in Paragraph 77.

78. Paragraph 78 contains a legal conclusion to which no response is required. Insofar as a response is required, Debtor admits that Plaintiff has accurately quoted a portion of section 506(a).

79. Paragraph 79 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 allegations in Paragraph 79.

80. Admitted.

81. Paragraph 81 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 81.

82. Debtor avers that no response is required to Paragraph 82. Insofar as a response is required, Debtor repeats and restates each of its answers to Paragraphs 1-81 of the Complaint as if set forth herein.

83. Paragraph 83 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 83.

84. Paragraph 84 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 84.

85. Paragraph 85 contains legal conclusions 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 allegations in Paragraph 85.

86. Paragraph 86 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 86.

87. Paragraph 87 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 87.

88. Paragraph 88 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 88.

89. Paragraph 89 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 89.

90. Paragraph 90 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 90.

91. Paragraph 91 contains legal conclusions to which no response is required. Insofar as a response is required, Debtor denies the allegations contained in Paragraph 91.

The WHEREFORE clause (A-F) 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 WHEREFORE clause (A-F).

AFFIRMATIVE DEFENSES

In addition to the foregoing denials, Debtor alleges and asserts the following defenses. By pleading the following as affirmative defenses, Debtor 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 Debtor's discovery and investigation is ongoing. Debtor reserves 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 Debtor such other relief as it may deem just and proper.

Dated: December 23, 2019
Wilmington, Delaware

/s/ David T. Queroli

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- and -

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