

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

**In re:**

**Hi-Crush Inc., et al.,**

**Debtors.**<sup>1</sup>

**Hi-Crush Permian Sand LLC,**

**Plaintiff,**

**V.**

**EOG Resources, Inc.,**

**Defendant.**

[illegible]

## Chapter 11

**Case No. 20-33495 (DRJ)**

**(Jointly Administered)**

Adversary No. 20-03471

**HI-CRUSH PERMIAN SAND LLC'S MOTION FOR AN  
ORDER AUTHORIZING HI-CRUSH TO FILE RESPONSE  
IN OPPOSITION TO EOG RESOURCES, INC.'S MOTION TO  
DISMISS UNDER SEAL AND REDACT CONFIDENTIAL INFORMATION**

**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.**

**Represented parties should act through their attorney.**

1 The reorganized debtors in the bankruptcy 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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Hi-Crush Permian Sand LLC, a reorganized debtor in the above-captioned bankruptcy case and plaintiff in this adversary proceeding (“**Hi-Crush**” or the “**Debtor**”) respectfully states the following in support of this motion (the “**Motion**”):

### **RELIEF REQUESTED**

1. Hi-Crush files this Motion to request authority to seal a certain filing in the above-captioned adversary proceeding against EOG Resources, Inc. (“**EOG**”). Hi-Crush files this motion pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). Hi-Crush requests entry of an order, substantially in the form attached hereto (the “**Proposed Order**”), authorizing Hi-Crush to file under seal an unredacted version of *Hi-Crush’s Response in Opposition to EOG Resources, Inc.’s Motion to Dismiss* (the “**Opposition**”) in this adversary proceeding. Hi-Crush also requests authorization to file a redacted version of the Opposition that will be publicly available.

2. The redacted Opposition was filed as Docket Number 26. The unredacted Opposition will be filed under seal pursuant to General Order 2021-1. In this Motion, Hi-Crush requests that the unredacted Opposition filed under seal remain sealed.

### **JURISDICTION AND VENUE**

3. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, rule 9013-1 of the Bankruptcy Local Rules for the

Southern District of Texas (the “***Bankruptcy Local Rules***”), General Order 2021-1, and the Procedures for Complex Cases in the Southern District of Texas (the “***Complex Case Procedures***”).

## BACKGROUND

5. Hi-Crush Inc. and its affiliates, including Hi-Crush, are a leading supplier of premium proppant (also known as “frac sand”), used in hydraulic fracturing of oil and gas wells, and logistics services to exploration and production companies, service companies, and pressure pumping companies. They own and operate six sand production facilities, with four in Wisconsin and two in West Texas. These facilities, coupled with Hi-Crush Inc.’s world-class processing technology and systems, allow Hi-Crush Inc. and its affiliates to provide high-quality proppant to their customers with preferred delivery to all major U.S. shale basins. EOG is one of those customers.

6. EOG is engaged in the exploration and production of hydrocarbons with assets both abroad and in the United States, including in the Permian Basin of West Texas. Upon information and belief, EOG utilizes frac sand during the process of drilling and completing unconventional oil and gas wells.

7. On February 13, 2017, Hi-Crush<sup>2</sup> and EOG entered into a Sand Purchase Agreement, which was amended effective June 1, 2018 (“***Sand Purchase Agreement***”) for Hi-Crush to sell and EOG to purchase certain quantities of sand at a certain price.

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<sup>2</sup> The party to the Sand Purchase Agreement was Permian Basin Sand Company, LLC, which was later acquired by Hi-Crush. In the Parties’ June 1, 2018 First Amendment to the Sand Purchase Agreement, they agreed that all references to “Permian Basin Sand Company LLC” throughout the Sand Purchase Agreement shall be replaced by “Hi-Crush Permian Sand LLC” and all references to “PBS” throughout the Sand Purchase Agreement shall be replaced by “Hi-Crush.” First Amendment to Sand Purchase Agreement.

8. The Sand Purchase Agreement is subject to a confidentiality provision contained in Section 12 of the Sand Purchase Agreement that protects and restricts the provisions of the Sand Purchase Agreement from disclosure because they involve confidential and proprietary information, such as pricing terms. [ECF No. 14, at Exh. 1].

9. Further, the Sand Purchase Agreement contains commercial, financial, and/or business information that, if revealed publicly, could potentially harm EOG and/or Hi-Crush, and Hi-Crush seeks to protect this information out of an abundance of caution.

10. On July 12, 2020 (the “**Petition Date**”), Hi-Crush Inc. and certain of its affiliates, including Hi-Crush Permian Sand LLC, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On September 23, 2020, the Court entered an order (“**Confirmation Order**”) confirming the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*.

11. On November 20, 2020, Hi-Crush filed its Original Complaint against EOG and its *Motion for an Order Authorizing Hi-Crush to File Original Complaint and Certain Exhibits Under Seal and Redact Confidential Information*. [ECF Nos. 1, 2, 3]. By order dated December 21, 2020, this Court allowed that motion. [ECF No. 11].

12. On January 7, 2021, after conferring with EOG’s counsel on the appropriate scope of redactions, Hi-Crush filed a redacted copy of its *Hi-Crush Permian Sand LLC’s First Amended Complaint* (“**Amended Complaint**”), with exhibits, against EOG [ECF No. 14]. Hi-Crush also filed *Hi-Crush Permian Sand LLC’s Motion for an Order Authorizing Hi-Crush to File Amended Complaint and Certain Exhibits Under Seal and Redact Confidential Information* (“**Motion to Seal Amended Complaint**”) [ECF No. 15] and filed under seal an unredacted version of the

Amended Complaint, with exhibits, on January 8, 2021 [ECF No. 16]. The Court granted Hi-Crush's Motion to Seal Amended Complaint on January 11, 2021 [ECF No. 17].

13. On January 29, 2021, EOG Resources, Inc. ("EOG") filed *Defendant EOG Resources, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint* ("**Motion to Dismiss**") [ECF No. 18]. On March 10, 2021, Hi-Crush filed its redacted Opposition to EOG's Motion to Dismiss [ECF No. 26] and will file under seal an unredacted version of the Opposition. In Hi-Crush's Opposition, Hi-Crush references and discusses confidential information relating to the Sand Purchase Agreement that warrants the same protections the Court has previously afforded these terms.

#### **BASIS FOR RELIEF**

14. In order to maintain the confidentiality of the sensitive financial and commercial terms of the Sand Purchase Agreement that are discussed in the Opposition, Hi-Crush respectfully requests authority to file the Opposition under seal and file a redacted version of the Opposition, so that the documents are available to the public with the confidential terms protected.

15. The relief requested herein is supported by sections 105(a) and 107(b) of the Bankruptcy Code. Specifically, section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Additionally, section 107(b) of the Bankruptcy Code provides that "[o]n request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information." 11 U.S.C. § 107(b)(1). Section 107(b) allows bankruptcy courts to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*,

181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information . . .”).

16. Bankruptcy Rule 9018 sets forth procedures by which a party may move for relief under Section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . .” Fed. R. Bankr. P. 9018. In addition, General Order 2021-1 of this Court provides that “[c]oncurrently with the filing of a sealed document, a motion to seal must be filed electronically.”

17. Unlike its counterpart in Federal Rule of Civil Procedure 26(c), section 107(b) of the Bankruptcy Code does not require an entity seeking protection thereunder to demonstrate “good cause.” *See, e.g., Wyndham Vacation Resorts, Inc. v. Faucett (In re Faucett)*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994)). Instead, the movant need only demonstrate that the material to be protected satisfies a category identified in section 107(b) of the Bankruptcy Code. Once a court determines that a party in interest is seeking to protect information that fits any of the specified categories identified in section 107(b) of the Bankruptcy Code, the court “is *required* to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 567 (quoting *Orion Pictures*, 21 F.3d at 27) (emphasis in original); *see In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute [i.e., section 107(b) of the Bankruptcy Code], on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.”) (emphasis in original).

18. Indeed, bankruptcy courts routinely issue orders to protect entities from potential harm caused by the disclosure of confidential or sensitive commercial information. *See, e.g., Young Again Prods. Inc. v. Supp. Spot, LLC (In re Supp. Spot, LLC)*, No. 07-03019, 2009 WL 2006834, at \*22 (Bankr. S.D. Tex. July 8, 2009).

19. Here, EOG has moved to dismiss the Amended Complaint, which seeks declaratory relief and damages pursuant to, as well as specific performance of (or, in the alternative, reinstatement of) the Sand Purchase Agreement. In order to respond to the Motion to Dismiss, Hi-Crush must address and discuss certain of the provisions contained in the Sand Purchase Agreement. The provisions of the Sand Purchase Agreement, and particularly provisions relating to price, quantity, and term, are subject to the confidentiality provision agreed to by Hi-Crush and EOG, and therefore constitute confidential information within the meaning of section 107(b) of the Bankruptcy Code.

20. Further, the Sand Purchase Agreement contains sensitive commercial information that falls within the plain language of section 107(b) of the Bankruptcy Code. “Commercial information has been defined as information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Faucett*, 438 B.R. at 567 (quoting *Orion Pictures*, 21 F.3d at 27). Commercial information does not need to rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 568 (quoting *Orion Pictures*, 21 F.3d at 28). Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *Id.* at 567 (quoting *Orion Pictures*, 21 F.3d at 27).

21. Here, the Sand Purchase Agreement is non-public, and contains confidential and sensitive financial terms and provisions negotiated by Hi-Crush and EOG. The public disclosure

of the Sand Purchase Agreement or certain provisions thereof could cause an unfair advantage to competitors by providing them information as to the commercial operations of the parties to the Sand Purchase Agreement. Therefore, the Sand Purchase Agreement contains statutorily-protected commercial information that should be sealed. Additionally, the information Hi-Crush seeks to redact is the same or similar to the information protected by this Court's prior orders.

22. Accordingly, Hi-Crush submits a redacted version of the Opposition for public filing [ECF No. 26] and requests that the Court grant the Motion to seal the unredacted version of the Opposition that will be filed pursuant to the terms of General Order 2021-1, because these documents contain information protected by section 107(b) of the Bankruptcy Code.

### **CONCLUSION**

**WHEREFORE**, Hi-Crush respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

*[Remainder of page intentionally left blank]*



Dated: March 10, 2021

Respectfully submitted,

/s/ Joseph W. Buoni

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**CERTIFICATE OF SERVICE**

I certify that on March 10, 2021, a true and correct copy of the foregoing document was served (i) 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; and (ii) via electronic mail on counsel for EOG, Sarah Link Schultz, David F. Staber, and Laura Warrick at sschultz@akingump.com, dstaber@akingump.com, and lwarrick@akingump.com.

/s/ Joseph W. Buoni

Joseph W. Buoni

**IN THE UNITED STATES BANKRUPTCY COURT  
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## Chapter 11

**Case No. 20-33495 (DRJ)**

**(Jointly Administered)**

**Adversary No. 20-3471 (DRJ)**

**ORDER GRANTING HI-CRUSH PERMIAN SAND LLC’S MOTION  
FOR AN ORDER AUTHORIZING HI-CRUSH TO FILE RESPONSE IN  
OPPOSITION TO EOG RESOURCES, INC.’S MOTION TO DISMISS  
UNDER SEAL AND REDACT CONFIDENTIAL INFORMATION  
[Relates to Docket No. \_\_]**

Upon the motion (the “**Motion**”)<sup>2</sup> of Hi-Crush for entry of an order authorizing Hi-Crush to redact the publicly filed *Hi-Crush’s Response in Opposition to EOG Resources, Inc.’s Motion to Dismiss* (the “***Opposition***”) and file under seal the unredacted Opposition, and granting related relief, all as more fully set forth in the Motion, and this Court having reviewed the Motion; and

The reorganized debtors in the bankruptcy 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.

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

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 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. Hi-Crush is authorized to file an unredacted version of the Opposition under seal.
2. The unredacted Opposition filed under seal pursuant to General Order 2021-1 shall remain confidential and under seal, and shall not be made available to anyone without the consent of the Parties or further order of the Court.
3. Hi-Crush is authorized to publicly file a redacted version of the Opposition, which has been filed as Docket Number 26. Hi-Crush and any party authorized to receive the unredacted version of the Opposition pursuant to this Order shall be authorized and directed, subject to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and General Order 2021-1, to redact specific references to the information set forth in the Opposition and the Sand Purchase Agreement from pleadings filed on the public dockets, including the docket maintained in this adversary proceeding and in the Chapter 11 case.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The requirements set forth in Bankruptcy Local Rule 9013-1 and General Order 2021-1 are satisfied by the contents of the Motion.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

7. The Parties are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Signed: \_\_\_\_\_, 2021

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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE