



ENTERED
07/13/2020

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

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 In re: : Chapter 11
 :
 HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
 :
 Debtors. : (Jointly Administered)
 :
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**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING,
AND SOLICITATION AGENT EFFECTIVE AS OF THE PETITION DATE**

[Relates to Motion at Docket No. 18]

Upon the application (the "Application")² of the Debtors for an order authorizing the retention and employment of Kurtzman Carson Consultants LLC ("KCC") as claims, noticing, and solicitation agent, under section 156(c) of title 28 of the United States Code, sections 105(a), 327, 503, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2002(f), 2014(a), 2016, 6003(a) and 6004, and Local Rules 2014-1 and 9013-1, effective to the Petition Date, to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and (iii) provide such other administrative services, as required by the Debtors, that would fall within the purview of services

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

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



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to be provided by the Clerk's Office; and upon the Jordan Declaration submitted in support of the Application; and the Debtors having estimated that there are thousands of creditors in the Chapter 11 Cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under section 156(c) of title 28 of the United States Code to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in these Chapter 11 Cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or their estates respecting the matters upon which it is to be engaged; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of KCC is in the best interests of the Debtors, their estates, and their creditors; and sufficient cause appearing therefor; it is hereby

ORDERED THAT:

1. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain KCC effective as of the Petition Date under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and all related tasks, all as described in the Application as the KCC Services.
3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Chapter 11 Cases and is authorized and

directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. KCC is authorized and directed to provide an electronic interface for filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. KCC shall provide access to the claims register, including complete proofs of claim with attachments, if any, without charge.

5. KCC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement, upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel to the Ad Hoc Group, counsel for any official committee monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Services Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The Debtors shall indemnify the Indemnified Parties (as defined in the Services Agreement) under the terms of the Services Agreement as modified by this Order.

12. The Indemnified Parties shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify an Indemnified Party, or provide contribution or reimbursement to an Indemnified Party for any claim or expense that is: (a) judicially determined (the determination having become final) to have arisen from the Indemnified Party's gross negligence, willful misconduct, breach of fiduciary duty (if any), self-dealing or fraud; (b) for a contractual dispute in which the Debtors allege the breach of an Indemnified Party's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; (c) of any type for which the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re Thermadyne Holding Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002); or (d) settled prior to a judicial determination under (a) or (b) but determined by the Court, after notice and a hearing, to

be a claim or expense for which an Indemnified Party should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Indemnified Party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Party must file an application therefor in the Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by the Court approving the payment. This paragraph is intended only to specify the period of time through which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution, or reimbursement and does not limit the duration of the Debtors' obligation to indemnify the Indemnified Parties. All parties in interest shall retain the right to object to any demand by the Indemnified Parties for indemnification, contribution, or reimbursement.

15. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and Debtors' counsel and cause to have all original proofs of claim and computer information turned over to another claims, noticing, and solicitation agent with the advice and consent of the Clerk and Debtors' counsel.

16. Notwithstanding the Application or the Services Agreement, to the extent the Debtors wish to expand the scope of KCC's services beyond those services set forth in the Application and the Services Agreement, the Debtors shall be required to seek further approval from this Court.

17. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

18. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

19. Notwithstanding any term in the Services Agreement to the contrary, KCC's liability during the Chapter 11 Cases shall not be limited to the amount billed or paid under the Services Agreement.

20. Notwithstanding any term in the Services Agreement to the contrary, KCC shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Services Agreement, the Application and this Order, this Order shall govern.

22. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the "**DIP Orders**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

23. If KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Services Agreement, the

invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Court after notice and a hearing.

24. In the event the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code and if claims agent representation would be necessary in the converted chapter 7 cases, KCC shall continue to be paid in accordance with 28 U.S.C. § 156(c) under the terms set forth herein.

25. After entry of an order terminating KCC's services, upon the closing of the Chapter 11 Cases or for any other reason, KCC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and transmitting to the Clerk's office all claims in an electronic format, if applicable, and shall be compensated by the Debtors in connection therewith.

26. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

Signed: July 13, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE