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PROPOSED ATTORNEYS FOR DEBTORS

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

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, <i>et al.</i> , ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Joint Administration Requested

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO FILE FEE LETTER UNDER SEAL PURSUANT TO
11 U.S.C. § 107 AND FED. R. BANKR. P. 9018**

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced Chapter 11 cases (collectively, the "Debtors") hereby file this *Debtors' Emergency Motion for Entry of an Order Authorizing the Debtors to File Fee Letter Under Seal Pursuant to 11 U.S.C. § 107 and Fed. R. Bankr. P. 9018* (the "Motion"). In support of the Motion, the Debtors respectfully state as follows:

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); 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.



Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Court”) pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein include sections 105(a) and 107(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 9077-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Northern District of Texas (effective February 1, 2006).

Background

3. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

5. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors' Chapter 11 Cases are set forth in greater detail in the *Declaration of Kristin Whitley in Support of the Debtors' Chapter 11 Petitions and First Day Motions* and the *Declaration of Gary Barton in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (collectively, the "First Day Declarations"), which were filed on the Petition Date and are incorporated by reference in this Motion.

6. Concurrently with the filing of this Motion, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to the Prepetition Secured Entities; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief* (the "DIP Motion").² In connection with the DIP Motion, the Debtors seek to pay certain fees set forth in a letter agreement between VPROP and Ares Capital Corporation (in its capacity as the administrative agent and collateral agent for the Lenders, the "DIP Agent") that was executed contemporaneously with the DIP Credit Agreement (the "Fee Letter"). The Fee Letter contains confidentiality provisions that require the Debtors to maintain the confidentiality of the Fee Letter.

Relief Requested

7. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to file the Fee Letter under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9077-1.

² All otherwise undefined terms shall have the same meaning ascribed to them in the DIP Motion.

Basis for Relief Requested

8. Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Moreover, section 107(b) of the Bankruptcy Code provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b). Pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the Debtors to file the Fee Letter under seal by entering an order that protects entities from potential harm that may result from the disclosure of certain confidential information.

9. Bankruptcy Rule 9018 sets forth the procedure by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 reads in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

10. Local Bankruptcy Rule 9077-1 provides:

(a) Permitted or Required by Statute or Rule.

A party may file under seal any document that a statute or rule requires or permits to be so filed. The term "document," as used in this rule, means any pleading, motion, other paper, or physical item

that the Federal Rules of Bankruptcy Procedure permit or require to be filed.

(b) Motions to File Documents Under Seal.

If no statute or rule requires or permits a document to be filed under seal, a party may file a document under seal only on motion and by permission of the Presiding Judge.

(c) Procedure.

When a party files a document under seal or a motion for leave to file a document under seal, the party must submit with the motion the original and a judge's copy of the document to be filed under seal, along with an electronic copy of the document on electronic media. The original of the document must be referenced as an exhibit to the motion. If leave to file the document under seal is granted, the Bankruptcy Clerk must file the original of the document under seal.

Local Bankruptcy Rule 9077-1.

11. Once the Court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, "the court is required to protect a requesting interested party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (stating that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public); *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (stating that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.").

12. Courts have also stated that commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See In re Meyrowitz*, No. 06-31660-bjh-11, 2006 WL 6544093, at *2 (Bankr. N.D. Tex. Oct. 27, 2006); *see also In re Orion Pictures Corp.*, 21 F.3d at 28 (stating that to invoke section 107(b)(1) of the Bankruptcy

Code, a party has to show only that the information it wishes to seal is “confidential commercial” in nature).

13. The terms of the Fee Letter are the product of good faith, arms’-length negotiations, and the Debtors have agreed to keep such terms confidential. Fees paid by a borrower in connection with financing would not, typically, be something that the DIP Agent, or any other similarly situated lender, agent, or arranger would disclose. The investment banking and lending industries are highly competitive, and it is of the utmost importance that the details of fee structures, such as that set forth in the Fee Letter, be kept confidential so that competitors cannot use the information to gain a strategic advance in the marketplace. Indeed, the DIP Agent has advised the Debtors that the Fee Letter contains certain obligations and commitments of the Debtors which are sensitive to the DIP Agent’s business and could be harmful to the DIP Agent’s business if made public. Moreover, the Fee Letter contains confidentiality provisions that require the Debtors to maintain the confidentiality of the Fee Letter.

14. Given the totality of the circumstances, however, including the Debtors’ recognition of the importance of the Court’s review of the Fee Letter and that a certain degree of transparency and public scrutiny is a necessary part of the bankruptcy process, and balancing these interests with the need to protect confidential and proprietary commercial information, the Debtors propose to file copies of the Fee Letter with the Court under seal, in compliance with the Local Bankruptcy Rules. Further, the Debtors will provide copies of the Fee Letter to the Office of the United States Trustee and the advisors to any statutory committees appointed in these Chapter 11 Cases.

15. For all of these reasons, the Debtors respectfully request that the Court permit the Debtors to file the Fee Letter under seal.

Notice

16. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors' secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for the DIP Agent; (vi) counsel for any official committees appointed by this Court; (vii) the 20 largest unsecured creditors of each of the Debtors; and (viii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the "Notice Parties"). Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and grant such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED this 10th day of June, 2020.

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Order

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

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, <i>et al.</i> , ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

**ORDER AUTHORIZING THE DEBTORS TO FILE FEE LETTER UNDER
SEAL PURSUANT TO 11 U.S.C. § 107 AND FED. R. BANKR. P. 9018**

CAME ON for consideration the *Debtors' Motion for Entry of an Order Authorizing the
Debtor to File Exit Financing Commitment Letter Under Seal Pursuant to 11 U.S.C. § 107 and*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); 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.

Fed. R. Bankr. P. 9018 (the “Motion”)² filed by Vista Proppants and Logistics, LLC and its debtor affiliates (collectively, the “Debtors”) in the above-styled Chapter 11 cases (the “Chapter 11 Cases”); and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted as provided herein.
2. The Debtors are authorized to file the Fee Letter under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9077-1. Any party filing documents under seal pursuant to this Order shall comply with the requirements of Local Bankruptcy Rule 9077-1.
3. The Fee Letter shall remain under seal for no longer than one year from the date of entry of this Order, unless the Court orders otherwise.
4. The only entities permitted to review the Fee Letter are those entities specified herein, except that the following entities shall also have access to matters placed under seal unless the Court specifically rules otherwise: (1) the judge presiding over this case, (2) the law clerk to whom the matter is assigned internally by the presiding judge, (3) the Courtroom Deputy responsible for this matter, (4) the Clerk of the Court, (5) the presiding judge and staff of any

² All otherwise undefined terms shall have the same meaning ascribed to them in the Motion.

appellate tribunal; (5) the Office of the United States Trustee; and (6) the advisors to any statutory committees appointed in these Chapter 11 Cases.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

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