

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Chieftain Sand and Proppant, LLC, *et al.*,

Debtors.¹

Case No. 17-10064 (KG)

Chapter 11

(Jointly Administered)

Related Docket No. 43

**STIPULATION BY AND BETWEEN DEBTORS AND ROBERT AND JANICE
PETERSON RESOLVING CLAIMS**

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) and Mr. Robert C. Peterson and Mrs. Janice Peterson, individuals (collectively, the “Petersons” and collectively with the Debtors, the “Parties”), by and through their undersigned respective counsel, hereby stipulate and agree (this “Stipulation”) as follows:

RECITALS

WHEREAS, , on January 9, 2017 (the “Petition Date”) the Debtors filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Court”) commencing cases for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

WHEREAS, prior to the Petition Date, the Parties entered into that certain Option Agreement, dated as of July 28, 2014 (as amended, the “Option Agreement”), pursuant to which Debtors obtained an exclusive option (the “Option”) to purchase certain real property owned by

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors’ service address is: 331 27th Street, New Auburn, WI 54757.

Mr. and Mrs. Peterson, located in Barron County, Wisconsin and consisting of approximately eighty (80) acres of land (as more fully described in the Option Agreement, the "Property"); and

WHEREAS, on January 30, 2015, the Debtors issued the Notice of Exercise of Option Agreement, pursuant to which the Debtors exercised the Option and agreed to purchase the Property for the Purchase Price as set forth in the Option Agreement; and

WHEREAS, the Option Agreement was amended pursuant to that certain (i) First Amendment to Option Agreement, dated as of March 17, 2015 (the "First Amendment") and (ii) Second Amendment to Option Agreement, dated as of June 29, 2016 (the "Second Amendment"); and

WHEREAS, the Petersons conveyed the Property to Debtor Chieftain Sand and Proppant Barron, LLC pursuant to the Warranty Deed dated as of March 30, 2015; and

WHEREAS, under the terms of the Option Agreement, the Debtors were required to make the final payment of \$205,000.00 (the "Payment") to the Petersons by December 31, 2016; and

WHEREAS, the Debtors did not make the Payment and the Option Agreement states that the Debtors shall re-convey the Property to the Petersons if Payment is not made; and

WHEREAS, the Petersons hold a scheduled general unsecured claim in the amount of \$205,000 on account of the Debtors' failure to make the Payment pursuant to the Option Agreement; and

WHEREAS, on January 9, 2017, the Debtors filed a motion (the "Motion")² (Docket No. 17) for entry of an order (the "Bidding Procedures Order"), among other things (i) approving bidding procedures (the "Bidding Procedures") in connection with the sale (the

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

“Sale”) of substantially all assets (collectively, the “Assets”) of the Debtors, (ii) scheduling an auction and a hearing (the “Sale Hearing”) to consider approval of the Debtors entering into a Sale, (iii) approving the form and manner of notice thereof and (iv) granting related relief. On February 3, 2017, the Court entered the Bidding Procedures Order; and

WHEREAS, the Petersons have informally raised concerns with the Debtors with respect to the non-Payment and the proposed sale of the Property through the Sale; and

WHEREAS, following good faith negotiations, and in order to fully and finally resolve their disputes, avoid litigation, expense and delay and settle all claims in connection with the Property and all claims asserted or that could be asserted against one another, the Parties have reached the compromise and settlement set forth in this Stipulation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parties hereby stipulate and agree as follows:

STIPULATION

1. The Petersons shall have an allowed claim (the “Allowed Claim”) in the amount of \$205,000.00, (i) \$50,000.00 of which shall be an allowed administrative priority claim (the “Administrative Claim”) and (ii) \$155,000.00 of which shall be an allowed general unsecured claim (the “General Unsecured Claim”).

2. Within fourteen (14) days after the closing of the Sale, the Debtors shall pay to the Petersons from the proceeds of the Sale, the amount of \$50,000.00 (the “Settlement Payment”). The Settlement Payment shall be delivered by wire payment to undersigned counsel to the Petersons. The Settlement Payment shall be in full and final satisfaction of the Administrative Claim.

3. The General Unsecured Claim shall be entitled to a distribution, if any, in the same time and manner as all other similarly-situated allowed general unsecured claims. For the avoidance of doubt, nothing in this Stipulation shall create, enlarge, or otherwise modify any rights of the Petersons with respect to the General Unsecured Claim and such General Unsecured Claim shall receive the treatment provided to all other similarly-situated allowed general unsecured claims in the Chapter 11 Cases.

4. The Petersons hereby release all of their rights, title and interest in and to the Property to the Debtors and their successors or assigns and consent to the sale of the Property to a third party purchaser free and clear of any and all such rights, title, and interests.

5. Notwithstanding anything set forth in the Bar Date Order (Docket No. 44), the Petersons shall not be required to file a proof of claim on account of the Allowed Claim.

6. Except for the rights and obligations arising out of this Stipulation, the Petersons do hereby fully and finally mutually compromise and settle with, and forever release, remise, relieve, waive, relinquish, and discharge the Debtors, Energy Capital Partners Mezzanine Opportunities Fund A, LP, Energy Capital Partners Mezzanine Opportunities Fund, LP, Energy Capital Partners Mezzanine Opportunities Fund B, LP, and each of their respective predecessors, successors, assigns, and current and former affiliates, officers, directors, principals, employees, managers, shareholders, members, and agents (collectively, the "Debtor Release Parties") from all claims, all causes or causes of action, suits, debts, refunds, dues, demands, obligations, charges, costs, expenses (including but not limited to attorneys' fees), sums of money, controversies, damages, accounts, agreements, covenants, contracts, judgments, reckonings, liens, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether based upon statute, common law or otherwise, whether matured, contingent, or non-contingent,

whether direct, indirect or derivative, whether known or unknown, whether suspected or unsuspected, whether or not hidden and without regard to the subsequent discovery or existence of different or additional facts, the Petersons ever had, now have, or may claim to have against the Debtor Release Parties, including but not limited to all claims and causes of actions arising under chapter 5 of the Bankruptcy Code.

7. Except for the rights and obligations arising out of this Stipulation, the Debtor Release Parties do hereby fully and finally mutually compromise and settle with, and forever release, remise, relieve, waive, relinquish, and discharge the Petersons from all claims, all causes or causes of action, suits, debts, refunds, dues, demands, obligations, charges, costs, expenses (including but not limited to attorneys' fees), sums of money, controversies, damages, accounts, agreements, covenants, contracts, judgments, reckonings, liens, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether based upon statute, common law or otherwise, whether matured, contingent, or non-contingent, whether direct, indirect or derivative, whether known or unknown, whether suspected or unsuspected, whether or not hidden and without regard to the subsequent discovery or existence of different or additional facts, any of the Debtor Release Parties ever had, now have, or may claim to have against the Petersons, including but not limited to all claims and causes of actions arising under chapter 5 of the Bankruptcy Code.

8. This Stipulation constitutes the entire agreement between the Parties hereto and may not be amended or modified in any manner except by a writing signed by such Parties or their duly authorized representatives. There are no other covenants, promises, agreements, conditions or understandings, either oral or written, expressed or implied, between the Parties hereto, except for this Stipulation with respect to its subject matter.

9. Each Party shall each bear its respective attorneys' fees and costs relating to the settlement negotiations and implementation of this Stipulation. However, if any action is commenced by any Party hereto to enforce the provisions of this Stipulation, the prevailing party shall be entitled to an award, in addition to any other claims or damages, of its costs and expenses including attorneys' fees, in connection with said action.

10. The Parties acknowledge and agree that the Court shall retain jurisdiction over all disputes concerning or related to the subject matter of this Stipulation.

11. This Stipulation may be executed in multiple counterparts and by facsimile or by PDF attached to an email, with each such facsimile or PDF counterpart being deemed an original and constituting one original document when combined.

12. The undersigned persons represent and warrant that they have full authority to execute this Stipulation on behalf of the respective Parties and that the respective Parties have full knowledge of and have consented to this Stipulation.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused the Stipulation to be duly executed as set forth below.

Dated: February 14, 2017 GIBBONS P.C. By: <u>/s/ Howard A. Cohen</u> Howard A. Cohen (DE 4082) 300 Delaware Avenue, Ste. 1015 Wilmington, DE 19801 (302) 518-6300 <i>Counsel to the Debtors</i>	Dated: February 14, 2017 PEPPER HAMILTON LLP By: <u>/s/ John H. Schanne</u> John H. Schanne, II (DE No. 5260) Hercules Plaza, Suite 5100 1313 N. Market Street P.O. Box 1709 Wilmington, DE 19899-1709 (302) 777-6500 <i>Counsel to Mr. Robert C. Peterson and Mrs. Janice Peterson</i>
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Dated: February 14, 2017

RICHARDS, LAYTON & FINGER, P.A.

By: /s/ Mark D. Collins

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