

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

In re:

HI-CRUSH, INC., et al.,¹

Debtors.

)
) **Chapter 11**
)
) **Case No. 20-33495 (DRJ)**
)
) **(Jointly Administered)**
)

**TARGET LOGISTICS MANAGEMENT LLC’S LIMITED OBJECTION AND
RESERVATION OF RIGHTS TO NOTICE OF CURE AMOUNTS IN CONNECTION
WITH CONTRACTS AND LEASES
[Relates to Docket No. 344]**

Target Logistics Management LLC (“Target”) files this Limited Objection and Reservation of Rights (the “Limited Objection”) to the Notice of Cure Amounts in Connection with Contracts and Leases (the “Cure Notice”) filed by the Debtors² at Docket No. 344 and in support thereof would show the Court as follows:

I. BACKGROUND FACTS

1. On July 12, 2020 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (the “Debtors”), commenced these bankruptcy cases (the “Bankruptcy Cases”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11

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), HiCrush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, HiCrush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, HiCrush 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.

² All capitalized terms not otherwise defined in this Limited Objection have the meanings ascribed to them in the Cure Notice.



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U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the “Court”).

2. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Bankruptcy Cases.

3. Target and the Debtor Hi-Crush LMS, LLC (“Hi-Crush LMS”) are parties to an Exclusive Master Lease and Services Agreement (the “Agreement”). Under the Agreement, Target provided the lease of lodging and related services, including catering and janitorial services, to Hi-Crush LMS. Following the Debtors’ bankruptcy filing, Hi-Crush LMS and Target have continued to perform under the Agreement

4. Hi-Crush LMS owes Target the prepetition amount of \$83,877.76 under the Agreement in connection with lodging and services provided to Hi-Crush LMS before these Bankruptcy Cases were filed. On August 15, 2020, Target filed Proof of Claim No. 523 (“Proof of Claim 523”) against Hi-Crush LMS reflecting this principal amount due. A copy of Proof of Claim 523 is attached to this Limited Objection as Exhibit “1”.

5. Bankruptcy Code § 365(a) provides that a trustee or a debtor-in-possession may, subject to bankruptcy court approval, assume or reject any executory contract or unexpired lease. 11 U.S.C. § 365(a) (2020). This provision allows a debtor’s estate to keep beneficial contracts and leases while ridding itself of burdensome ones. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993); *University Med. Ctr. v. Sullivan (In re University Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992); *In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379 (7th Cir. 1983). To assume an executory contract under § 365, the trustee or debtor-in-possession must, at the time of assumption, 1) “cure[] or provide[] adequate assurance that the trustee will promptly cure” any

default under the contract, 2) compensate the counterparty (or provide adequate assurance of prompt compensation) for any “actual pecuniary loss” resulting from the debtor’s default, and 3) provide “adequate assurance of future performance” under the contract. 11 U.S.C. § 365(b)(1); *see also Century Indem. Co. v. Nat’l Gypsum Co. Settlement Trust (In re Nat’l Gypsum Co.)*, 208 F.3d 498, 506 (5th Cir. 2000); *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 76 (Bankr. D. Del. 2005) (“[W]hen a contract is assumed under section 365, all unpaid amounts due under the agreement must be paid.”).

6. The listing for Target in the Cure Notice provides that the cure amount for the Agreement is \$0. Target objects to this proposed cure amount because it differs from Target’s books and records. As set forth in Proof of Claim 523, the amount due for the pre-petition period is \$83,877.76.

7. Because Target continues to provide lodging and related services to Hi-Crush LMS postpetition, the cure amount owed to Target may change over time unless Hi-Crush LMS keeps its postpetition obligations under the Agreement current. Before the Agreement may be assumed, Hi-Crush LMS must pay—or arrange for the payment of—all accrued charges (both pre- and post-petition) owed in connection with the Agreement, whether those charges have been billed or not. *See* U.S.C. § 365(b)(1); *Nat’l Gypsum Co.*, 208 F.3d at 506. Target files this Limited Objection to ensure, *inter alia*, that all these amounts will be paid as of the date of assumption of the Agreement no matter what amount may be listed in the Cure Notice.

III. RESERVATION OF RIGHTS

8. Target hereby reserves the right to further amend, modify, or supplement this Limited Objection at any time and to request the postponement and/or adjournment of any hearing to consider the assumption (or rejection) of the Agreement. Target reserves its rights in connection with this Limited Objection and the Cure Notice. Finally, Target also reserves its rights as a creditor in these Bankruptcy

Cases, including in connection with Proof of Claim 523.

WHEREFORE, Target respectfully requests that this Court (i) deny the Debtors' request to assume the Agreement for the cure amount listed in the Cure Notice and instead require the Debtors (or their assignee) to pay the full cure amount owed under the Agreement in order to assume it, and (ii) grant Target such other and further relief as is appropriate.

Dated: September 17, 2020

Respectfully submitted,

/s/ Elizabeth M. Guffy

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Counsel for Target Logistics Management, LLC

Certificate of Service

I hereby certify that on the 17th day of September, 2020, a true and correct copy of the foregoing pleading was served electronically via the Court's ECF system on all parties registered to receive such service and by email on the following:

Counsel to the Debtors

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Office of the United States Trustee for the Southern District of Texas

Stephen Statham
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/s/ Elizabeth M. Guffy

Elizabeth M. Guffy

Fill in this information to identify the case:

Debtor Hi-Crush LMS LLC

United States Bankruptcy Court for the: Southern District of Texas
(State)

Case number 20-33503

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>TARGET LOGISTICS MANAGEMENT LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)		
Contact phone	_____	Contact phone _____
Contact email	<u>wshields@targethospitality.com</u>	Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check all that apply:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.☒ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/15/2020

MM / DD / YYYY

/s/Wesley Shields

Signature

Print the name of the person who is completing and signing this claim:

Name

Wesley Shields

First name

Middle name

Last name

Title

Assistant General Counsel

Company

Target Hospitality Corp.

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



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KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 554-5810 | International (781) 575-2032

Debtor: 20-33503 - Hi-Crush LMS LLC District: Southern District of Texas, Houston Division		
Creditor: TARGET LOGISTICS MANAGEMENT LLC Wesley Shields 2170 Buckthorne Place Suite 440 The Woodlands, Texas, 77380 United States Phone: Phone 2: Fax: Email: wshields@targethospitality.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Lease of lodging rooms, services including catering, janitorial	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 83,877.76	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: Yes, 83,877.76 Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Wesley Shields on 15-Aug-2020 6:40:30 p.m. Eastern Time Title: Assistant General Counsel Company: Target Hospitality Corp.		

Transaction	Class	Activity Date	Due Date	Days Late	Entered Currency	Original Amount	Current Amount	Unapplied Amount
64060	Invoice	4/30/20	5/30/20	59.	USD	186.14	186.14	
60006	Invoice	3/31/20	4/30/20	89.	USD	777.60	777.60	
59043	Invoice	3/31/20	4/30/20	89.	USD	35,958.38	35,958.38	
59042	Invoice	3/31/20	4/30/20	89.	USD	3,731.26	3,731.26	
50253	Invoice	1/31/20	3/1/20	149.	USD	8.75	8.75	
50250	Invoice	1/31/20	3/1/20	149.	USD	36.69	36.69	
50246	Invoice	1/31/20	3/1/20	149.	USD	3.73	3.66	
30836	Invoice	1/31/20	3/1/20	149.	USD	40,462.37	40,462.37	
30825	Invoice	1/31/20	3/1/20	149.	USD	10,453.53	10.00	
29671A	Invoice	12/20/19	1/19/20	191.	USD	48.60	48.60	
29671	Invoice	11/30/19	12/30/19	211.	USD	583.20	583.20	
27571	Invoice	9/30/19	10/30/19	272.	USD	2,071.11	2,071.11	
							83,877.76	

Past Due Amount	Business Unit	Status
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186.14	THC US BU	Open
777.60	THC US BU	Open
35,958.38	THC US BU	Open
3,731.26	THC US BU	Open
8.75	THC US BU	Open
36.69	THC US BU	Open
3.66	THC US BU	Open
40,462.37	THC US BU	Open
10.00	THC US BU	Open
48.60	THC US BU	Open
583.20	THC US BU	Open
2,071.11	THC US BU	Open