

**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. 3

**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS
AND NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the “**Section 156(c) Application**”)² of the Debtors for an order authorizing the retention and employment of Kurtzman Carson Consultants LLC (“**KCC**”) as claims and noticing agent, under 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code, and Local Rule 2002-1(f), *nunc pro tunc* to the Petition Date, to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and (iii) provide such other administrative services, as required by the Debtors, that would fall within the purview of services to be provided by the Clerk’s Office; and upon the Jordan Declaration submitted in support of the Section 156(c) Application; and the Debtors having estimated that there are in excess of 250 creditors in the Chapter 11 Cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time

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 Section 156(c) Application.



consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in these Chapter 11 Cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or their estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Section 156(c) Application having been given; and no other or further notice being required; and it appearing that the employment of KCC is in the best interests of the Debtors, their estates, and their creditors; and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. Notwithstanding the terms of the Services Agreement attached to the Section 156(c) Application, the Section 156(c) Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain KCC effective as of the Petition Date under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and all related tasks, all as described in the Section 156(c) Application as the KCC Services.

3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. KCC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

5. KCC is authorized to take such other action to comply with all duties set forth in the Section 156(c) Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement, upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Services Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under

the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The Debtors shall indemnify the Indemnified Parties under the terms of the Services Agreement as modified by this Order.

12. The Indemnified Parties shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify an Indemnified Party, or provide contribution or reimbursement to an Indemnified Party for any claim or expense that is: (a) judicially determined (the determination having become final) to have arisen from the Indemnified Party's gross negligence, willful misconduct or fraud; (b) for a contractual dispute in which the Debtors allege the breach of an Indemnified Party's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination under (a) or (b) but determined by the Court, after notice and a hearing, to be a claim or expense for which an Indemnified Party should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Indemnified Party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors'

indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Party must file an application therefor in the Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by the Court approving the payment. This paragraph is intended only to specify the period of time through which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution, or reimbursement and does not limit the duration of the Debtors' obligation to indemnify the Indemnified Parties. All parties in interest shall retain the right to object to any demand by the Indemnified Parties for indemnification, contribution, or reimbursement.

15. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and Debtors' counsel and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' counsel.

16. Nothing in this Order shall operate to limit the approval of any separate retention application for KCC pursuant to Bankruptcy Code sections 327 and 328 for services that KCC intends to perform outside the ambit of those services described in the Section 156(c) Application under Bankruptcy Code sections 327 and 328.

17. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Section 156(c) Application.

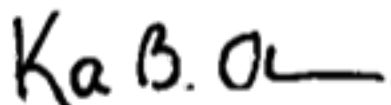
18. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

19. Notwithstanding any term in the Services Agreement to the contrary, KCC's liability during the Chapter 11 Cases shall not be limited to the amount billed or paid under the Services Agreement.

20. Notwithstanding any term in the Services Agreement to the contrary, KCC shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Services Agreement, the Section 156(c) Application and this Order, this Order shall govern.

Dated: July 17th, 2019
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE