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BY E-FILING AND EMAIL

The Honorable Christopher S. Sontchi
U.S. Bankruptcy Court
824 N. Market Street, 5th Floor
Wilmington, DE 19801

Re: Adversary Proceeding No. 20-50813, relating to *In re Extraction Oil & Gas, Inc., et al.*, Case No. 20-11548

Dear Chief Judge Sontchi:

We represent REP Processing LLC in the above-referenced matters. Extraction Oil & Gas seeks on an expedited basis to strip REP of valuable property rights and interests that comprise a material portion of REP's business. Despite REP's best efforts and the Court's statement at the September 1 hearing that REP and other midstream providers are entitled to reasonable discovery, Extraction has failed or outright refused to provide REP with the discovery necessary to REP's full defense of its interests. REP's response to Extraction's summary judgment motion is due in five days, on September 18. The hearing on that motion, as well as Extraction's motion to reject REP's gas gathering agreement, is currently set for September 30. Given Extraction's failure or refusal to provide REP with meaningful discovery, it is evident that REP will suffer great prejudice if the hearing goes forward on September 30. Accordingly, REP respectfully asks the Court to postpone the September 30 hearing, extend REP's deadline to respond to Extraction's summary judgment motion, and set a reasonable schedule that will allow REP to fully defend its valuable interests.

This Court stated at the September 1 hearing that if Extraction wanted expedited treatment, it had the burden to ensure the appropriate steps were taken to make that happen. Extraction has not taken those steps.

Shortly after the commencement of the adversary proceeding, REP served discovery on Extraction relevant to the issues presented by Extraction's summary judgment motion and motion to reject. During a meet and confer following the September 1 hearing (before which

Extraction had refused to provide ***any*** discovery before REP's response to Extraction's summary judgment motion was due), Extraction suggested the parties agree to stipulated facts to avoid the need for certain discovery and asked REP to identify the discovery it prioritized the most. The next day, REP complied with Extraction's request. Yet, as of noon on Sunday, September 13, Extraction had failed to make a meaningful document production. And after only a single exchange of revised proposed stipulated facts, Extraction declared that it was done discussing the stipulations and has refused to engage. Further, and as described in greater detail below, Extraction has (i) refused to respond to REP's discovery requests on an expedited basis, such that REP would have the responses before its deadline to respond to Extraction's summary judgment motion; (ii) refused to identify the witnesses it intends to call at the September 30 hearing; (iii) deliberately withheld relevant, non-privileged documents that bear directly on the issues, including whether Extraction exercised reasonable business judgment in attempting to reject the contract; and (iv) delayed production of its documents, despite its promises to the contrary.

Given Extraction's tactics to delay and to deprive REP of meaningful discovery, Extraction's expedited schedule should not be permitted to stand.

Extraction has delayed and obstructed the discovery process.

After Extraction commenced the adversary proceeding, REP diligently sought discovery from Extraction, which Extraction initially refused. On August 14, Extraction filed its complaint and summary judgment motion. Within two weeks, on August 26, REP served on Extraction four discovery requests: (1) 36 requests for production; (2) 13 interrogatories; (3) 24 requests for admission; and (4) a corporate representative deposition notice—all targeted to the issues of whether the contract at issue contains covenants running with the land and the propriety of Extraction's rejection request. Rather than promptly cooperate with REP's discovery requests, on August 28, Extraction claimed that REP's discovery was premature and that REP could not serve requests until three weeks after filing its answer—which would have left REP with no discovery at all before the summary judgment hearing. In fact, Extraction demanded that REP withdraw its discovery completely.

Extraction relented on its initial position only after the Court's direction to Extraction to provide the midstream providers with discovery. Nevertheless, Extraction has continued to delay or obstruct the discovery process. On September 2, the parties met and conferred regarding the discovery process. Extraction proposed that the parties agree to stipulated facts to obviate the need for certain discovery, and the parties discussed the stipulated facts REP required. At Extraction's request, on September 3, REP provided Extraction a targeted list of discovery that it considered a priority as REP awaited proposed stipulated facts from Extraction. On September 4, Extraction provided its initial draft of proposed stipulated facts, to which REP promptly responded with its revised proposed stipulated facts that tracked the parties' discussion during the meet and confer. On September 7, rather than continue to work to limit necessary discovery, Extraction backtracked on its proposal, refusing to agree to any of REP's proposed stipulations (including basic facts like the date the contract was signed) and declaring that further discussion about stipulations would not be constructive.

Moreover, during this time, REP asked Extraction multiple times to identify when REP could expect responses to its discovery requests and the production of documents. REP requested that Extraction provide its written responses to REP's August 26 discovery requests in less than 30 days so that REP would have those responses before filing its brief opposing Extraction's summary judgment motion. Extraction refused this request, and while Extraction agreed to work to have the production of documents on ***only*** the list of REP's targeted document requests substantially complete by September 11, REP received little as of noon on Sunday, September 13 (as discussed in greater detail below).

As a result of Extraction's delay and obstruction tactics, REP has received no written discovery from Extraction and insufficient document production, nearly three weeks since REP served discovery and less than a week before its response to Extraction's summary judgment motion is due. REP is now in the position of taking the deposition of Extraction's corporate representative on September 15 and submitting its response brief on September 18 without significant evidence material to the defense of its interests.

Extraction has not identified the witnesses it will call at the September 30 hearing.

Additionally, REP has asked Extraction to promptly identify the witnesses it intends to call at the September 30 hearing so that REP can depose the witnesses before the hearing. Extraction has still not identified those witnesses.

Extraction is withholding relevant, material discovery.

In conferences with REP, Extraction has stated that it will not produce the following relevant documents:

- Merger proposals received by Extraction. Extraction's counsel referenced these proposals at the September 1 hearing as relevant to Extraction's rejection decision. The proposals are not privileged and are relevant, as they relate to the future of Extraction's operations and the value of Extraction's assets, all of which is squarely at issue due to Extraction's position that rejecting the agreement with REP would benefit Extraction's estate. Extraction has no basis to withhold these relevant documents.

- Business plans. Extraction has taken the position that its only responsive document is its current drilling schedule. But counsel for Extraction admitted at the September 1 hearing that Extraction has provided a business plan to the Unsecured Creditors' Committee. Indeed, Extraction has shared business plans and management presentations with the creditors' committee, and presumably with the ad hoc bondholder group and even merger candidates. Moreover, given Extraction's representations about the analysis underlying its rejection motion (e.g., that after a thorough review and analysis, Extraction determined that the

agreement is not a "source of potential value for future operations, creditors, or other parties in interest," Dkt. 14 ¶ 10), it seems unlikely that Extraction does not have additional responsive documents. Midstream parties like REP have invested hundreds of millions of dollars of infrastructure capital that have helped produce the value that is at play in this proceeding and around which a chapter 11 plan will be negotiated. There is no reason to keep midstream parties in the dark on commercial documents that undoubtedly have been shared with many already and for which confidentiality may be ensured through a protective order.

- Documents related to Extraction's alleged exercise of business judgment in the rejection of its midstream contracts that Extraction has already provided to other midstream parties. These documents are relevant, non-privileged, and discoverable. Again, Extraction has no basis to withhold them.

REP has been prejudiced by Extraction's discovery gamesmanship.

Extraction promised to produce a limited set of documents on a rolling basis, to be substantially completed by September 11, but waited until the afternoon of September 10 to even begin its production. As of noon on Sunday, September 13, Extraction had produced only 336 documents, mostly communications and receipts regarding lease rental, extension, and shut-in payments, lease "data sheets" that contain very limited relevant information, and easement and right of way agreements. This production included only one oil and gas lease, and no documents or communications related to Extraction's analysis of and decision to enter into the REP gathering agreement or Extraction's decision to reject the REP gathering agreement. Extraction has not responded to any of the interrogatories or requests for admission served by REP and has not provided initial disclosures or otherwise identified who it may rely on to support its claims. No doubt cognizant of how its discovery obstinance will be received at the September 14 hearing, Extraction will likely point to the over 500,000 page document production it uploaded to an FTP site on Sunday, September 13—the bulk of which, according to Extraction, is several hundred thousand pages of lease documents that may take all day Sunday to even upload to the FTP site. This belated production only exacerbates the prejudice to REP. Given the time required to upload the documents to make them available to REP (in single page TIF files), and the time REP will then require to download and load them into a document review tool, despite its best efforts, REP has not even been afforded the opportunity to review these documents in advance of the submission of this letter. Nor should REP be forced to divert resources to sifting through hundreds of thousands of pages of documents the week its summary judgment response brief is due. The size alone of Extraction's initial document production is more evidence that the current case timeline Extraction desires is simply unworkable.

Extraction seeks to force REP to respond to a summary judgment motion only 35 days after Extraction filed this lawsuit (despite its own delay in initiating this proceeding) and to defend against Extraction's rejection motion without the benefit of meaningful discovery. Basic

fairness requires more. REP respectfully asks that this Court issue a ruling that provides REP with the documents, information, and time it requires to fully defend its interests in this matter.

Respectfully,

Robert J. Dehney

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cc: Kenneth Young
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