



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 (I) AUTHORIZING (A) PAYMENT OF PREPETITION
WORKFORCE OBLIGATIONS AND (B) CONTINUATION
OF WORKFORCE PROGRAMS ON A POSTPETITION BASIS, (II)
AUTHORIZING PAYMENT OF PAYROLL TAXES, (III) CONFIRMING
THE DEBTORS' AUTHORITY TO TRANSMIT PAYROLL DEDUCTIONS,
(IV) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO
ADMINISTRATORS, AND (V) DIRECTING BANKS TO HONOR PREPETITION
CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

[Relates to Motion at Docket No. 17]

Upon the emergency motion (the "**Motion**")² of the Debtors for entry of an Order (i) authorizing the Debtors to (a) pay certain prepetition amounts for compensation, benefits, and reimbursable expenses owing to or for the benefit of the Debtors' Workforce and (b) continue, postpetition, the Workforce Programs in the ordinary course of business, as such programs were in effect immediately prior to the filing of the Chapter 11 Cases; (ii) confirming that the Debtors are authorized to pay any and all local, state and federal withholding and payroll-related or similar

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 Motion.



taxes relating to prepetition periods; (iii) confirming that the Debtors are permitted, but not required, to continue to deduct and to transmit deductions from payroll checks as authorized by Employees, as required by any Workforce-related plan, program or policy, or as required by law; (iv) authorizing the Debtors to pay any prepetition claims owing to the Administrators; and (v) authorizing and directing all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant thereto; and (vi) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this 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. Subject to Paragraph 2 of this Order, the Debtors are authorized, but not directed, to pay or otherwise honor all prepetition Workforce Obligations to, or for the benefit of, the Workforce, including but not limited to, all prepetition amounts owed in connection with (i) the Workforce Compensation Obligations, (ii) the Employee Reimbursement Obligations, and (iii) the Employee Benefits Obligations, each as described in the Motion. Notwithstanding any other provision of this Order, such payments shall not exceed \$2,837,785 in the aggregate without

further order of the Court. Such Workforce Obligations are summarized in further detail in the chart below.

Workforce Obligations	Approximate Outstanding Prepetition Amount
<i>Workforce Compensation Programs</i>	
vii. Employee payroll obligations (net of Deductions)	\$358,900
viii. Independent Contractors' compensation	\$96,700
ix. Deductions (payroll, Employee-funded benefits and insurance, etc.)	\$1,147,800
x. PTO	\$609,700
xi. Employee Cash Incentive Programs	\$65,000
xii. LTIP	\$0
TOTAL	\$2,278,100
<i>Employee Reimbursement Programs</i>	
viii. Business Expenses	\$3,700
ix. Per Diem Stipends	\$5,900
x. Mobile Expenses	\$1,500
xi. Tuition Expenses	\$0
xii. Director Fees and Expenses	\$0
xiii. Lodging Expenses	\$297,800
xiv. Relocation Expenses	\$0
TOTAL	\$308,900
<i>Employee Benefits Programs (Employer Costs)</i>	
vii. Medical Benefits, Dental Benefits, and Vision Plan	\$72,300
viii. HSAs and HRA	
a. HSAs	\$3,900
b. HRA	\$148,125
ix. Income Protection Plans	\$400
x. 401(k) Plan	\$0
xi. Workers Compensation Policies	\$26,060
xii. Benefits Reimbursement Arrangement	\$0

Workforce Obligations	Approximate Outstanding Prepetition Amount
TOTAL	\$250,785
GRAND TOTAL	\$2,837,785

2. The Debtors shall provide five (5) days' advance notice to the U.S. Trustee, counsel to the ABL Agent, counsel to the Ad Hoc Group, and counsel to any statutory committee if any individual in the Workforce is anticipated to receive prepetition payments under this Order in excess of the priority caps set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided*, that if the U.S. Trustee, the ABL Agent, the Ad Hoc Group, or any statutory committee objects to such payment, the Debtors shall not make such payment in excess of the priority caps set forth in sections 507(a)(4) and 507(a)(5) without further order of the Court or written consent from the U.S. Trustee or any statutory committee, as applicable. For the avoidance of doubt, the Debtors shall not make any cash payments to "insiders" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, under any bonus, incentive, or retention plan, or any severance obligation without first (i) consulting with the advisors to the ABL Agent and the advisors to the Ad Hoc Group and (ii) seeking authority from the Court.

3. Except as otherwise expressly set forth in this Order, the Debtors are authorized to (i) continue each of the Workforce Programs, including but not limited to, the Workforce Compensation Programs, the Employee Reimbursement Programs, and the Employee Benefits Programs, each as described in the Motion, in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of the Chapter 11 Cases, and (ii) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program, including but not limited to, the Workforce Compensation Programs, the

Employee Reimbursement Programs, and the Employee Benefits Programs, as described in the Motion, in the ordinary course of business.

4. The Debtors are authorized to honor the LTIP Awards granted prepetition and continue the vesting of Stock Units, on a postpetition basis, in the ordinary course and consistent with historical practice, both for insider and non-insider Employees; *provided* that no cash payments shall be made on account the LTIP without further order of the Court; *provided, further* that the Debtors are not authorized to make any further grants under the LTIP during the Chapter 11 Cases without further order of the Court. Before making any payments or transfers due under the Employee Cash Incentive Programs and LTIP in excess of \$25,000 to any individual, the Debtors shall provide five (5) days' advance notice to the U.S. Trustee, the Ad Hoc Group, and any statutory committee of (a) the title of the Claimant, (b) the amount of the payment or transfer of such Claimant, and (c) the proposed payment date. The Debtors shall maintain a matrix or schedule of amounts paid related to the Employee Cash Incentive Programs and LTIP subject to the terms and conditions of this Order, including the following information: (a) the name of the Claimant paid; (b) the amount of the payment to such Claimant; (c) the total amount paid to the Claimant to date; (d) the payment date; and (e) the purpose of such payment. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases every 30 days beginning upon entry of this Order.

5. The Debtors are authorized to reimburse the Employees for all Employee Reimbursement Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties on account of amounts owed in connection with the Employee Reimbursement Obligations.

6. The Debtors are authorized to continue their Workers' Compensation Policy and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees arising under the Workers' Compensation Policy and or programs in which they participate. In addition, the automatic stay of section 362(d) of the Bankruptcy Code is hereby lifted to allow the Debtors' Employees to proceed with any Workers' Compensation Claims they may have under the Workers' Compensation Policy and to allow the Debtors' insurance providers and/or third party administrators to negotiate, settle, and/or litigate such claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

7. The Debtors are authorized to withhold, pay and/or transmit any and all amounts attributable to the Deductions, including but not limited to, paying withholding and payroll-related taxes and fees related to the Workforce Obligations, social security taxes, and Medicare taxes, as required by any Workforce-related plan, program or policy, or as required by law, whether such amounts relate to the period before or after the Petition Date.

8. The Debtors are authorized to pay amounts owed in connection with claims of the Administrators in connection with administering and delivering payments or providing other services and benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators.

9. The Debtors are authorized, but not directed, to pay any prepetition amounts owed to the Directors and may continue to make such payments on a postpetition basis in the ordinary course of business.

10. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to authorize any prepetition or postpetition payments on account of an incentive plan, a retention plan (including the retention plans governing the Prepetition KERP Payments), or a similar plan, in

each case to the extent such payments violate section 503(c) of the Bankruptcy Code; *provided, however,* that nothing herein shall prejudice the Debtors' ability to seek authorization to make any payments that are subject to section 503(c) of the Bankruptcy Code, in consultation with the advisors to the ABL Agent and the advisors to the Ad Hoc Group, pursuant to a separate motion.

11. Authorization to pay, and the payment of, any amounts on account of prepetition Workforce Obligations, including any amounts on account of the Workforce Compensation Obligations, the Employee Reimbursement Obligations, and/or the Employee Benefits Obligations, shall not affect the Debtors' right to contest the amount or validity of any prepetition Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

12. The Debtors will provide notice to the U.S. Trustee, counsel to the ABL Agent, counsel to the Ad Hoc Group, and any other statutory committee of any changes to the Workforce Obligations or of any new programs, policies, and benefits.

13. Neither the provisions of this Order, nor any payments made or not made by the Debtors pursuant to this Order, shall be deemed an assumption or rejection of any Workforce Program, agreement or contract, or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and any member of the Workforce, or other person.

14. Notwithstanding anything to the contrary in this Order, the Debtors retain their right, in consultation with the advisors to the ABL Agent and the advisors to the Ad Hoc Group, to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law; *provided, however,* that the

Debtors shall seek court approval, on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code.

15. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance, limit or change the status of any claim held by, any member of the Workforce, or other person.

16. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition amounts owed to any party in connection with the Prepetition Workforce Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. Further, the Debtors are authorized to issue new postpetition checks and initiate new postpetition electronic fund transfers to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

17. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

18. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors'

rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

19. 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 orders 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).

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

21. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

22. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

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

Signed: July 13, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE