

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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In re: : Chapter 11
: :
HI-CRUSH PERMIAN SAND LLC, *et al.*,¹ : Case No. 20-33505 (DRJ)
: (Jointly Administered)
Reorganized Debtors. : (Formerly Jointly Administered under Lead
: Case: Hi-Crush Inc., Case No. 20-33495)²
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**REORGANIZED DEBTORS' TWELFTH OMNIBUS
OBJECTION TO CERTAIN CLAIMS (EQUIPMENT FINANCE CLAIMS)**

This objection seeks to disallow certain claims. Claimants receiving this objection should locate their names and claims on Schedule 1 attached to the proposed form of order attached to this objection. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

A hearing will be conducted on this matter on May 14, 2021 at 9:30 am (Prevailing Central Time) in Courtroom 400, 4th floor, United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing by audio/video connection.

Audio communication will be by use of the Court's regular dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Jones' conference room number is 205691.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting Code "JudgeJones" in the GoToMeeting app or click the link on Judge Jones' home page on

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 Reorganized Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² On December 11, 2020, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* [Case No. 20-33495, Docket No. 505], which closed each Reorganized Debtor's case except for Hi-Crush Permian Sand LLC, Case No. 20-33505, and directed that all further filings be made in that case.



the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select “Bankruptcy Court” from the top menu. Select “Judges’ Procedures,” then “View Home Page” for Judge Jones. Under “Electronic Appearance” select “Click here to submit Electronic Appearance”. Select the case name, complete the required fields and click “Submit” to complete your appearance.

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within 30 days from the date this objection was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The above-captioned reorganized debtors (collectively, the “**Debtors**” or “**Reorganized Debtors**,” as applicable) respectfully state the following in support of this omnibus claims objection (this “**Objection**”):

RELIEF REQUESTED

1. By this Objection, the Reorganized Debtors seek entry of an order (the “**Order**”), substantially in the form attached hereto, disallowing each of the claims identified on **Schedule 1** (the “**Equipment Finance Claims**”) in their entirety because each of the Equipment Finance Claims asserts a secured claim for which the collateral has either been already returned to the claimant or was made available to the claimant to recover. In support hereof, the Reorganized Debtors submit the declaration of Jeffrey Sielinski, Senior Director of Alvarez and Marsal North America, LLC (the “**Sielinski Declaration**”), attached here as **Exhibit A**.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157, and this Court may enter a final order consistent with

Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rule 3007-1(b) of the Bankruptcy Local Rules for the Southern District of Texas, and the Procedures for Complex Cases in the Southern District of Texas.

BACKGROUND

4. On July 12, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court commencing cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, 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 of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 24]³ (the “**First Day Declaration**”), filed on the Petition Date.

5. On August 15, 2020, the Debtors filed their *Joint Plan of Reorganization for Hi-Crush Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 289] (as may be amended, modified, or supplemented, the “**Plan**”). On September 23, 2020, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Plan of Reorganization for Hi-Crush Inc. and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 420] (the “**Confirmation Order**”).

³ All references to “Docket No.” refer to the docket in the former lead case of Hi-Crush Inc., Case No. 20-33495 unless otherwise indicated.

6. The Plan provides that the Reorganized Debtors are authorized to object to scheduled claims and proofs of claim and interests. *See* Plan Article VIII. On October 9, 2020, the Plan was substantially consummated, and the Effective Date (as defined in the Plan) occurred. *See Notice of (I) Effective Date of the Joint Plan or Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code and (II) Establishing Deadline for the Filing of Administrative Claims Against the Debtors* [Docket No. 452] (the “**Notice of Effective Date**”).

7. On August 11, 2020, the Debtors filed their respective schedules of assets and liabilities (“**Schedules**”) and statements of financial affairs, pursuant to Bankruptcy Rule 1007. *See* Docket Nos. 231-274.

8. On July 13, 2020, the Court entered the *Order (I) Establishing (A) Bar Dates and (B) Related Procedures for Filing Proofs of Claim, (II) Approving the Form and Manner of Notice Thereof and (III) Granting Related Relief* [Docket No. 88] (the “**Bar Date Order**”) pursuant to which the Court, among other things, established August 16, 2020, at 5:00 p.m. (prevailing Central Time) (the “**General Bar Date**”), as the deadline for all non-governmental entities⁴ holding or wishing to assert a “claim” (as defined in section 101(15) of the Bankruptcy Code).

9. As set forth in the Notice of Effective Date, under the terms of the Plan and Confirmation Order, the deadline for holders of Contract Rejection Claims to file proofs of such claims was the later of the General Bar Date of the date that is twenty-one days following service of an order approving rejection of any executory contract or unexpired lease of the Debtors (the “**Contract Rejection Claims Bar Date**”).

⁴ The deadline for all governmental units asserting a “claim” (as defined in section 101(15) of the Bankruptcy Code) against the Reorganized Debtors that arose on or prior to the Petition Date to file written proof of such claim was January 8, 2021, at 5:00 p.m. (prevailing Central Time) (together with the General Bar Date and the Contract Rejection Claims Bar Date, the “**Bar Dates**”).

10. On October 16, 2020, the Reorganized Debtors filed the *Reorganized Debtors' Motion for Entry of an Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claim Objections* [Docket No. 456] (the "**Omnibus Procedures Motion**") seeking approval of certain omnibus claims objection procedures (the "**Omnibus Objection Procedures**"). On November 10, 2020, the Court entered an order granting the Omnibus Procedures motion [Docket No. 477] (the "**Omnibus Procedures Order**") and approving the Omnibus Objection Procedures.

THE EQUIPMENT FINANCE CLAIMS

11. The Reorganized Debtors object to the Equipment Finance Claims because each Equipment Finance Claim asserts a secured claim against the Reorganized Debtors on account of collateral that has either been returned to the claimant or otherwise made available for the claimant to recover.⁵ Each of the Equipment Finance Claims is based on an agreement with the Reorganized Debtors for the purchase or lease of equipment that secures the obligations under the agreement. In each case, the Reorganized Debtors determined that the equipment was no longer needed for the Reorganized Debtors' business and contacted the Claimants to arrange return of their of their collateral. While certain of the Claimants did make arrangements to recover their collateral, others have failed to do so despite repeated requests from the Reorganized Debtors.

12. Under the terms of the Plan, each secured Equipment Finance Claim constitutes an Other Secured Claim. Other Secured Claims are classified in Class 2 under the Plan. At the election of the Reorganized Debtors, such claims may be satisfied by surrendering the collateral securing such claim to the claimant.⁶

⁵ One of the Equipment Finance Claims asserts an unsecured claim against Hi-Crush Inc. on account of Hi-Crush Inc.'s guaranty of certain secured obligations.

⁶ Plan Art. III.B.2.

13. While the Reorganized Debtors believe each Equipment Finance Claim has been satisfied under the terms of the Plan, the Reorganized Debtors have been unable to confirm this with the claimants. Further, as previously noted, certain of the claimants have not recovered the collateral securing their claims, despite the Reorganized Debtors making the collateral available for return and multiple attempts to contact the claimants.

14. Accordingly, the Reorganized Debtors request that the Court enter the Order, disallowing the Equipment Finance Claims listed on **Schedule 1** to the Order.

BASIS FOR RELIEF

15. Section 502(a) of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Moreover, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law” 11 U.S.C. § 502(b)(1).

16. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *In re Armstrong*,

347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

17. For the reasons set forth above, as supported by the Sielinski Declaration, the Reorganized Debtors respectfully request that the Court enter an Order sustaining this Objection and disallowing the Equipment Finance Claims as set forth above. Failure to do so could result in the Claimants receiving unwarranted or duplicate recoveries from the Reorganized Debtors—to the detriment of legitimate creditors.

RESERVATION OF RIGHTS

18. This Objection is without prejudice to the rights of the Reorganized Debtors or any other party in interest to object to the Equipment Finance Claims on any grounds whatsoever, and the Reorganized Debtors expressly reserve all further substantive or procedural objections they may have.

SEPARATE CONTESTED MATTER

19. To the extent that a response is filed regarding any Equipment Finance Claim and the Reorganized Debtors are unable to resolve any such response, each such Equipment Finance Claim, and the Objection as it pertains to such Equipment Finance Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Further, the Reorganized Debtors request that any order entered by the Court regarding an objection or other reply asserted in response to this Objection be deemed a separate order with respect to each claim.

Dated: April 8, 2021
Houston, Texas

Respectfully Submitted,

/s/ Philip M. Guffy

Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)

Joseph P. Rovira (TX Bar No. 24066008)

Ashley Harper (TX Bar No. 24065272)

Philip M. Guffy (TX Bar No. 24113705)

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Counsel for the Reorganized Debtors

CERTIFICATE OF SERVICE

I certify that on April 8, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Philip M. Guffy _____
Philip M. Guffy

Exhibit A

Sielinski Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
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HOUSTON DIVISION**

	X	
In re:	:	Chapter 11
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HI-CRUSH PERMIAN SAND LLC, <i>et al.</i> , ¹	:	Case No. 20-33505 (DRJ)
	:	(Jointly Administered)
Reorganized Debtors.	:	(Formerly Jointly Administered under Lead
	:	Case: Hi-Crush Inc., Case No. 20-33495) ²
	X	

**DECLARATION OF JEFFREY SIELINSKI
IN SUPPORT OF REORGANIZED DEBTORS’ TWELFTH
OMNIBUS OBJECTION TO CERTAIN CLAIMS (EQUIPMENT FINANCE CLAIMS)**

I, Jeffrey Sielinski, hereby declare under penalty of perjury:

1. I am a Senior Director with Alvarez & Marsal North America, LLC, (“**A&M**”), a restructuring advisory services firm with numerous offices throughout the country.³ I, along with my colleagues at A&M, have been engaged by the Reorganized Debtors to provide various restructuring and financial services. In my current position with the Reorganized Debtors, I am responsible for all claims management related matters. I am generally familiar with the Reorganized Debtors’ day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Reorganized Debtors’ liabilities and the amount

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³ Capitalized terms used but not otherwise defined in this Declaration have the meanings given to them in the Objection.

thereof owed to their creditors as of the Petition Date and afterwards. I am above 18 years of age, and I am competent to testify.

2. I submit this declaration (this “**Declaration**”) in support of the *Reorganized Debtors’ Twelfth Omnibus Objection to Certain Claims (Equipment Finance Claims)* (the “**Objection**”) and am directly, or by and through the Reorganized Debtors’ advisors and personnel, familiar with the information contained therein and the Equipment Finance Claims. I am authorized to submit this declaration on the Reorganized Debtors’ behalf. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Reorganized Debtors’ operations and finances, information learned from my review of relevant documents, and information I have received from other members of the Reorganized Debtors’ management, the Reorganized Debtors’ employees or the Reorganized Debtors’ advisors. As to matters regarding state and federal law, including bankruptcy law, I have relied on the advice of counsel. If I were called upon to testify, I could and would testify competently to the facts set forth in this Declaration on that basis.

3. To the best of my knowledge, information, and belief, insofar as I have been able to ascertain after reasonable inquiry, considerable time and resources have been expended to ensure a high level of diligence in reviewing and reconciling the proofs of claim filed against the Reorganized Debtors in the chapter 11 cases. In evaluating the Equipment Finance Claims, the Reorganized Debtors and/or their advisors thoroughly reviewed the Reorganized Debtors’ books and records and the Equipment Finance Claims (as well as any supporting documentation) and have determined that the Equipment Finance Claims should be disallowed in their entirety for the reasons set forth in the Objection.

4. Failure to do so could result in such claimants receiving an unwarranted or duplicate recovery—to the detriment of similarly situated creditors with legitimate claims. Thus, I believe that disallowance of the Equipment Finance Claims in their entirety is appropriate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: April 8, 2021

Respectfully submitted,

/s/ Jeffrey Sielinski

Jeffrey Sielinski, Senior Director

Alvarez & Marsal North America, LLC

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In re:	:	Chapter 11
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HI-CRUSH PERMIAN SAND LLC, <i>et al.</i> , ¹	:	Case No. 20-33505 (DRJ)
	:	(Jointly Administered)
Reorganized Debtors.	:	(Formerly Jointly Administered under Lead
	:	Case: Hi-Crush Inc., Case No. 20-33495) ²
	X	

**ORDER SUSTAINING REORGANIZED DEBTORS’ TWELFTH
OMNIBUS OBJECTION TO CERTAIN CLAIMS (EQUIPMENT FINANCE CLAIMS)**
[Relates to Objection at Docket No. ___]

Upon the objection (the “**Objection**”)³ of the above-captioned reorganized debtors (collectively, the “**Reorganized Debtors**”) seeking entry of an order (this “**Order**”) disallowing the Equipment Finance Claims in their entirety, all as more fully set forth in the Objection; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the Reorganized Debtors’ notice of the Objection and opportunity

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³ Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Objection.

for a hearing on the Objection were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Objection; and all responses, if any, to the Objection having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. Each Equipment Finance Claim (i.e., those claims listed on **Schedule 1** hereto) is disallowed in its entirety.

2. Kurtzman Carson Consultants LLC, as claims agent, is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Order.

3. The Reorganized Debtors and Kurtzman Carson Consultants LLC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

4. Each Equipment Finance Claim and the objections by the Reorganized Debtors to each Equipment Finance Claim constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate order with respect to each Equipment Finance Claim.

5. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to this Order.

Signed: _____, 2021

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Equipment Finance Claims

Hi-Crush Permian Sand LLC, et al. 20-33505 (DRJ)
Twelfth Omnibus Objection
Schedule 1 - Equipment Finance Claims

NAME	DATE FILED	DEBTOR	CLAIM #	CLAIM AMOUNT	REASON FOR DISALLOWANCE
1 CRESTMARK VENDOR FINANCE, A DIVISION OF METABANK PAUL R. HAGE JAFFE RAITT HEUER WEISS, P.C. 27777 FRANKLIN, SUITE 2500 SOUTHFIELD, MI 48034	7/28/2020	Hi-Crush Inc.	46	\$ 350,080.32	Proof of claim asserts an amount of \$350,080.32 as an unsecured claim under the terms of an agreement for purchase or lease of equipment. Claim has been satisfied in full by return of collateral under the terms of the Plan.
2 CRESTMARK VENDOR FINANCE, A DIVISION OF METABANK PAUL R. HAGE JAFFE RAITT HEUER WEISS, P.C. 27777 FRANKLIN, SUITE 2500 SOUTHFIELD, MI 48034	8/24/2020	Pronghorn Logistics, LLC	680	\$ 350,080.32	Proof of claim asserts an amount of \$ 350,080.32 as a secured claim under the terms of an agreement for purchase or lease of equipment. Claim has been satisfied in full by return of collateral under the terms of the Plan.
3 EQUIFY FINANCIAL, LLC C/O AIMEE FURNESS HAYNES AND BOONE, LLP 2323 VICTORY AVENUE, SUITE 700 DALLAS, TX 75219	8/14/2020	Hi-Crush Inc.	490	\$ 2,091,106.64	Proof of claim asserts an amount of \$2,091,106.64 as a secured claim under the terms of an agreement for purchase or lease of equipment. Claim has been satisfied because the Debtors have either returned the collateral under the terms of the Plan or made the collateral available to the claimant for return.
4 STEARNS BANK NATIONAL ASSOCIATION HANNAH GILBERT 4191 2ND STREET SOUTH ST. CLOUD, MN 56301	8/11/2020	Hi-Crush Inc.	474	\$ 1,932,358.27	Proof of claim asserts an amount of \$1,932,358.27 as a secured claim under the terms of an agreement for purchase or lease of equipment. Claim has been satisfied because the Debtors have either returned the collateral under the terms of the Plan or made the collateral available to the claimant for return.
			TOTAL	\$ 4,723,625.55	