

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**INTERIM ORDER (I) AUTHORIZING (A) PAYMENT OF PREPETITION
WORKFORCE OBLIGATIONS AND (B) CONTINUATION OF WORKFORCE
PROGRAMS ON POSTPETITION BASIS, (II) AUTHORIZING PAYMENT OF
PAYROLL-RELATED 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**

Upon the motion (the "Motion")² of the Debtors for entry of an Interim Order under sections 105(a), 362(d), 363(b), 507(a), 541, 553, 1107(a), and 1108 of the Bankruptcy Code, and Bankruptcy Rule 6003 (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 the Workforce Programs in the ordinary course of business postpetition, as 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 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

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 them in the Motion.



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 hereunder; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the final hearing; 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 this Interim Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. 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 Interim Order, such payments shall not exceed \$1,000,000 in the aggregate without further order of the Court. Such Workforce Obligations are summarized in further detail in the chart below.

Workforce Obligations	Estimated Interim Amount
<i>Workforce Compensation Programs</i>	
i. Employee payroll obligations (inclusive of Deductions)	\$900,000
ii. PTO	\$0
iii. Employee Incentive Programs	\$0
iv. Payments to Recruiting Agency and Temporary Staffing Agency	\$0
TOTAL	\$900,000
<i>Employee Reimbursement Programs</i>	
i. Business expenses	\$10,000
ii. Vehicle Program and Vehicle Fleet Program	\$10,000
iii. Relocation Expenses	\$0
iv. Per-Diem	\$0
v. Company-Owned Homes	\$0
vi. Miscellaneous Reimbursement Programs	\$12,500
vii. Independent Director fees and expenses	\$0
TOTAL	\$32,500
<i>Employee Benefits Programs</i>	
i. Medical Benefits, Dental Benefits, and Vision Plan	\$2,500
ii. HSAs	\$25,000
iii. Income Protection Plans	\$0
iv. 401(k) Plan	\$40,000
v. Workers Compensation Policy	\$0
vi. Severance Plan	\$0
vii. Supplemental Benefits Programs	\$0
TOTAL	\$67,500

3. Except as otherwise expressly set forth in this Interim 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. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid PTO except upon termination of an Employee and to the extent required by applicable non-bankruptcy law.

5. Subject to the caps set forth in paragraph 2, 8 and 19 of this Interim Order, 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. Notwithstanding any other provision of this Interim Order, such payments to Administrators shall not exceed \$5,000 in the aggregate without further order of the Court.

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

10. Nothing herein shall authorize the Debtors to make payments under the Employee Incentive Programs.

11. Subject to entry of the Final Order, the Debtors are authorized to continue the Severance Plan on a postpetition basis in the ordinary course of business and to pay any accrued amounts thereunder as they become due; *provided that*, nothing herein shall be deemed to

authorize the payment of any amounts in satisfaction of bonus or severance obligations, or other amounts which are subject to section 503(c) of the Bankruptcy Code.

12. 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 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.

13. 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 Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

14. 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 such prepetition Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

15. Neither the provisions of this Interim Order, nor any payments made or not made by the Debtors pursuant to this Interim 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.

16. Notwithstanding anything to the contrary in this Interim Order, the Debtors retain their right 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.

17. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim 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.

18. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

19. Notwithstanding any other provision of this Interim Order and subject to entry of the Final Order, no payments to any individual Employee or Temporary Staff pursuant to this Interim Order on account of prepetition obligations shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

20. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b).

21. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

22. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

24. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.

25. The final hearing (the "**Final Hearing**") on the Motion shall be held on August 14, 2019, at 11:00 a.m., prevailing Eastern Time. On or before 4:00 p.m., prevailing Eastern Time, on August 7, 2019, any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq., and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com, and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to (a) the First Lien Administrative Agent and Collateral Agent for the Debtors' prepetition Second Amended and Restated Revolving Credit and Security Agreement, (b) the Second Lien Notes Agent and Collateral Agent for the Debtors' prepetition Second Lien Note Purchase Agreement, and (c) the DIP Agent, 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)); (v) local counsel to (a) the First Lien Administrative Agent and Collateral Agent for the Debtors' prepetition Second Amended and Restated Revolving Credit and Security Agreement, (b) the Second Lien Notes Agent and Collateral Agent for the Debtors' prepetition Second Lien Note Purchase Agreement, and (c) the DIP Agent, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) 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)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

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

Dated: July 17, 2019
Wilmington, Delaware

KaB. Owens
THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE