Docket #0050 Date Filed: 5/4/2021

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

In re:	§	**Chapter 11**
Hi-Crush Inc., *et al.*,	§	**Case No. 20-33495 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**
Hi-Crush Permian Sand LLC,	§	
Plaintiff,	§	
v.	§	**Adversary No. 20-03471 (DRJ)**
EOG Resources, Inc.,	§	
Defendant.	§	

HI-CRUSH PERMIAN SAND LLC'S MOTION TO STRIKE DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT OR IN THE ALTERNATIVE TO COMPEL DEFENDANT TO FILE AMENDED ANSWER

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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Instead of adequately responding to each of the allegations contained in Plaintiff Hi-Crush Permian Sand LLC's ("***Hi-Crush***") well-pleaded First Amended Complaint ("***Complaint***"), EOG Resources, Inc. ("***EOG***") chooses to obfuscate – responding, instead, to the vast majority of Hi-Crush's allegations with statements that "the document speaks for itself" or "call[s] for a legal conclusion." But it is well-settled that this type of pleading fails to satisfy the pleading requirements of Federal Rule of Civil Procedure 8(b) ("***Rule 8***"). Accordingly, Hi-Crush files this motion, pursuant to Federal Rule of Civil Procedure 12(f) ("***Rule 12***"), seeking an order striking EOG's Answer to the Complaint or, in the alternative, requiring EOG, to file an amended answer that complies with the pleading requirements of Rule 8(b)(2). In support thereof, Hi-Crush states as follows:

I. FACTUAL BACKGROUND

On February 13, 2017,[2] Permian Basin Sand Company, LLC and EOG entered into the Sand Purchase Agreement ("***SPA***").[3] Weeks later, Hi-Crush acquired Permian Basin Sand Company, LLC, succeeding to its rights under the SPA.[4] On June 27, 2020, EOG sent Hi-Crush a notice of immediate termination of the SPA pursuant to Section 7(b) of the SPA.[5] On November 20, 2020, Hi-Crush initiated this adversary proceeding against EOG based on EOG's invalid termination of the SPA. Hi-Crush filed its First Amended Complaint on January 7, 2021, asserting three causes of action against EOG. EOG moved to dismiss the Complaint,[6] which this Court granted in part.[7]

[2] As this Court is already familiar with the facts of this case, Hi-Crush will limit its discussion of the facts to just those that are central to the Court's ruling on this Motion. Hi-Crush incorporates by reference the facts as pleaded in Hi-Crush's Complaint [ECF No. 14] and Hi-Crush's Response in Opposition to EOG Resources, Inc.'s Motion to Dismiss [ECF No. 26].

[3] Compl. ¶ 14; *see also* Compl. Ex. 1 (SPA).

[4] *Id.* at ¶ 15.

[5] *Id.* at ¶ 28.

[6] EOG's Motion [ECF No. 18] at 16-17.

[7] [ECF No. 37].

EOG then filed its Answer on April 13, 2021.[8] Hi-Crush's Complaint is 56 paragraphs long.[9] In response to 32 of those allegations, EOG responds with "[t]o the extent the allegations in Paragraph [X] call for legal conclusions, EOG need not respond."[10] Similarly, in response to 18 of Hi-Crush's allegations, EOG improperly responds that the document at issue "speaks for itself, should be read as a whole, and provides only as stated therein."[11]

But as discussed herein, these do not meet the pleading requirements of Rule 8. Therefore, EOG should be required to amend its Answer to properly respond to Hi-Crush's allegations.

II. LEGAL STANDARD

"In responding to a pleading, a party must: (A) state in short and plain terms its defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party."[12] "Rule 8 offers a party three ways to respond to the allegations of a pleading: The responding party must admit an allegation, deny the allegation, or explain that it is without sufficient knowledge or information to form a belief about the truth of the allegation."[13] Moreover, "[a] party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest."[14]

> As has been noted in many judicial opinions, the theory of Rules 8(b) and 8(d) is that a defendant's pleading should apprise the opponent of those allegations in the complaint that stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable the plaintiff to prevail.[15]

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[8] [ECF No. 45]
[9] This does not include Count III, which the Court dismissed on April 1, 2021.
[10] *See, e.g.,* Answer ¶ 1.
[11] *See, e.g., id.* at ¶ 14.
[12] Fed. R. Civ. P. 8(b)(1).
[13] *Certain Underwriters at Lloyds v. SSDD, LLC*, No. 4:13-cv-193 CAS, 2013 WL 6801832, at *5-6 (E.D. Mo. Dec. 23, 2013).
[14] Fed. R. Civ. P. 8(b)(4).
[15] *Bruce v. Anthem Ins. Cos., Inc.*, No. 3:15-cv-353-D, 2015 WL 1860002, at *2 (N.D. Tex. Apr. 23, 2015) (internal quotation marks omitted).

"When an answer does not comply with Rule 8(b), a plaintiff may move to require the defendant to replead."[16]

Rule 12(f) provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."[17] Where an answer fails to comply with Rule 8(b), a plaintiff may move to strike the inadequately pleaded responses under Rule 12(f).[18]

Therefore, EOG's Answer should be stricken and EOG should be required to amend its Answer to properly respond to Hi-Crush's allegations.

III. ARGUMENT AND AUTHORITIES

Numerous courts have held that pleading that a "document speaks for itself" or "calls for a legal conclusion" does not satisfy the pleading requirements of Rule 8(b). *See, e.g., Ball v. Life Insurance Co. of North America*, No. 3:17-cv-2366-L, 2017 WL 6621539, at *6 (N.D. Tex. Dec. 28, 2017) ("[a]lleging that the report 'speaks for itself' only creates confusion as to [defendant's] general denial of the entirety of the [paragraph at issue] and does not fairly respond to the substance of the allegations."); *Bruce*, 2015 WL 1860002 at *2 (collecting cases for the proposition that "[t]his approach to pleading has been rejected."); *Certain Underwriters at Lloyds*, 2013 WL 6801832, at *5-6 (granting motion to strike defendant's answer and requiring defendant to replead without "the use of colloquialisms and surplusage such as that a 'document speaks for itself' . . . and shall not refuse to answer any allegations on the basis that they contain legal conclusions."); *Do It Best Corp. v. Heinen Hardware LLC*, No. 1:13-cv-69, 2013 WL 3421924, at *5 (N.D. Ind.

[16] *Id.* at *1 (citing *Rodriguez v. Prof'l Servs. Assistance, Inc.*, 2007 WL 667166, at *1 (W.D. Tex. Feb. 16, 2007)).

[17] Fed. R. Civ. P. 12(f).

[18] *Bruce*, 2015 WL 186000, at *2 (discussing three available options for responding to "an answer [that] does not comply with Rule 8(b)").

July 8, 2013) (striking defendant's responses to the complaint and ordering defendant to replead because "cryptic responses" such as the "that a document speaks for itself" or that "an allegation is a legal conclusion" do not inform [p]laintiff of whether their denials were based on the facts or otherwise."); *Azza Int'l Corp. v. Gas Research Inst.*, 204 F.R.D. 109, 110 (N.D. Ill. 2001) (striking defendant's answer with leave to replead because defendant's answer "provides another example of impermissible pleading" including through the use of "the equally impermissible statement that a document 'speaks for itself.'"); *State Farm Mut. Auto. Ins. Co. v. Riley*, 199 F.R.D. 276, 279 (N.D. Ill. 2001) (creating an "Appendix" covering the "most common flaws [in pleadings], so that corrective orders required to be entered in future cases can simply incorporate the treatment here by reference," and including "speaks for itself" as an example of "another unacceptable device").

Indeed, in a recent case pending before this court, Judge Isgur *sua sponte* ordered the defendant to file an amended answer because "I don't believe the rules allow you to not admit or deny based on the fact that a document speaks for itself. If someone alleges that a document says X, you have to admit or deny that the documents says X."[19]

Moreover, adding a general denial at the end of the response does not cure the deficient pleading. *See, e.g., Bruce*, 2015 WL 1860002 at *2 (holding that defendant's answer that "[d]efendants admit only that the [document] speaks for itself. Otherwise denied." was "insufficient."); *Certain Underwriters at Lloyds*, 2013 WL 6801832, at *5 ("the fact that [the] answer . . . concludes with a general denial does not make the otherwise improper response proper."). Indeed, responding that a "document speaks for itself" "only creates confusion as to [defendant's] general denial of the entirety" of the allegation to which defendant is responding.[20]

[19] *Sable Land Company, LLC v. Shell Trading (US) Company*, No. 20-03424, [ECF No. 24] at audio file minute 4:35 (Nov. 16, 2020). Please note that Judge Isgur's order was conditioned on the parties' not reaching a settlement at a forthcoming mediation.

[20] *Ball*, 2017 WL 6621539 at *6.

Here, EOG's Answer is riddled with these "insufficient" pleading responses. Over 50% of EOG's Answer relies on the "call[s] for a legal conclusions" response.[21] EOG does not even admit that the Court has personal jurisdiction over EOG or that venue is proper,[22] despite asserting a counterclaim against Hi-Crush wherein it alleges that "[t]his Counterclaim needs no new jurisdictional support."[23]

Similarly, nearly a third of EOG's responses state that the document addressed in Hi-Crush's Complaint "speaks for itself, should be read as a whole, and provides only as stated therein."[24] This is the case even where Hi-Crush directly quotes from the document in question. For example, in paragraph 20, Hi-Crush quotes, verbatim, the SPA's explanation of how shortfall payments are calculated, to which EOG states that the SPA "speaks for itself." And in response to paragraph 43 of the Complaint, which verbatim cites the text of 28 U.S.C. § 2201, EOG similarly responds that the statute "speaks for itself."[25] But, as courts in the Fifth Circuit have concluded, responding that a document "speaks for itself" is an insufficient response to an allegation where the "Complaint alternately quote[s] or paraphrase[s], or, in some instances, characterizes" the document in question.[26]

EOG's Answer to Hi-Crush's Complaint consists primarily of "legal conclusion" and "document speaks for itself" responses. As a result, it fails to meet Rule 8(b)'s pleading requirements. Therefore, EOG's Answer should be stricken and EOG should be ordered to file an amended answer in compliance with Rule 8(b).

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[21] *See* Answer ¶¶ 1-4, 6, 8-9, 12, 18-21, 23, 31-36, 40-41, 43-46, and 48-55.
[22] *Id.* at ¶¶ 8-9.
[23] *Id.* at EOG's Counterclaim ¶ 3.
[24] *Id.* at ¶¶ 14, 18-21, 23, 25-33, 35, 43, and 45.
[25] *Id.* at ¶ 43.
[26] *See, e.g., Ball*, 2017 WL 6621539 at *6.

IV. CONCLUSION

EOG's inappropriate responses to Hi-Crush's allegations do not sufficiently apprise Hi-Crush as to which "allegations in the complaint [] stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable [Hi-Crush] to prevail."[27] This type of pleading does not satisfy the requirements of Rule 8(b). For these reasons, EOG's Answer should be stricken and EOG should be ordered to amend its Answer to comply with the Federal Rules of Civil Procedure.

Dated: May 4, 2021

Respectfully submitted,

/s/ Joseph W. Buoni

Joseph W. Buoni (TX Bar No. 24072009)
Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)
Ashley S. Lewis (TX Bar No. 24079415)
Philip Guffy (TX Bar No. 24113705)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Tel: (713) 220-4200
Fax: (713) 220-4285
Email: josephbuoni@huntonak.com
taddavidson@huntonak.com
ashleylewis@huntonak.com
pguffy@huntonak.com

Counsel for Plaintiff Hi-Crush Permian Sand LLC

[27] *Bruce*, 2015 WL 1860002, at *2 (internal quotation marks omitted).

CERTIFICATE OF SERVICE

I certify that on May 4, 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
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
Hi-Crush Inc., *et al.*,	§	**Case No. 20-33495 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**
Hi-Crush Permian Sand LLC,	§	
Plaintiff,	§	
v.	§	**Adversary No. 20-3471 (DRJ)**
EOG Resources, Inc.,	§	
Defendant.	§	

ORDER GRANTING HI-CRUSH PERMIAN SAND LLC'S MOTION TO STRIKE DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT OR IN THE ALTERNATIVE TO COMPEL DEFENDANT TO FILE AMENDED ANSWER
[Relates to Docket No.]

Upon consideration of Plaintiff Hi-Crush Permian Sand LLC's *Motion to Strike Defendant's Answer to First Amended Complaint or in the Alternative to Compel Defendant to File Amended Answer* [Docket No. 50] (the "**Motion**"); and having considered Defendant EOG Resources, Inc.'s response in opposition and Hi-Crush Permian Sand LLC's reply in support of the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and

[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.

it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. EOG's Answer is stricken.

3. EOG is **ORDERED** to file an amended answer within 14 days of the date of this Order.

4. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to this Order.

Signed: _____, 2021

_____
DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE