

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 Nos. 4, 58 & 77

**CERTIFICATION OF COUNSEL REGARDING
 FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R.
 BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING
 CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING
 MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS
 FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT
 PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY
 TRANSACTIONS; AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO
CERTAIN POSTPETITION INTERCOMPANY CLAIMS**

The undersigned hereby certifies as follows:

1. On July 15, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.P. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Administrative Expense Status to Certain Postpetition Intercompany Claims* [Docket No. 4] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

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. On July 17, 2019, the Court entered the *Interim Order Under 11 U.S.C. §§ 105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.P. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Administrative Expense Status to Certain Postpetition Intercompany Claims* [Docket No. 58] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of Interim Order Under 11 U.S.C. §§ 105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions; and (IV) Granting Administrative Expenses Status to Certain Postpetition Intercompany Claims; and (B) Final Hearing Thereon* [Docket No. 77], 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**”) and the official committee of unsecured creditors (the “**Committee**”) until August 9, 2019 at 4:00 p.m. (ET).

4. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee and the Committee. The Comments were resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (the “**Revised Order**”).

5. The Revised Order has been circulated to counsel to the Committee, 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**

In re:	x	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	x	Re: Docket Nos. 4 & 58

FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS; AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS

Upon the motion (the “Motion”)² of the Debtors for entry of a Final Order under sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described in the Motion or herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their

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, Ft. Worth, TX 76109.

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

existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; and (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on July 17, 2019; 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 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; 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 Final Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Final Order. In connection with the ongoing utilization of the Cash Management System, the Debtors

shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions between Debtors on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor entity on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

4. The Debtors are authorized to (i) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account number, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees and Expenses arising prior to the Petition Date; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

5. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue

postpetition, and electronic funds transfers drawn on the Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees and Expenses outstanding as of the date hereof, if any.

6. In each instance in which the Debtors hold Bank Accounts at banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of the Interim Order the Debtors shall (i) contact the Banks, (ii) provide the Banks with each of the Debtors' employer identification numbers, and (iii) identify their bank accounts held as being held by a debtor-in-possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor-in-Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor-in-Possession" and the

main bankruptcy case number on all checks; *provided* that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main case number on such items within ten days of the date of entry of the Interim Order.

8. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

9. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Final Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees and Expenses) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors’ designation of

any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

10. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Final Order (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, such Bank shall not be deemed liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Final Order.

11. The Debtors are authorized to implement such non-material, reasonable changes consistent with this Final Order to the Cash Management System as the Debtors may deem necessary or appropriate.

12. The Debtors may close any of the Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the “**New Accounts**”) wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) only at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement, and any New Account that the Debtors open shall be (i) at a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor-in-Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized (but not required, except as set forth in the

cash management agreements between the Bank and the Debtors) to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors' monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases, including the Official Committee of Unsecured Creditors (the "**Committee**") within fifteen business days after the opening or closing of any such account.

13. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Final Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of thirty days (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the "**Extension Period**") within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors' right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

14. Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of who makes the disbursements.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of the

underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

16. The UST Requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived except as otherwise required by any applicable agreements between the Debtors and the Banks.

17. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

18. Nothing in this Final Order waives or impairs the Committee's rights to seek to challenge the characterization of any Intercompany Claim as equity.

19. The Debtors shall provide the Committee's financial advisor with (i) bi-weekly reports of postpetition Intercompany Transactions, (ii) reasonable access to the Debtors and their professionals regarding the Intercompany Transactions reports; and (iii) reasonable access to the Debtors' books and records regarding the Intercompany Transactions.

20. Nothing contained in the Motion or this Final Order shall be construed to (i) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

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

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

23. 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 Final Order.

24. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final 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 Final Order. Nothing contained in this Final 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.

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

EXHIBIT B

Blackline

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

In re:	x	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19 <u>19-11563 (KBO)</u>
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	<u>Re: Docket Nos. 4 & 58</u>

FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR. L.R. 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (II) AUTHORIZING CONTINUATION OF EXISTING DEPOSIT PRACTICES, (III) APPROVING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS; AND (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO CERTAIN POSTPETITION INTERCOMPANY CLAIMS

Upon the motion (the “Motion”)² of the Debtors for entry of a Final Order under sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described in the Motion or herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their

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

existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; and (vi) according administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on July 17, 2019; 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 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; 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 Final Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Final

Order. In connection with the ongoing utilization of the Cash Management System, the Debtors shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions between Debtors on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor entity on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

4. The Debtors are authorized to (i) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account number, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees and Expenses arising prior to the Petition Date; (iv) perform their obligations under the documents and agreements governing the Bank Accounts; and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

5. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and,

if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic funds transfers drawn on the Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees and Expenses outstanding as of the date hereof, if any.

~~6. 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.~~

6. ~~7.~~In each instance in which the Debtors hold Bank Accounts at banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of ~~this Final~~ the Interim Order the Debtors shall (i) contact the Banks, (ii) provide the Banks with each of the Debtors' employer identification numbers, and (iii) identify their bank accounts held as being held by a debtor-in-possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that

the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. ~~8.~~ Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation “Debtor-in-Possession” or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the main bankruptcy case number on all checks; *provided* that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main case number on such items within ten days of the date of entry of ~~this Final~~ the Interim Order.

8. ~~9.~~ The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

9. ~~10.~~ *Nunc pro tunc* to the Petition Date, and subject to the terms of this Final Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees and Expenses) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court and directed by the

Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

10. ~~11.~~ If any Bank honors a prepetition check or item drawn on any account that is the subject of this Final Order (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error, such Bank shall not be deemed liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Final Order.

11. ~~12.~~ The Debtors are authorized to implement such non-material, reasonable changes consistent with this Final Order to the Cash Management System as the Debtors may deem necessary or appropriate.

12. ~~13.~~ The Debtors may close any of the Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the "New Accounts") wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) only

at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement, and any New Account that the Debtors open shall be (i) at a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor-in-Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors’ requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases—, including the Official Committee of Unsecured Creditors (the “Committee”) within fifteen business days after the opening or closing of any such account.

13. ~~14.~~ The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Final Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of thirty days (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the “**Extension Period**”) within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors’ right to request

from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

14. ~~15.~~ Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of who makes the disbursements.

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

16. ~~17.~~ The UST Requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived except as otherwise required by any applicable agreements between the Debtors and the Banks.

17. ~~18.~~ All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

18. [Nothing in this Final Order waives or impairs the Committee's rights to seek to challenge the characterization of any Intercompany Claim as equity.](#)

19. [The Debtors shall provide the Committee's financial advisor with \(i\) bi-weekly reports of postpetition Intercompany Transactions, \(ii\) reasonable access to the Debtors and their professionals regarding the Intercompany Transactions reports; and \(iii\) reasonable access to the Debtors' books and records regarding the Intercompany Transactions.](#)

20. ~~19.~~ Nothing contained in the Motion or this Final Order shall be construed to (i) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

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

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

23. ~~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 Final Order.

24. ~~23.~~ Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final 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 Final Order. Nothing contained in this Final 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.

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

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE