

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	§	Chapter 11
EMERGE ENERGY SERVICES LP, <i>et al</i>	§	Case No. 19-11563
Debtor.	§	(Jointly Administered)

**ANCHOR TECHNICAL SERVICES, LLC’S RESPONSE TO REORGANIZED DEBTORS’ FIRST (SUBSTANTIVE) OMNIBUS OBJECTION TO, OR MOTION TO RECLASSIFY, PURPORTED SECURED CLAIMS**

Anchor Technical Services, LLC (“Anchor”), by and through the undersigned counsel, hereby files this response to the *Reorganized Debtors’ First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims* [Docket No. 876], and respectfully represents as follows:

**BACKGROUND**

1. Anchor is a company which delivered and provided labor and goods for the improvement and construction of the project located at 24068 Pleasonton Road, San Antonio, Texas 78264 (the “San Antonio Plant”) for Superior Silica Sands, LLC (“Debtor”). The amount due and owing Anchor up through July 15, 2019 (the “Petition Date”) is at least \$15,571.76, exclusive of accruing interest, costs, fees, and other charges.

2. On August 9, 2019, Anchor filed its *Notice of Perfection of Mechanic’s and Materialmen’s Lien by Anchor Technical Services, LLC Pursuant to 11 U.S.C. § 546(b)(2)* [Docket No. 159].

3. On September 9, 2019, Anchor filed a proof of claim against the Debtor asserting a secured claim in the amount of \$15,571.76 resulting from its properly perfected M&M lien on the San Antonio Plant. *See* Claim No. 367. Under Chapter 53 of the Texas Property Code, a



statutory mechanic's lien relates back to the time of the inception of the lien, which is the "commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used." Tex. Prop. Code § 53.124.

### **RESPONSE**

4. Debtors' objection should be overruled because it asserts no basis on which to substantively disallow Anchor's properly perfected secured claim. Rather, the Debtors are improperly attempting to determine the validity, priority, and extent of liens in a claim objection proceeding rather than an adversary proceeding.

5. Rule 7001 of the Federal Rules of Bankruptcy Procedure states that "a proceeding to determine the validity, priority, or extent of a lien or other interest in property" is an adversary proceeding. Fed. R. Bankr. P. 7001.

6. Here, the sole basis of Debtors' objection to the secured claims asserted against the San Antonio Plant is that such claims "are junior to the prepetition liens and thus fully unsecured."<sup>1</sup> The Debtors assert no other legal basis on which the secured claims of the lien claimants should be disallowed. Moreover, the value of the lien claimants' collateral, the San Antonio Plant, is not addressed in the objection.

7. Because the Debtors assert no legal basis for the disallowance of Anchor's claim or the other secured claims asserted against the San Antonio Plant, the objection should be overruled.

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<sup>1</sup> Objection, para 20.

**PRAYER**

For the reasons set forth above, Anchor respectfully requests that the Court overrule the Debtors' objection and provide Anchor with such other and further relief as it may be justly entitled.

Dated: September 10, 2020

Respectfully submitted,

/s/ Joshua N. Eppich

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SERVICES, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 10, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties requesting or consenting to such service.

/s/ Bryan C. Assink

Bryan C. Assink

Counsel for Anchor Technical Services, LLC