

**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
 :
 : **Re: Docket Nos. 247, 255, 276 & 277**
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**MOTION OF DEBTORS FOR LEAVE TO FILE
DEBTORS’ OMNIBUS REPLY TO OBJECTIONS TO
DISCLOSURE STATEMENT AND DISCLOSURE STATEMENT MOTION**

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 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. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On July 15, 2019 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations,

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.



their capital and debt structures and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration Bryan M. Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 14] filed with the Court on July 16, 2019, and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in these Chapter 11 Cases. On July 31, 2019 the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”).

4. On August 22, 2019, the Debtors filed the *Motion of the Debtors for Entry of an Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other Dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan, (IV) Approving the Manner and Forms of Notice and Other Related Documents, and (V) Granting Related Relief* [Docket No. 247] (the “**Disclosure Statement Motion**”) seeking, among other things, approval of the *Disclosure Statement with Respect to Joint Plan of Reorganization for Emerge Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended, modified or supplemented from time to time, the “**Disclosure Statement**”).

5. In response to the Disclosure Statement Motion and the Disclosure Statement, the Debtors received several formal objections (collectively, the “**Objections**”) filed by: (i) the Committee [Docket No. 277], (ii) Pownall Services, LLC [Docket No. 276] (“**Pownall**”), and (iii) the Securities and Exchange Commission [Docket No. 255] (the “**SEC**” and together with

the Committee and Pownall, the “**Objecting Parties**”). Additionally, the Debtors received informal comments (the “**Comments**”) from the U.S. Trustee.

RELIEF REQUESTED

6. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), authorizing the Debtors to file their reply (the “**Reply**”),² filed contemporaneously herewith, in support of the Disclosure Statement Motion and the Disclosure Statement. Pursuant to the Reply, the Debtors will address issues raised in the Objections filed in opposition to the Disclosure Statement Motion and the Disclosure Statement.

BASIS FOR RELIEF

7. Pursuant to Local Rule 9006-1(d), “[r]eple papers . . . may be filed by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda.” *See* Del. Bankr. L.R. 9006-1(d). The agenda for the hearing to consider the Disclosure Statement Motion and the Disclosure Statement (the “**Hearing**”) was due by 12:00 p.m. (prevailing Eastern Time) on September 5, 2019. Accordingly, pursuant to Local Rule 9006-1(d), the deadline to file the Reply was 4:00 p.m. (prevailing Eastern Time) on September 4, 2019 (the “**Reply Deadline**”). As a result, absent leave of the Court, the Debtors would be unable to file the Reply and the Court would be denied the opportunity to review the Debtors’ response to the Objections in advance of the Hearing.

8. The Debtors submit that cause exists to grant the relief requested by this Motion and approve an extension of the Reply Deadline under Local Rule 9006-1(d). The Debtors have

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Reply.

attempted to negotiate with the Objecting Parties in an effort to resolve the Objections and have worked diligently with the U.S. Trustee to resolve the Comments in advance of the Hearing. Accordingly, the Debtors waited to file any reply to the Objections in an attempt to narrow the contested issues for the Hearing and the Court. The Debtors' respectfully submit that their opportunity to file the Reply should not be foreclosed as a result of their negotiation efforts with the Objecting Parties. The Reply will provide the Court with substantive information and arguments for consideration in connection with the Disclosure Statement Motion, the Disclosure Statement and the Objections, and the Court's consideration of the Reply may reduce argument on these matters at the Hearing. Further, extending the Reply Deadline will not prejudice the parties.

CONSENT TO JURISDICTION

9. Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

NOTICE

10. Notice of this Motion will be given to: (a) the Office of the U.S. Trustee; (b) the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) counsel to the Committee; (e) counsel to the DIP Agent and the Prepetition Agents; (f) counsel to Insight Equity; (g) counsel to Pownall; (h) counsel to the SEC; and (i) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

11. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: September 6, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Counsel to the Debtors and Debtors-in-Possession

Exhibit A

Proposed 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	

**ORDER GRANTING MOTION OF DEBTORS FOR LEAVE TO FILE
DEBTORS’ OMNIBUS REPLY TO OBJECTIONS TO
DISCLOSURE STATEMENT AND DISCLOSURE STATEMENT MOTION**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), pursuant to Local Rule 9006-1(d), granting the Debtors leave and permission to file the Reply in support of the Disclosure Statement Motion and the Disclosure Statement; 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 consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); 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 upon the record herein and upon all of the proceedings had before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor,

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.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are granted leave and permission to file the Reply, and the Court will consider the Reply.
3. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.