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

In re

**Vista Proppants and Logistics, LLC, et al.,
Debtors.**

§
§ **Chapter 11**
§
§ **Case No. 20-42002-elm11**
§
§ **(Jointly Administered)**
§

MAALT, LP,

Plaintiff and Counter-Defendant,

vs.

SEQUITUR PERMIAN, LLC

Defendant.

§
§
§ **Adversary Proceeding No. 20-04064**
§
§
§
§



**DEFENDANT, SEQUITUR PERMIAN, LLC’S MOTION FOR ENTRY OF
SCHEDULING ORDER AND BRIEF IN SUPPORT THEREOF**

SEQUITUR PERMIAN, LLC (“Sequitur” or “Defendant”) files this *Motion for Entry of Scheduling Order* and would respectfully show until the Court the following:

I. MOTION.

1. Sequitur moves the Court for entry its proposed Scheduling Order which is filed contemporaneously with this Motion.

II. BRIEF IN SUPPORT.

2. The Court requested that the parties confer on a Scheduling Order in this matter. The parties have exchanged proposed Scheduling Orders but cannot come to an agreement on certain proposed dates. There are three dates for which Court intervention is needed and many, if not all other, deadlines appear will fall in line once these dates are set. Defendant identifies these three dates as follows: (1) the deadline to amend and refile motions for summary judgment that were on file in the state court lawsuit at the time of removal, (2) the discovery deadline, and (3) docket call. Based on the proposed Scheduling Orders exchanged between the parties, these three dates differ as follows:

Deadline	Sequitur’s Proposed Deadline	Maalt’s Proposed Deadline
Docket Call	May 3, 2021	April 5, 2021
Discovery	April 5, 2021	January 22, 2021
Refiling of State Court Summary Judgment	November 16, 2020	October 29, 2020

A. Deadline to File State Court Summary Judgments.

3. On September 28, 2020, the parties appeared before this Honorable Court to initially discuss the matter and proceeding forward. At this conference, the Court instructed the parties to refile, for clarity, in this adversary proceeding any motions for summary judgment that

were on file in the state court proceedings. At that time, Sequitur informed the Court that it would request permission to amend its motion for summary judgment prior to filing with the Court and that it would like for all parties' motions for summary judgment to be heard at that same time. The Court stated that it was in approval with this request and instructed the parties to work together to schedule deadlines to refile the motions for summary judgment, responding to the motions, and a hearing date so that both parties' motions for summary judgment may be heard at that same time.

4. The next day, September 29, 2020, Maalt refiled its motion and, without consulting with Sequitur, set its motion for summary judgment for hearing. After a review of the transcript of the scheduling conference, Maalt backed off the unilaterally set hearing date in mid-October but still insists on pressing the deadline to refile. The parties are currently approximately fifteen days apart with Sequitur proposing a deadline of October 29, 2020 and Sequitur seeking a deadline of November 16, 2020. Sequitur's request for a mid-November deadline is made due to the schedule of the drafting and arguing attorney. His current schedule of approximately eight appellate briefings due and a week-long jury trial during the one of the last two weeks of October prevent him from adequately addressing amendments to the motion for summary judgment prior to its refiling. With a spring trial date, Sequitur does not believe that fifteen extra days will delay a trial setting or prejudice Maalt.

B. Discovery Deadline.

5. Maalt filed its Notice of Bankruptcy in the state court proceeding on June 10, 2020. At that time, Sequitur had scheduled two depositions of third-party witnesses. In addition, Sequitur had communicated to Maalt that it was seeking to depose at least three other third-party witnesses with whom Sequitur was working on scheduling their depositions at the time of the bankruptcy filing. Sequitur had also requested the deposition dates of the corporate representative of Maalt

and the president of Maalt. Maalt had informed Sequitur that these deposition dates would be provided on June 12, 2020. Maalt had also scheduled the deposition of Sequitur's corporate representative and another third-party witness. In sum, there are approximately ten witnesses who need to be deposed, not including the parties' respective expert witnesses.

6. Sequitur recognizes that at the time of the bankruptcy filing the parties were approximately two months out from the first trial setting and three months out from the alternate trial setting, but to merely impose that time frame in this proceeding is problematic for a number of reasons. In June 2020, COVID-19 had forced most courts in the large metropolitan areas to suspend trials and hearings to prevent face to face contact. This allowed the parties some latitude to schedule these depositions via Zoom since there were limited conflicts with trial dates and hearings being reset. However, Maalt's filing of bankruptcy has pushed this adversary proceeding to a time period when the legal landscape is quite different. The postponement of settings from the Spring and Summer of 2020, that permitted the parties more latitude to set the identified depositions at that time, have been reset to this Fall and Winter. The reality is that due to Maalt's bankruptcy filing and subsequent removal, this adversary proceeding is beginning at a time when there are limited dates in which to conduct the identified depositions for the reasons stated herein. With a Spring trial date, Maalt's insistence on completing these depositions by the January is unnecessary and unwarranted for the reasons noted above, as well as the upcoming holiday season. Therefore, Sequitur has proposed a discovery cutoff approximately thirty (30) days prior to the docket call, which should provide both parties time to conclude discovery and prepare for trial

C. Trial Date.

7. In light of the scheduling concerns presented above, Sequitur believes that a May trial setting is appropriate. A May 2021 setting would permit both parties to proceed in a reasonable

manner in preparation for trial. It would also take into account, to some degree, the chance that COVID-19 cases may spike in the upcoming winter months, as some experts have predicted, and further inhibit the necessary discovery.

D. Conclusion.

8. For the reasons stated, Defendant, Sequitur Permian, LLC, respectfully seeks entry of the proposed Scheduling Order attached hereto.

Dated: October 9, 2020.

Respectfully submitted,

/s/ Dylan B. Russell

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**ATTORNEYS FOR DEFENDANT,
SEQUITUR PERMIAN, LLC**

CERTIFICATE OF CONFERENCE

Prior to filing this Motion and the proposed Scheduling Order, the Parties conferred and exchanged proposed dates but no agreement could be reached.

/s/ Matthew A. Kornhauser
Matthew A. Kornhauser

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of October 2020, a true and correct copy was served upon all parties of record.

/s/ Dylan B Russell
Dylan B. Russell

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

<p>In re</p> <p>Vista Proppants and Logistics, LLC, <i>et al.</i>,</p> <p style="padding-left: 40px;">Debtors.</p>	§ § § § § § §	<p>Chapter 11</p> <p>Case No. 20-42002-elm11</p> <p>(Jointly Administered)</p>
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<p>MAALT, LP,</p> <p style="padding-left: 40px;">Plaintiff and Counter-Defendant,</p> <p>vs.</p> <p>SEQUITUR PERMIAN, LLC</p> <p style="padding-left: 40px;">Defendant.</p>	§ § § § § § § §	<p>Adversary Proceeding No. 20-04064</p>
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PROPOSED SCHEDULING ORDER IN ADVERSARY PROCEEDING

Came on for consideration the *Defendant, Sequitur Permian, LLC's Motion for Entry of Scheduling Order* (the "Motion")¹ submitted by Sequitur Permian, LLC, the defendant (the "Defendant," and collectively with Plaintiff, the "Parties"). The Court, having considered the Motion and this Order, and after due deliberation and sufficient cause appearing therefor, hereby finds that the Order is acceptable and should be entered.

ACCORDINGLY, it is hereby **ORDERED** that the following dates and deadlines shall apply to this adversary proceeding:

A. Docket Call/Trial. The Docket Call for the trial on this matter will be held before the Honorable Edward L. Morris on **May 3, 2021 at 1:30 p.m.**, at 501 W. 10th St., Room 204, Fort Worth, TX 76102. Trial will take place on during the month of **May 2021** unless order otherwise by the Court;

B. Service by Electronic Means. Pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Bankr. P. 7005, the Parties hereby agree to service of all pleadings and other papers in this case via email transmittal to all counsel of record and the Court's Electronic Case Filing (ECF) system, where applicable.

C. Pleading Deadlines. The deadline for amending any pleading asserting an affirmative claim by **November 2, 2020**. Any amended answer to an amended pleading must be filed by **November 16, 2020**.

D. Expert Disclosures. The deadline for making case-in-chief expert disclosures under Federal Rule of Civil Procedure 26(a)(2) is **January 4, 2021**. The deadline for making rebuttal expert disclosures is **February 5, 2021**;

E. Discovery. The deadline for the completion of all discovery is **April 5, 2021**;

¹ Capitalized terms not otherwise defined in this Order are given the same meaning as in the Motion.

F. Dispositive Motions. This adversary proceeding has been removed from matter Maalt LP v. Sequitur Permian, LLC; In the (“State Court Lawsuit”) in which there was, at the time of removal, motions for summary judgments filed by both Parties (the “Motions”). The Parties shall refile these Motions, and any amendments thereto by **November 16, 2020**. Any response to the Motions shall be filed by **November 30, 2020**. All replies thereto shall be filed by **December 7, 2020**. These Motions shall be heard on no later than **January 15, 2021**.

Unless otherwise permitted by the Court, all other dispositive motions must be filed no later than **February 5, 2020**. Any response to all other dispositive motions shall be filed by **February 22, 2020**. All replies thereto shall be filed by **March 5, 2021**. All other dispositive motions shall be heard by no later than **March 29, 2021**;

G. Exhibits. All exhibits, except impeachment exhibits, shall be marked with exhibit labels and exchanged with the opposing party, together with a list of witnesses to be called, by no later than **April 19, 2021**. A list of exhibits and witnesses shall also be filed with the Court by no later than **April 26, 2021**. All exhibits not objected to in writing prior to the Docket Call shall be admitted into evidence at trial without further proof, except for relevance. Written objections to exhibits will be taken up either at the beginning of, or during the course of, the actual trial, unless otherwise directed by the Court;

H. Joint Pretrial Order. The parties shall file, serve and upload for Court entry a Joint Pretrial Order in compliance with Local Bankruptcy Rule 7016-1 by no later than **April 19, 2021**. All counsel are responsible for preparing the Joint Pretrial Order, which shall contain the following: (a) a summary of the claims and defenses of each party; (b) a statement of stipulated facts; (c) a list of the contested issues of fact; (d) a list of contested issues of law; (e) an estimate

of the length of trial; (f) a list of additional matters which would aid in the disposition of this proceeding; and (g) the signature of each attorney;

I. Proposed Findings and Conclusions. Written proposed Finding of Fact and Conclusions of Law shall be filed and served on the opposing party by no later than **April 19, 2021**. Trial briefs addressing contested issues of law shall also be filed and served on the opposing party by no later than **April 26, 2021**; and,

J. Pretrial Conference. A Pretrial Conference shall be scheduled by the Parties to occur on or before **April 26, 2021**.

It is hereby further **ORDERED** that this Scheduling Order shall replace and supersede the Court's *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* entered by the Court on September 8, 2020 [Adv. Docket No. 4].

End of Order

Approved as to substance and form by:

/s/ Dylan B. Russell

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