

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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In re: : Chapter 11
 :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
 :
 Debtors. : (Jointly Administered)
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STIPULATION AND AGREED ORDER BETWEEN DEBTORS AND SECURITIES AND EXCHANGE COMMISSION EXTENDING TIME TO FILE A COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT PURSUANT TO 11 U.S.C. §1141(d)(6)

This stipulation and agreed order (the “**Stipulation and Agreed Order**”) is entered into this 13th day of October, 2020, by and among the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) and the United States Securities and Exchange Commission (the “**SEC**”) and, together with the Debtors, the “**Parties**”). The Parties hereby stipulate and agree as follows:

WHEREAS on July 12, 2020, the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United State Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”);

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC , Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



WHEREAS on September 23, 2020, the Bankruptcy Court entered an order confirming the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code*, dated August 15, 2020 (as amended, modified or supplemented, the “**Plan**”) at Docket Number 420;

WHEREAS on October 9, 2020, the Plan was substantially consummated, and the Effective Date (as defined in the Plan) occurred;

WHEREAS, Section 1141(d)(6) of the Bankruptcy Code provides that “the confirmation of a plan does not discharge a debtor that is a corporation from any debt . . . (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit.” 11 U.S.C. § 1141(d)(6);

WHEREAS, nothing in this Stipulation and Agreed Order constitutes a determination that section 523(c) of the Bankruptcy Code or Rule 4007(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) apply, or that any deadline exists to seek a determination of dischargeability under section 1141(d)(6) of the Bankruptcy Code;

WHEREAS, out of an abundance of caution, the SEC has requested the extension set forth herein, without prejudice to the SEC staff’s right to seek further extensions or to assert that the statute is self-executing, and without prejudice to the Debtors’ claims, objections or defenses;

WHEREAS, if section 523(c) and Bankruptcy Rule 4007(c) apply in this case, the date by which the SEC must file its complaint or take other action that may be required, if any, in this Chapter 11 case to determine the dischargeability of a debt, pursuant to Section 1141(d)(6) of the Bankruptcy Code, is October 17, 2020 (the “**Objection Deadline**”), or such later date as may be ordered by the Bankruptcy Court;

WHEREAS, the Parties have agreed, subject to the approval of the Bankruptcy Court, to an extension of the Objection Deadline;

NOW THEREFORE, the Parties, through their undersigned counsel, hereby stipulate and agree, and upon approval of the Bankruptcy Court, it is **ORDERED**, as follows:

1. The deadline by which the SEC must file its complaint or take other action that may be required, if any, in this Chapter 11 case to determine the dischargeability of a debt, pursuant to Section 1141(d)(6) of the Bankruptcy Code, shall be January 8, 2021, or such later date as may be ordered by the Bankruptcy Court, without prejudice to the SEC's right to seek further extensions of such deadline or to argue that such deadline should not apply to the SEC, and without prejudice to the Debtors' rights, objections, or defenses related thereto or to any claims or dischargeability actions asserted by the SEC.

2. Nothing in this Stipulation and Agreed Order constitutes a determination that section 523(c) of the Bankruptcy Code or Bankruptcy Rule 4007(c) apply, or that any deadline exists to seek a determination of dischargeability under section 1141(d)(6) of the Bankruptcy Code.

Signed: _____, 2020

THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO ON THIS 13TH DAY OF OCTOBER, 2020:

<p>By: <u>Sonia A. Chae</u> Sonia A. Chae (<i>pro hac vice</i> pending) SECURITIES AND EXCHANGE COMMISSION 175 W. Jackson Blvd., Suite 1450 Chicago, IL 60604 Telephone: (312) 353-7390 Facsimile: (312) 353-7398 chaes@sec.gov</p> <p><i>Attorney for the U.S. Securities and Exchange Commission</i></p>	<p>By: <u>/s/ Keith A. Simon</u> Keith A. Simon (admitted <i>pro hac vice</i>) George A. Davis (admitted <i>pro hac vice</i>) David A. Hammerman (admitted <i>pro hac vice</i>) Annemarie V. Reilly (admitted <i>pro hac vice</i>) Hugh K. Murtagh (admitted <i>pro hac vice</i>) LATHAM & WATKINS LLP 885 Third Avenue New York, New York 10022 Tel: 212-906-1200 Fax: 212-751-4864 Email: keith.simon@lw.com george.davis@lw.com david.hammerman@lw.com annemarie.reilly@lw.com hugh.murtagh@lw.com</p> <p>-and-</p> <p>Timothy A. (“Tad”) Davidson II (TX Bar No. 24012503) Ashley L. Harper (TX Bar No. 24065272) HUNTON ANDREWS KURTH LLP 600 Travis Street, Suite 4200 Houston, Texas 77002 Tel: 713-220-4200 Fax: 713-220-4285 Email: taddavidson@HuntonAK.com ashleyharper@HuntonAK.com</p> <p><i>Counsel for the Debtors and Debtors-in-Possession</i></p>
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