

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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In re: : Chapter 11
: :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
: :
Debtors. : (Jointly Administered)
: :
----- X

**CERTIFICATE OF NO OBJECTION REGARDING
DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
AND APPROVING THE SETTLEMENT BY AND AMONG THE DEBTORS
AND BLACK MOUNTAIN SAND, LLC, (II) AUTHORIZING THE DEBTORS’ ENTRY
INTO THE SETTLEMENT AGREEMENT, AND (III) GRANTING RELATED RELIEF
[Relates to Docket No. 311]**

Pursuant to the *Procedures for Complex Cases in the Southern District of Texas*, the undersigned counsel for the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby certifies as follows:

1. On August 21, 2020, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Settlement by and Among the Debtors and Black Mountain Sand, LLC, (II) Authorizing the Debtors’ Entry Into the Settlement Agreement, and (III) Granting Related Relief* [Docket No. 311] (the “**Motion**”).

2. Objections to the Motion were due on or before September 11, 2020 (the “**Objection Deadline**”). More than one business day has passed since the Objection Deadline,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



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and no objections to the Motion have been filed on the Court's docket. Additionally, counsel for the Debtors did not receive any informal responses to the Motion.

3. Accordingly, the Debtors respectfully request entry of the proposed order attached hereto.

Signed: September 14, 2020

Respectfully Submitted,

/s/ Ashley L. Harper

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Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on September 14, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Ashley L. Harper

Ashley L. Harper

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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In re:	:	Chapter 11
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HI-CRUSH INC., <i>et al.</i> , ¹	:	Case No. 20-33495 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**ORDER (I) AUTHORIZING AND APPROVING THE SETTLEMENT
BY AND AMONG THE DEBTORS AND BLACK MOUNTAIN SAND,
LLC, (II) AUTHORIZING THE DEBTORS' ENTRY INTO THE
SETTLEMENT AGREEMENT, AND (III) GRANTING RELATED RELIEF**

[Relates to Motion at Docket No. 311]

Upon the motion (the “**Motion**”)² of the Debtors for an Order (i) authorizing and approving the settlement by and among the Debtors and Black Mountain Sand, LLC, (ii) authorizing entry into the Settlement Agreement, and (iii) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; 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

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

Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; 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 the Order, it is hereby

ORDERED THAT:

1. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved and shall be binding and effective on Debtor FB Industries USA, Inc. ("**FB**") and Black Mountain Sand, LLC ("**BMS**") upon entry of this Order.

2. FB is hereby authorized to enter into the Settlement Agreement on behalf of itself and each of the Debtors, and the Debtors are authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately and fully implement the Settlement in accordance with the terms, conditions, and agreements set forth in the Settlement Agreement, all of which are hereby approved.

3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

Signed: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Settlement Agreement

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("**Mutual Release**") is made and entered into as of the 20th day of August, 2020 ("**Effective Date**"), by and between Black Mountain Sand, LLC ("**BMS**") and FB Industries USA, Inc. ("**FB**"). BMS and FB together are referred to as the "**Parties**" and, where applicable, individually as "**Party**."

A. Whereas, BMS and FB were parties to a Purchase and Sale Agreement and Equipment Leasing Agreement, effective as of October 31, 2018 (collectively, the "**Agreements**").

B. Whereas, Various disputes arose under the Agreements; BMS asserted claims against FB, and FB asserted counterclaims against BMS in *Black Mountain Sand, LLC v. FB Industries USA, Inc.*, Cause No. 2019-60395, pending in the 125th Judicial District Court of Harris County, Texas ("the Lawsuit"). The Lawsuit is currently stayed pursuant to Section 362(a) of the United States Bankruptcy Code.

C. Whereas, the Parties have mutually decided to put their disputes and the Lawsuit behind them.

NOW, THEREFORE, in consideration of the Recitals, which are incorporated by this reference, and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each of the Parties to this Mutual Release hereby agree as follows:

1. **Dismissal of Lawsuit.** Within 5 days of execution of this Mutual Release or the approval of this settlement by the Bankruptcy Court, whichever occurs later, the Parties will file a joint nonsuit of the Lawsuit, with prejudice as to all claims and counterclaims. Each Party shall bear its own share of fees and costs.

2. **Mutual Releases.**

a. BMS, on its own behalf and on behalf of its owners, investors, partners, members, managers, managing directors, officers, directors, successors, assigns, predecessors, parent companies, subsidiaries, affiliates, and their respective members, managers, managing directors, officers, directors, employees, personal representatives and agents ("**BMS Releasers**"), hereby fully and finally releases, acquits, and forever discharges FB and any and all of its respective affiliates, subsidiaries, owners, investors, and parent companies, and each of their respective officers, agents, directors, executives, and employees ("**FB Released Parties**") with respect to all liabilities, obligations, claims, actions, causes of action, demands, damages, losses, fees, costs and expenses, of any nature whatsoever, whether known or unknown, asserted or unasserted, ascertained or unascertained, suspected or unsuspected, accrued or unaccrued, matured or unmatured, liquidated or contingent, existing or claimed to exist that the **BMS Releasers** have or could have against any of the **FB**

Released Parties concerning or relating to the Agreements, and/or the Lawsuit for any alleged conduct or breach of conduct whatsoever ("Released Claims"). Notwithstanding anything to the contrary contained herein, Released Claims shall not include claims to enforce this Mutual Release, and no Party is releasing or being released from any claims, rights or obligations arising under this Mutual Release.

BMS, on its own behalf and on behalf of the **BMS Releasors**, agrees and covenants that it is forever barred from initiating, prosecuting, participating in the assertion or prosecution of, maintaining, asserting or seeking to enforce any Released Claim against any of the **FB Released Parties**, whether directly or indirectly, whether on its own behalf or on behalf of any class or any other person or entity, and **BMS** agrees, on its own behalf and on behalf of the **BMS Releasors**, that these releases shall constitute complete defenses to any such Released Claim.

b. **FB**, on its own behalf and on behalf of its owners, investors, partners, members, managers, managing directors, officers, directors, successors, assigns, predecessors, parent companies, subsidiaries, affiliates, and their respective members, managers, managing directors, officers, directors, employees, personal representatives and agents ("FB Releasors"), hereby fully and finally releases, acquits, and forever discharges **BMS** and any and all of its respective affiliates, subsidiaries, owners, investors, and parent companies, and each of their respective officers, agents, directors, executives, and employees ("BMS Released Parties") with respect to all liabilities, obligations, claims, actions, causes of action, demands, damages, losses, fees, costs and expenses, of any nature whatsoever, whether known or unknown, asserted or unasserted, ascertained or unascertained, suspected or unsuspected, accrued or unaccrued, matured or unmatured, liquidated or contingent, existing or claimed to exist that **FB Releasors** have or could have against any of the **BMS Released Parties** concerning or relating to the Agreements, and/or the Lawsuit for any alleged conduct or breach of conduct whatsoever ("Released Claims"). Notwithstanding anything to the contrary contained herein, Released Claims shall not include claims to enforce this Mutual Release, and no Party is releasing or being released from any claims, rights or obligations arising under this Mutual Release.

FB, on its own behalf and on behalf of the **FB Releasors**, agrees and covenants that it is forever barred from initiating, prosecuting, participating in the assertion or prosecution of, maintaining, asserting or seeking to enforce any Released Claim against any of the **BMS Released Parties**, whether directly or indirectly, whether on its own behalf or on behalf of any class or any other person or entity, and **FB** agrees, on its own behalf and on behalf of the **FB Releasors**, that these releases shall constitute complete defenses to any such Released Claim.

3. **Representations and Warranties.** Each Party represents and warrants to the other and agrees with the other as follows:

a. Each Party has carefully read and reviewed this Mutual Release and understands it fully, and each Party has reviewed the terms of this Mutual Release with one or more attorneys of the Party's choice prior to executing this Mutual Release;

b. Each Party specifically is not relying upon any statement, representation,

legal opinion, accounting opinion, or promise, express or implied, of any other Party or of any person representing such other Party in executing this Mutual Release, or in making the settlement provided for herein, except as expressly stated in this Mutual Release;

c. Each Party has made such investigation of the law and the facts pertaining to this Mutual Release, and of all the matters pertaining thereto, as it deems necessary;

d. This Mutual Release is the result of arm's-length negotiation between the Parties;

e. Each Party has full power and authority, and has been duly authorized, to enter into this Mutual Release and consummate the transactions contemplated by this Mutual Release; and

f. The person signing this Mutual Release has the full authority to bind the Party indicated.

4. **Interpretation.** This Mutual Release has been negotiated by the Parties and their respective attorneys and is to be interpreted according to its fair meaning as if the Parties had prepared it together and not strictly for or against any party.


5. **No Reliance.** The Parties acknowledge that they have read and understand the terms of this Mutual Release and have been advised by their respective counsel with respect thereto, understand the significance and consequences of this Mutual Release, have entered into this Mutual Release knowingly and voluntarily, and have not relied, and expressly disclaim any reliance, on any representation, declaration, promise or inducement other than as set forth in this Mutual Release.

6. **Further Actions.** Each Party agrees to execute any additional documents and to take any further action which reasonably may be required to consummate this Mutual Release or otherwise fulfill the intent of the Parties.


7. **Governing Law.** This Mutual Release shall be deemed to have been executed and delivered within the State of Texas, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with and governed by the laws of the State of Texas without regard to choice-of-law principles or provisions thereof.

IN WITNESS WHEREOF, the Parties have executed this Mutual Release and Settlement Agreement as of the date first above written.

Black Mountain Sand, LLC

By: 
Name: HAIDEN GILLESPIE
Title: CEO

FB Industries USA, Inc.

By: 
Name: Mark C. Skolos
Title: General Counsel / Secretary