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HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF ISSAQUAH, a municipal corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited liability company; and RESMARK EQUITY PARTNERS, LLC, a Delaware limited liability company,

Defendants.

NO. 18-CV-00910 RSM

STIPULATION AND ORDER REGARDING DEPOSITION PROTOCOL

ORA TALUS 90, LLC, a Delaware limited liability company; and RESMARK EQUITY PARTNERS, LLC, a Delaware limited liability company,

Third-Party plaintiffs,

v.

TERRA TALUS LLC, a Washington limited liability company; ELEMENT RESIDENTIAL INC., a Washington corporation; JOSHUA FREED, an individual; J.R. HAYES & SONS, INC., a Washington corporation; TERRA ASSOCIATES, INC., a Washington corporation; TALUS MANAGEMENT

STIPULATION AND ORDER REGARDING DEPOSITION PROTOCOL - 1

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1 SERVICES LLC, a Washington limited
2 liability company; and TALUS 7&8, LLC, a
3 Washington limited liability company,

4 Third-Party Defendants.

5 TALUS 7&8 INVESTMENT, LLC, a
6 Washington limited liability company; J.R.
7 HAYES & SONS, INC., a Washington
8 corporation,

9 Fourth-Party plaintiffs,

10 v.

11 KULCHIN FOUNDATION DRILLING
12 COMPANY, a Washington corporation, and
13 BIG MOUNTAIN ENTERPRISE LLC, a
14 Washington limited liability company,

15 Fourth-Party

16 Defendants.

17 AND RELATED COUNTERCLAIMS AND
18 CROSSCLAIMS

19 The United States federal and state governments and courts have issued states of
20 emergency, restrictions on travel and gatherings, and modified rules and procedures designed to
21 slow the spread of the COVID-19 pandemic. One such step is encouraging matters be conducted
22 by telephone, video, or other remote means where it is appropriate to do so.

23 Accordingly, the Parties hereby jointly stipulate to the following protocol for conducting
24 depositions in the above-captioned matter:

25 Administration of the Remote Deposition

26 1. The Parties agree to work in a collaborative and cooperative manner in attempting
to schedule remote depositions consistent with the admonition in Rule 1 of the Federal Rules of
Civil Procedure that states the Rules “should be construed, administered, and employed by the

1 court and the parties to secure the just, speedy, and inexpensive determination of every action
2 and proceeding.”

3 2. The Parties agree that depositions shall occur through Zoom, a videoconferencing
4 software, consistent with Rule 30(b)(4).

5 3. The Parties agree that remote depositions may be recorded by audio and
6 audiovisual means consistent with the requirements of Rule 30(b)(3).

7 4. The Parties further agree that remote depositions shall be recorded by
8 stenographic means consistent with the requirements of Rule 30(b)(3), but that it is not necessary
9 for the court reporter to be physically present with the witness whose deposition is being taken
10 unless state law expressly provides otherwise.

11 5. The Parties agree to treat the stenographer as an “Officer” as defined by Rules
12 28(a)(2) and 29(a) and the Party that noticed the remote deposition shall provide the Officer with
13 a copy of this Stipulation in advance of the remote deposition.

14 6. The Officer shall be permitted to remotely administer the oath and record the
15 deposition in accordance with state law.

16 7. At the beginning of the remote deposition, consistent with Rule 30(b)(5)(A), the
17 Officer shall begin the deposition with an on-the-record statement that includes: (i) the Officer’s
18 name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent’s
19 name; (iv) the Officer’s administration of the oath or affirmation to the deponent; and (v) the
20 identity of all persons present (physically and remotely).

21 8. At the beginning of the remote deposition, the Officer shall require the defending
22 attorney to confirm and certify the identity of the deponent.

23 Technology

24 9. The Parties agree to work collaboratively and cooperatively and in good faith to
25 assess their respective technological abilities and to troubleshoot any issues sufficiently in
26 advance of the deposition so any adjustments can be made. The Parties also agree to work

1 collaboratively and cooperatively to address and troubleshoot technological (including audio or
2 video) issues that arise during a deposition and make such provisions as are reasonable under the
3 circumstances to address such issues. This provision shall not be interpreted to compel any party
4 to proceed with a deposition where the witness cannot hear or understand the other participants
5 or where the participants cannot hear or understand the witness.

6 10. Should technological issues persist which make it difficult to proceed with the
7 remote deposition, the Parties agree to obtain professional technical assistance (such as by
8 contacting counsel(s)'s IT personnel) in an attempt to resolve any technological issues.

9 11. Any technological issues that arise during a party's questioning of a witness that
10 delay or pause the deposition shall not be counted toward (1) the total duration of the deposition
11 (Rule 30(d)(1)), or (2) the time allocated to that party for questioning.

12 12. To the extent possible, the Parties agree that each participant attending the remote
13 deposition shall be readily visible to all other participants at all times, and their statements shall
14 be audible to all participants at all times; in the event of limited bandwidth, the Parties agree that
15 the witness, the questioning attorney, and the defending attorney shall be readily visible to all
16 other participants, and their statements shall be audible to all participants at all times. However,
17 to minimize background noise and feedback, and to facilitate clear audio, the Parties agree that
18 participants not actively speaking shall mute their microphones on the device being used to
19 conduct the remote deposition.

20 13. The Parties agree that the deponent's electronic devices (such as iPads, tablets,
21 other laptops or computers, cell phones, etc.), other than the device being used to conduct the
22 remote deposition, shall be turned off during each segment of the deposition. Notifications on
23 each participant's device being used to conduct the remote deposition, such as calendar and
24 email alerts or chat functions, shall be turned off or muted.

25 14. The Parties agree not to engage in coaching or other impermissible
26 communication with the deponent through electronic or other means while on the record. Any

1 such coaching or impermissible communication during the remote deposition shall be considered
2 a violation of this Stipulation and subject to the Court's discretion to enter appropriate sanctions.
3 This provision is not intended to conflict with the applicable Federal Rules and ethical rules
4 governing communications between counsel and their witness but to address the use of
5 technology and remote participation.

6 15. The Parties agree that objections shall be raised by an audible objection and that
7 objections raised by one party shall apply to all parties.

8 Exhibits

9 16. The Parties expressly agree that hard copies of exhibits shall not be used in any
10 deposition to minimize the risk of the spread of COVID-19, except upon prior written unanimous
11 agreement by the Parties and the deponent upon a protocol for use of hard copy exhibits.
12 However, where a questioning attorney intends to have a witness's markings become part of an
13 exhibit, a hard copy of the exhibit may be given to the witness to mark upon if the witness's
14 modification of that exhibit cannot be done using Zoom.

15 17. The Parties agree that the exhibits shall be electronically shared and introduced
16 using the software provided by the Court Reporter. Each party who intends to ask questions of
17 the deponent and introduce any exhibits shall do so using the Court Reporter's exhibit software.
18 Each attorney intending to introduce exhibits during his or her questioning agrees to sufficiently
19 familiarize him or herself with use of this exhibit sharing software prior to any depositions so as
20 to ensure exhibits can be introduced in an efficient manner during the deposition. Likewise, the
21 defending attorney also agrees to sufficiently familiarize the deponent with the use of Zoom and
22 the exhibit sharing software prior to the deponent's deposition.

23 Miscellaneous

24 18. For purposes of this Stipulation and its provisions herein, a remote deposition
25 shall constitute any deposition where at least one party or its counsel attends remotely.
26

1 19. The Parties agree that this Stipulation also applies to remote depositions of non-
2 parties under Rule 45 and shall work in a collaborative and cooperative manner in attempting to
3 schedule remote depositions of non-parties. The Parties shall provide this Stipulation and Order
4 to any non-party under Rule 45 with the notice of the deposition.

5 20. The Parties agree to introduce this Stipulation as an exhibit in any party or non-
6 party depositions. This Stipulation need not be introduced as a new exhibit in each deposition
7 taken in this lawsuit but should be referenced in each deposition.

8 21. The Parties agree to revisit the terms of this Stipulation if it becomes necessary
9 and desirable to do so.

10 22. The Parties agree that if any provision of this Stipulation is invalid or
11 impermissible under applicable law, the applicable law shall control.

12 DATED this 26th day of August, 2020.

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STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 6

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STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 7

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ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

DATED this 4th day of September, 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

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STIPULATION AND ORDER REGARDING DEPOSITION
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STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 10

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Certificate of Service

I, Kelsey M. Doyle, certify under penalty of perjury of the laws of the State of Washington that on August 26, 2020, I electronically filed this document entitled STIPULATION AND [PROPOSED] ORDER REGARDING DEPOSITION PROTOCOL using the CM/ECF system which will send notification of such filing to all attorneys of record.

DATED this 26th day of August, 2020, at Seattle, Washington.

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