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Local Counsel for Sequitur Permian, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,[1]	§	**Case No. 20-42002-ELM-11**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	**ADV. PROC. NO. 20-04064**
Defendant.	§	

MOTION FOR SETTING AND REQUEST FOR EXPEDITED HEARING

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

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1. Defendant, Counter-Plaintiff, and Third-Party Plaintiff, Sequitur Permian, LLC ("Sequitur"), hereby requests that an expedited hearing be set on its *Motion for Direct Appeal* (the "Motion to Certify Direct Appeal")[2] [Docket No. 133] to the United States Court of Appeals for the Fifth Circuit (the "Fifth Circuit") **at the Court's convenience between May 19, 2021 and May 21, 2021**, or at the Court's earliest convenience thereafter. The Motion to Certify Direct Appeal is opposed, and Sequitur believes it will require approximately one (1) hour of the Court's time.

2. In the Motion to Certify Direct Appeal, Sequitur requests that the Court certify Sequitur's appeal of the Court's rulings on the parties' respective motions for summary judgment [Docket Nos. 122, 126 and 128] for a direct appeal to the Fifth Circuit pursuant to pursuant to 28 U.S.C. § 158(d)(2)(A)(i)-(iii) and Federal Rule of Bankruptcy Procedure 8006(f). Sequitur asserts that certification of a direct appeal to the Fifth Circuit is mandated under 28 U.S.C. § 158(d)(2)(B)(i), which provides that the Bankruptcy Court "shall" certify a matter for a direct appeal where a circumstance provided in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists.

3. As set forth in more detail in the Motion to Certify Direct Appeal, each of the circumstances mandating certification of Sequitur's appeal for a direct appeal to the Fifth Circuit exist. For example, Sequitur's appeal involves a question of law as to which there is no controlling decision of the Fifth Circuit or Supreme Court regarding a conflict between (ii) a line of Texas Supreme Court cases holding that unambiguous contracts should be enforced as written, and (ii) certain Texas appellate court cases that rely on the Restatement (First) of Contracts, which has not been approved by the Texas Supreme Court, to find that the failure of a condition precedent may be waived if its requirement will involve an extreme forfeiture or penalty. Moreover, because these conflicting contract-law principles involve fundamental questions about Texas's strong public policy favoring freedom of contract, resolving these issues "involves a matter of public importance." *See id.* § 158(d)(2)(A)(i). As a result, 28 U.S.C. § 158(d)(2)(A)(i) and (ii) are satisfied. Finally, the resolution of an immediate appeal from the orders would materially advance the progress of the case under 28 U.S.C. § 158(d)(2)(A)(iii) because the resolution of the purely legal issues raised in Sequitur's appeal pertaining to the failure of a condition precedent and the lack of any payment obligation under the Terminal Services Agreement because no "Product" was ever "Throughput" into the Terminal would either dispose of Maalt's claims entirely or inform Sequitur the rulings were correct under fundamental Texas contract-law principles.

4. Pursuant to Fed. R. Bankr. P. 8006(f)(3), Maalt has a fourteen (14) day period to respond to the Motion to Certify Direct Appeal, making its response due on May 14, 2021. Sequitur *is not* seeking to shorten Maalt's response period. Instead, Maalt is requesting that an expedited hearing be set on the Motion to Certify Direct Appeal during the week of **May 17, 2021** so that the parties may present oral argument. Moreover, although oral argument is not required under Fed. R. Bankr. P. 8006(d)(4), Sequitur requests an opportunity to present oral argument on the Motion to Certify Direct Appeal because of the complexity of the legal issues involved.

[2] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion to Certify Direct Appeal.

5. Expedited consideration of the Motion for Continuance is needed because the current trial docket call is June 7, 2021. The parties should not be forced to incur the expense and time associated with preparing for a trial in one month's time when Sequitur is entitled to a direct appeal on two legal issues that may render a trial completely (or at least partially) unnecessary. Consequently, Sequitur respectfully requests that a hearing on the Motion to Certify Direct Appeal be set **at the Court's convenience between May 19, 2021 and May 21, 2021**, or at the Court's earliest convenience thereafter, so that the Court may consider the issues raised in the Motion to Certify Direct Appeal before the parties incur a tremendous amount of time and expense preparing for a trial that may be rendered unnecessary if a direct appeal to the Fifth Circuit results in a reversal of the Court's rulings on the motions for summary judgment.

6. As indicated in the Certificate of Conference below, counsel for plaintiff, Maalt, LP, **DOES NOT OPPOSE** expedited consideration of the Motion to Certify Direct Appeal, so long as the hearing takes place on May 19, 20, or 21.

Dated: May 4, 2021.

Respectfully Submitted,

/s/ Matthew A. Kornhauser

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-and-

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LOCAL COUNSEL FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF CONFERENCE

I hereby certify that on May 4, 2021, I contained James Lanter, Esq., counsel for plaintiff, Maalt, LP, via email regarding Sequitur's request for an expedited hearing on its Motion to Certify Direct Appeal. Mr. Lanter indicated that Maalt, LP does not oppose expedited consideration of the Motion to Certify Direct Appeal, so long as the hearing takes place on May 19, 20, or 21.

/s/ *Dylan B. Russell*
Dylan B. Russell

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2021 a copy of the foregoing document was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

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/s/ Matthew A. Kornhauser
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