

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
----- X **Re: Docket No. 86**

**CERTIFICATION OF COUNSEL REGARDING
ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

The undersigned hereby certifies as follows:

1. On July 24, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for an Order Authorizing the Employment and Payment of Professionals Utilized in Ordinary Course of Business* [Docket No. 86] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. Pursuant to the *Notice of Motion and Hearing*, objections to the Motion were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET).

3. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee. The Comments were

¹ The Debtors in these cases, along with the last four digits of each Debtor’s 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.



resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (the “**Revised Order**”).

4. The Revised Order has been circulated to counsel to the official committee of unsecured creditors, counsel to the DIP Agent and the Prepetition Agents, and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Motion, and no objection or responsive pleading to the Motion has appeared on the Court’s docket in these chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as Exhibit B.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: August 12, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Revised Order

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

-----	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	Re: Docket No. 86

**ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), pursuant to sections 105(a), 327, 328, 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014, authorizing, but not directing, the Debtors to retain and pay the OCPs pursuant to the OCP Procedures, all as further described in the Motion; and the Court having jurisdiction to consider the Motion and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing (if any) having been held to consider the relief requested in the Motion; and upon the record of the hearing (if any) and all proceedings had before the Court; and the Court having found and determined that the legal and

¹ The Debtors in these cases, along with the last four digits of each Debtor’s 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.

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

factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. Subject to the OCP Procedures (as defined below), the Debtors are authorized, but not directed, in their discretion, to retain and pay reasonable fees and expenses for the services of the OCPs set forth on Exhibit 1 hereto, as such may be supplemented in accordance with the procedures set forth in paragraph 3 (m) below, in the ordinary course of its business.

3. The following procedures shall govern the retention and payment of OCPs (the **“OCP Procedures”**):

(a) Within five (5) business days after the date of entry of this Order, the Debtors shall serve this Order upon each OCP. Thereafter, within thirty (30) calendar days of the later of (a) the date of entry of this Order and (b) the date on which each retained initial OCP commences postpetition services for the Debtors, each OCP shall complete a declaration, substantially in the form attached to hereto as Exhibit 2 (each, a **“Declaration of Disinterestedness”**), and provide such declaration to counsel for the Debtors. Upon receipt of such Declaration of Disinterestedness, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (ii) counsel to the official committee of unsecured creditors (a) Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street NE Suite 2800, Atlanta, Georgia 30309 (Attn: Todd C. Meyers, Esq. (email: tmeyers@kilpatricktownsend.com)) and Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: David M. Posner, Esq. email: dposner@kilpatricktownsend.com)) and (b) Potter Anderson Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Jeremy W. Ryan, Esq. and Christopher M. Samis, Esq. (emails: jryan@potteranderson.com and

csamis@potteranderson.com)); and (iii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (collectively, the “**Reviewing Parties**”).

- (b) The Reviewing Parties shall have fourteen (14) days after the filing and service of a Declaration of Disinterestedness to object to the retention of the OCP filing such declaration (the “**Objection Deadline**”). An objecting party shall serve its objection upon the other Reviewing Parties and the relevant OCP so that any such objection is actually received on or before the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days after service, the matter may be scheduled for hearing before the Court on the next regularly-scheduled hearing date or such other date otherwise agreeable to the OCP, the Debtors, and the objecting party.
- (c) If no objection is received by the Objection Deadline with respect to an OCP, the Debtors shall be authorized to retain and pay that OCP in accordance with these OCP Procedures, *nunc pro tunc* to the Petition Date, or, if later, the date on which the OCP commenced post-petition services for the Debtors.
- (d) The Debtors shall not pay any fees and expenses to any OCP unless (a) such OCP has executed its Declaration of Disinterestedness and such Declaration of Disinterestedness was filed with the Court and served on the Reviewing Parties, (b) the applicable Objection Deadline has expired, and (c) no timely objection is pending. If a timely objection is received, no payment shall be made until such objection is either resolved or withdrawn or otherwise overruled by the Court.
- (e) The Debtors are authorized, but not directed, to make monthly payments to any retained OCP, without further application to the Court, one-hundred percent (100%) of the fees and disbursements upon submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date and the fees and disbursements related thereto (without prejudice to the Debtors’ rights to dispute any such invoices); provided, however, that, except as set forth in Paragraph 3 (f) below, without further order of the Court, the Debtors shall not pay any individual OCP listed on Exhibit 1 and any amendment to Exhibit 1, amounts in excess of (a) \$15,000 a month on average over a rolling three (3) month period during the pendency of these Chapter 11 Cases for those with a Tier 1 OCP Cap, and (b) \$50,000 a month (no rolling) during the pendency of these Chapter 11 Cases for those with a Tier 2 OCP Cap.
- (f) Notwithstanding the foregoing, the Debtors believe that it may be appropriate to allow a monthly cap in excess of the applicable OCP Cap for any OCP who likely will exceed such cap amount but who should not

otherwise be required to follow the payment procedure applicable to retained professionals. If the Debtors are able to obtain the agreement of all of the Reviewing Parties to a higher cap for any OCP, the agreement would be evidenced by the filing of a notice of increased OCP Cap (a “**Cap Increase Notice**”), and the increased OCP Cap will be deemed approved upon the filing of such Cap Increase Notice, without further action by the Court. Absent such an agreement of the Reviewing Parties, or if the OCP otherwise exceeds the applicable cap set forth in paragraph 3 (e) above, such OCP shall file a fee application (a “**Fee Application**”) that applies for compensation and reimbursement of the full amount of its fees and expenses for the applicable period in compliance with sections 330 and 331 of the Bankruptcy Code, the applicable provisions of the Bankruptcy Rules, the Local Rules, the Guidelines for Reviewing Applications for Compensation filed under 11 U.S.C. § 330, and any other procedures and orders of the Court, including any order addressing interim compensation.

- (g) Each Fee Application shall be served upon the Reviewing Parties. The Reviewing Parties shall then have fifteen (15) days to object to the Fee Application, which deadline shall be set forth in the notice of such Fee Application. If, after fifteen (15) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the OCP may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such OCP.
- (h) If any OCP exceeds the applicable OCP Cap set forth in Paragraph 3 (e) above, or any other applicable incremental amount agreed to by all the Reviewing Parties, by more than \$5,000 during any three month period more than twice, then such OCP must be retained by the Debtors pursuant to a separate retention application and will subsequently file fee applications in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court, and, as to any OCP that is a law firm, such OCP shall make a reasonable effort to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013, both in connection with its retention application and its interim and final Fee Applications to be filed in these Chapter 11 Cases.
- (i) At three-month intervals (each, a “**Quarter**”) during the pendency of these Chapter 11 Cases, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that shall include the following information for each OCP: (i) the name of the OCP; (ii) the amounts paid as compensation for

services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter broken down by month during that Quarter, as well as the amounts paid to each such OCP in the two months prior to the Quarter; (iii) all postpetition payments made to that OCP to such date; and (iv) a general description of the services rendered by that OCP (the “**Quarterly Statements**”). The first Quarterly Statement covering the period from the Petition Date through September 30, 2019 shall be filed by October 31, 2019. The obligation to file Quarterly Statements shall terminate upon confirmation of a chapter 11 plan in these Chapter 11 Cases, provided that a Quarterly Statement shall be filed with respect to the final period (or partial period) ending on such confirmation date. The Reviewing Parties shall be permitted to file objections with the Court to the payments to the OCP identified in the Quarterly Statement within fourteen (14) days following service of the Quarterly Statement (the “**Quarterly Statement Objection Deadline**”). If an objection to the fees and expenses of an OCP is filed with the Court on or before the Quarterly Statement Objection Deadline, such fees and expenses will be subject to review and approval by the Court pursuant to section 330 of the Bankruptcy Code to the extent that such objection is not consensually resolved.

- (j) All payments to OCPs shall be subject to sections 328(c) and 330 of the Bankruptcy Code.
- (k) Except for law firms that represented the Debtors prior to the Petition Date and that have been employed pursuant to this Order, all OCPs shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtors and their estates, and must include a statement of disinterestedness in their Declaration of Disinterestedness.
- (l) The Debtors may retain additional OCPs from time to time during these Chapter 11 Cases by (i) including each additional OCP on an amended version of Exhibit 1 attached hereto that shall be filed with the Court and served on the Reviewing Parties, which amendment shall list the names of the additional OCPs and a brief description of the services to be rendered (including, if a law firm, the area of law), and the amount of the applicable payment cap, and (ii) having such additional OCP comply with the OCP Procedures. Such authorization is effective *nunc pro tunc* to the date of filing of the amendment or the applicable date of engagement, provided that the latter is no more than thirty (30) calendar days prior to the filing of the amendment. For purposes of complying with the Declaration of Disinterestedness requirement above, for each additional OCP, the thirty (30) calendar day deadline for the filing of the Declaration of Disinterestedness by such additional OCP shall run from the date of the filing of the amendment with the Court, but all other requirements and deadlines shall remain the same.

4. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim, and any such payment is not intended and should not be construed as an assumption of any executory contract or obligation of the Debtors.

5. Notwithstanding the possible applicability of Bankruptcy Rules 7062, 9014, or otherwise, this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

7. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Order.

EXHIBIT 1**List of Ordinary Course Professionals**

Ordinary Course Professional	OCP Address	Type of Service	Applicable OCP Cap
Jackson Walker	1401 McKinney Street, Suite 1900 Houston, Texas 77010 2323 Ross Avenue, Suite 600 Dallas, Texas 75201	Outside Regulatory Counsel	Tier 1 OCP Cap (\$15,000 a month)
Shook Hardy & Bacon	2555 Grand Boulevard Kansas City, Missouri 641108	Outside Corporate/Litigation Counsel	Tier 1 OCP Cap (\$15,000 a month)
Opportune LLP	711 Louisiana Street, Suite 3100 Houston, Texas 77002	Asset Impairment Valuation	Tier 2 OCP Cap (\$50,000 a month)
A.T. Tax Advisory	40 NE Loop 410, Suite 607 San Antonio, Texas 78216	Property Tax Consultant	Tier 2 OCP Cap (\$50,000 a month)

EXHIBIT 2

Form of Declaration

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**DECLARATION IN SUPPORT OF EMPLOYMENT OF [_____] AS
PROFESSIONAL UTILIZED IN ORDINARY COURSE OF BUSINESS**

I, _____, declare that the following is true to the best of my knowledge, information and belief:

1. I am a [position] of [Firm], located at [Street, City, State ZIP Code] (the “**Firm**”), which has been employed by the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) in the ordinary course of the Debtors’ business. The Debtors wish to retain the Firm to continue providing ordinary course services during these Chapter 11 Cases, and the Firm has consented to provide such services. This Declaration is submitted in compliance with the *Order Under 11 U.S.C. §§ 105(a), 327, 330 and 331 Authorizing Employment and Payment of Professionals Utilized in Ordinary Course of Business* (the “**OCP Order**”), which OCP Order I have reviewed. I understand the limitations on compensation and reimbursement under such OCP Order.

2. The Firm [IS/IS NOT] a legal services firm. [If the firm is a legal services firm, please state the area of law.]

¹ The Debtors in these cases, along with the last four digits of each Debtor’s 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.

3. The Firm [HAS/HAS NOT] provided services to the Debtors prior to the Petition Date of July 15, 2019.

4. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to the Debtors or to these Chapter 11 Cases for persons that are parties in interest in these Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Debtors or these Chapter 11 Cases, or have any relationship with any such person, their attorneys, or their accountants that would be adverse to the Debtors or their estates.

[PLACEHOLDER FOR DESCRIPTION OF SERVICES RENDERED]

5. As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these Chapter 11 Cases.

6. Neither I nor any principal, partner, director, or officer of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed.

8. [For all firms other than legal services firms that represented the Debtors pre-petition] The Firm is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

9. The Firm intends to bill the Debtors for professional services rendered in connection with these Chapter 11 Cases, in accordance with the OCP Order, with such bill to include compensation for services based on the hourly rates set forth below, plus reimbursement of actual and necessary expenses and other charges incurred by the Firm. The principal [attorneys and paralegals/other professionals]/[employees] designated to represent the Debtors and their current standard rates are:

[PLACEHOLDER FOR LIST OF PROFESSIONALS AND HOURLY RATES]

10. The rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Such rates are the Firm's standard rates for work of this nature. The rates are set at a level designed to fairly compensate the Firm for the work of its [attorneys and paralegals/other professionals]/[employees] and to cover fixed and routine overhead expenses.

11. It is the Firm's policy to charge its clients in all areas of practice for all expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, [PLACEHOLDER FOR DESCRIPTION OF EXPENSES] and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

12. No representations or promises have been received by the Firm[, nor by any principal, partner, director, officer, or professional thereof,] as to compensation in connection with these Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code. The Firm has no agreement with any other entity to share with such entity any compensation received by the Firm in connection with these Chapter 11 Cases.

13. The Debtors owe the Firm \$[_____] for fees and expenses incurred prior to and unpaid as of the date these Chapter 11 Cases were commenced (the "**Petition Date**"), the

payment of which is subject to the limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. [FOR **NON-LEGAL SERVICES FIRMS ONLY**] The firm has agreed to waive all unpaid amounts for services rendered prior to the Petition Date. [FOR **LEGAL SERVICES FIRMS ONLY**] The Firm understands that it must file a proof of claim for such fees and expenses unless the amount thereof is properly listed in the Debtors' schedules of liabilities and is not designated therein as contingent, unliquidated or disputed.

14. The Firm [does / does not] keep time records in one-tenth of an hour increments in the ordinary course of business. [IF THE FIRM DOES NOT KEEP TIME IN ONE-TENTH OF AN HOUR INCREMENTS, PLEASE EXPLAIN HOW TIME RECORDS ARE KEPT]

15. As of the Petition Date, the Firm held a prepetition retainer of \$ _____.

16. As of the Petition Date, the Firm [was/was not] party to an agreement for indemnification with the Debtors. [A copy of such agreement is attached as Exhibit A to this Declaration.]

17. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors or other parties in interest in these cases, and upon conclusion of such inquiries, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

[Name]

[Title]

[FIRM NAME]

Address:

Telephone:

Facsimile:

Email:

EXHIBIT B

Blackline

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

	x	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	x	Re: Docket No. 86

**ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), pursuant to sections 105(a), 327, 328, 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014, authorizing, but not directing, the Debtors to retain and pay the OCPs pursuant to the OCP Procedures, all as further described in the Motion; and the Court having jurisdiction to consider the Motion and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing (if any) having been held to consider the relief requested in the Motion; and upon the record of the hearing (if any) and all proceedings had before the Court; and the Court ~~finding that the Motion is in full compliance with all applicable provisions~~

¹ The Debtors in these cases, along with the last four digits of each Debtor’s 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.

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

~~of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and the Court~~ having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Subject to the OCP Procedures (as defined below), the Debtors are authorized, but not directed, in their discretion, to retain and pay reasonable fees and expenses for the services of the OCPs set forth on Exhibit 1 hereto, as such may be supplemented in accordance with the procedures set forth in paragraph 3 (m) below, in the ordinary course of its business.
3. The following procedures shall govern the retention and payment of OCPs (the

“OCP Procedures”):

- (a) ~~Each~~ Within five (5) business days after the date of entry of this Order, the Debtors shall serve this Order upon each OCP. Thereafter, within thirty (30) calendar days of the later of (a) the date of entry of this Order and (b) the date on which each retained initial OCP commences postpetition services for the Debtors, each OCP shall complete a declaration, substantially in the form attached to hereto as Exhibit 2 (each, a **“Declaration of Disinterestedness”**), and provide such declaration to counsel for the Debtors. Upon receipt of such Declaration of Disinterestedness, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (ii) counsel to ~~any statutory committee appointed in these Chapter 11 Cases, if any, the official committee of unsecured creditors~~ (a) Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street NE Suite 2800, Atlanta, Georgia 30309 (Attn: Todd C. Meyers, Esq. (email: tmeyers@kilpatricktownsend.com)) and Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: David M. Posner, Esq. email: dposner@kilpatricktownsend.com)) and (b) Potter Anderson Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn:

Jeremy W. Ryan, Esq. and Christopher M. Samis, Esq. (emails: jryan@potteranderson.com and csamis@potteranderson.com)); and (iii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (collectively, the “**Reviewing Parties**”).

- (b) The Reviewing Parties shall have fourteen (14) days after the filing and service of a Declaration of Disinterestedness to object to the retention of the OCP filing such declaration (the “**Objection Deadline**”). An objecting party shall serve its objection upon the other Reviewing Parties and the relevant OCP so that any such objection is actually received on or before the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days after service, the matter may be scheduled for hearing before the Court on the next regularly-scheduled hearing date or such other date otherwise agreeable to the OCP, the Debtors, and the objecting party.
- (c) If no objection is received by the Objection Deadline with respect to an OCP, the Debtors shall be authorized to retain and pay that OCP in accordance with these OCP Procedures, *nunc pro tunc* to the Petition Date, or, if later, the date of employment which the OCP commenced post-petition services for the Debtors.
- (d) The Debtors shall not pay any fees and expenses to any OCP unless (a) such OCP has executed its Declaration of Disinterestedness and such Declaration of Disinterestedness was filed with the Court and served on the Reviewing Parties, (b) the applicable Objection Deadline has expired, and (c) no timely objection is pending. If a timely objection is received, no payment shall be made until such objection is either resolved or withdrawn or otherwise overruled by the Court.
- (e) ~~(d)~~ The Debtors are authorized to pay, but not directed, to make monthly payments to any retained OCP, without further application to the Court, one-hundred percent (100%) of the fees and disbursements upon submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date and the fees and disbursements related thereto (without prejudice to the Debtors’ rights to dispute any such invoices); provided, however, that each OCP’s fees do not exceed the applicable, except as set forth in Paragraph 3 (f) below, without further order of the Court, the Debtors shall not pay any individual OCP listed on Exhibit 1 and any amendment to Exhibit 1, amounts in excess of (a) \$15,000 a month on average over a rolling three (3) month period during the pendency of these Chapter 11 Cases for those with a Tier 1 OCP Cap, and (b) \$50,000 a month (no rolling) during the pendency of these Chapter 11 Cases for those with a Tier 2 OCP Cap.
- (f) ~~(e)~~ Notwithstanding the foregoing, the Debtors believe that it may be

appropriate to allow a monthly cap in excess of the applicable OCP Cap for any OCP who likely will exceed such cap amount but who should not otherwise be required to follow the payment procedure applicable to retained professionals. If the Debtors are able to obtain the agreement of all of the Reviewing Parties to a higher cap for any OCP, the agreement would be evidenced by the filing of a notice of increased OCP Cap (a “**Cap Increase Notice**”), and the increased OCP Cap will be deemed approved upon the filing of such Cap Increase Notice, without further action by the Court. Absent such an agreement of the Reviewing Parties, or if the OCP otherwise exceeds the applicable cap set forth in paragraph 3 (e) above, such OCP shall file a fee application (a “**Fee Application**”) ~~on account of the excess amount over the applicable OCP Cap and apply that applies~~ for compensation and reimbursement of ~~such the full~~ amount of its fees and expenses for the applicable period in compliance with sections 330 and 331 of the Bankruptcy Code, the applicable provisions of the Bankruptcy Rules, the Local Rules, the Guidelines for Reviewing Applications for Compensation filed under 11 U.S.C. § 330, and any other procedures and orders of the Court. ~~The U.S. Trustee reserves the right to request that any OCP who is regularly exceeding the applicable OCP Cap be the subject of a retention application pursuant to Bankruptcy Code section 327, including any order addressing interim compensation.~~

- (g) ~~(f)~~ Each Fee Application shall be served upon the Reviewing Parties. The Reviewing Parties shall then have fifteen (15) days to object to the Fee Application, which deadline shall be set forth in the notice of such Fee Application. If, after fifteen (15) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the OCP may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such OCP.
- (h) If any OCP exceeds the applicable OCP Cap set forth in Paragraph 3 (e) above, or any other applicable incremental amount agreed to by all the Reviewing Parties, by more than \$5,000 during any three month period more than twice, then such OCP must be retained by the Debtors pursuant to a separate retention application and will subsequently file fee applications in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court, and, as to any OCP that is a law firm, such OCP shall make a reasonable effort to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013, both in connection with its retention application and its interim and final Fee Applications to be filed in these Chapter 11 Cases.

- (i) ~~(g)~~ At three-month intervals (each, a “**Quarter**”) during the pendency of these Chapter 11 ~~Case~~Cases, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that shall include the following information for each OCP: (i) the name of the OCP; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter broken down by month during that Quarter, as well as the amounts paid to each such OCP in the two months prior to the Quarter; (iii) all postpetition payments made to that OCP to such date; and (iv) a general description of the services rendered by that OCP (the “Quarterly Statements”). The first Quarterly Statement covering the period from the Petition Date through September 30, 2019 shall be filed by October 31, 2019. The obligation to file Quarterly Statements shall terminate upon confirmation of a chapter 11 plan in these Chapter 11 Cases, provided that a Quarterly Statement shall be filed with respect to the final period (or partial period) ending on such confirmation date. The Reviewing Parties shall be permitted to file objections with the Court to the payments to the OCP identified in the Quarterly Statement within fourteen (14) days following service of the Quarterly Statement (the “Quarterly Statement Objection Deadline”). If an objection to the fees and expenses of an OCP is filed with the Court on or before the Quarterly Statement Objection Deadline, such fees and expenses will be subject to review and approval by the Court pursuant to section 330 of the Bankruptcy Code to the extent that such objection is not consensually resolved.
- (j) All payments to OCPs shall be subject to sections 328(c) and 330 of the Bankruptcy Code.
- (k) Except for law firms that represented the Debtors prior to the Petition Date and that have been employed pursuant to this Order, all OCPs shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtors and their estates, and must include a statement of disinterestedness in their Declaration of Disinterestedness.
- (l) ~~(h)~~ The Debtors may retain additional OCPs from time to time during these Chapter 11 Cases by (i) including each additional OCP on an amended version of Exhibit 1 attached hereto that shall be filed with the Court and served on the Reviewing Parties, which amendment shall list the names of the additional OCPs and a brief description of the services to be rendered (including, if a law firm, the area of law), and the amount of the applicable payment cap, and (ii) having such additional OCP comply with the OCP Procedures. Such authorization is effective nunc pro tunc to the date of filing of the amendment or the applicable date of engagement, provided that the latter is no more than thirty (30) calendar days prior to the filing of the amendment. For purposes of complying with the Declaration of Disinterestedness requirement above, for each additional OCP, the thirty

(30) calendar day deadline for the filing of the Declaration of Disinterestedness by such additional OCP shall run from the date of the filing of the amendment with the Court, but all other requirements and deadlines shall remain the same.

4. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim, and any such payment is not intended and should not be construed as an assumption of any executory contract or obligation of the Debtors.

5. Notwithstanding the possible applicability of Bankruptcy Rules 7062, 9014, or otherwise, this Order shall be immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

7. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Order.

EXHIBIT 1**List of Ordinary Course Professionals**

Ordinary Course Professional	OCP Address	Type of Service	Applicable OCP Cap
Jackson Walker	1401 McKinney Street, Suite 1900 Houston, Texas 77010 2323 Ross Avenue, Suite 600 Dallas, Texas 75201	Outside <u>Regulatory</u> Counsel	Tier 1 OCP Cap <u>(\$15,000 a month)</u>
Shook Hardy & Bacon	2555 Grand Boulevard Kansas City, Missouri 641108	Outside <u>Corporate/Litigation</u> Counsel	Tier 1 OCP Cap <u>(\$15,000 a month)</u>
Opportune LLP	711 Louisiana Street, Suite 3100 Houston, Texas 77002	Asset Impairment Valuation	Tier 2 OCP Cap <u>(\$50,000 a month)</u>
A.T. Tax Advisory	40 NE Loop 410, Suite 607 San Antonio, Texas 78216	Property Tax Consultant	Tier 2 OCP Cap <u>(\$50,000 a month)</u>

EXHIBIT 2

Form of Declaration

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**DECLARATION IN SUPPORT OF EMPLOYMENT OF [_____] AS
PROFESSIONAL UTILIZED IN ORDINARY COURSE OF BUSINESS**

I, _____, declare that the following is true to the best of my knowledge, information and belief:

1. I am a [position] of [Firm], located at [Street, City, State ZIP Code] (the “**Firm**”), which has been employed by the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) in the ordinary course of the Debtors’ business. The Debtors wish to retain the Firm to continue providing ordinary course services during these Chapter 11 Cases, and the Firm has consented to provide such services. This Declaration is submitted in compliance with the *Order Under 11 U.S.C. §§ 105(a), 327, 330 and 331 Authorizing Employment and Payment of Professionals Utilized in Ordinary Course of Business* (the “**OCP Order**”), [which OCP Order I have reviewed](#). [I understand the limitations on compensation and reimbursement under such OCP Order](#).

[2. The Firm \[IS/IS NOT\] a legal services firm. \[If the firm is a legal services firm, please state the area of law.\]](#)

¹ The Debtors in these cases, along with the last four digits of each Debtor’s 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.

3. The Firm [HAS/HAS NOT] provided services to the Debtors prior to the Petition Date of July 15, 2019.

4. ~~2.~~The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to the Debtors or to these Chapter 11 Cases for persons that are parties in interest in these Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Debtors or these Chapter 11 Cases, or have any relationship with any such person, their attorneys, or their accountants that would be adverse to the Debtors or their estates.

[PLACEHOLDER FOR DESCRIPTION OF SERVICES RENDERED]

5. ~~3.~~As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these Chapter 11 Cases.

6. ~~4.~~Neither I nor any principal, partner, director, or officer of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. ~~5.~~Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed.

8. [For all firms other than legal services firms that represented the Debtors pre-petition] The Firm is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

9. ~~6.~~The Firm intends to bill the Debtors for professional services rendered in connection with these Chapter 11 Cases, in accordance with the OCP Order, with such bill to include compensation for services based on the hourly rates set forth below, plus reimbursement of actual and necessary expenses and other charges incurred by the Firm. The principal [attorneys and paralegals/other professionals]/[employees] designated to represent the Debtors and their current standard rates are:

[PLACEHOLDER FOR LIST OF PROFESSIONALS AND HOURLY RATES]

10. ~~7.~~The rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Such rates are the Firm's standard rates for work of this nature. The rates are set at a level designed to fairly compensate the Firm for the work of its [attorneys and paralegals/other professionals]/[employees] and to cover fixed and routine overhead expenses.

11. ~~8.~~It is the Firm's policy to charge its clients in all areas of practice for all expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, [PLACEHOLDER FOR DESCRIPTION OF EXPENSES] and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

12. ~~9.~~No representations or promises have been received by the Firm[, nor by any principal, partner, director, officer, or professional thereof,] as to compensation in connection with these Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code. The Firm has no agreement with any other entity to share with such entity any compensation received by the Firm in connection with these Chapter 11 Cases.

13. ~~10.~~The Debtors owe the Firm \$[_____] for fees and expenses incurred prior to and unpaid as of the date these Chapter 11 Cases were commenced (the "**Petition Date**"), the

payment of which is subject to the limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. [FOR NON-LEGAL SERVICES FIRMS ONLY] The firm has agreed to waive all unpaid amounts for services rendered prior to the Petition Date. [FOR LEGAL SERVICES FIRMS ONLY] The Firm understands that it must file a proof of claim for such fees and expenses unless the amount thereof is properly listed in the Debtors' schedules of liabilities and is not designated therein as contingent, unliquidated or disputed.

14. The Firm [does / does not] keep time records in one-tenth of an hour increments in the ordinary course of business. [IF THE FIRM DOES NOT KEEP TIME IN ONE-TENTH OF AN HOUR INCREMENTS, PLEASE EXPLAIN HOW TIME RECORDS ARE KEPT]

15. As of the Petition Date, the Firm held a prepetition retainer of \$_____.

16. ~~11.~~As of the Petition Date, the Firm [was/was not] party to an agreement for indemnification with the Debtors. [A copy of such agreement is attached as Exhibit A to this Declaration.]

17. ~~12.~~The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors or other parties in interest in these cases, and upon conclusion of such inquiries, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

[Name]
[Title]

[FIRM NAME]
Address:

Telephone:
Facsimile:
Email: