

Stephen M. Pezanosky
State Bar No. 15881850
Ian T. Peck
State Bar No. 24013306
David L. Staab
State Bar No. 24093194
HAYNES AND BOONE, LLP
301 Commerce Street, Suite 2600
Fort Worth, TX 76102
Telephone: 817.347.6600
Facsimile: 817.347.6650
Email: stephen.pezanosky@haynesboone.com
Email: ian.peck@haynesboone.com
Email: david.staab@haynesboone.com

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, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Joint Administration Requested

**DEBTORS' EMERGENCY MOTION FOR ORDER (I) AUTHORIZING
DEBTORS TO PAY CERTAIN PREPETITION EMPLOYEE WAGES,
OTHER COMPENSATION AND REIMBURSABLE EMPLOYEE
EXPENSES; (II) CONTINUING EMPLOYEE BENEFITS PROGRAMS;
(III) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH
OBLIGATIONS PURSUANT TO SECTIONS 105(a), 363(a), AND 507(a)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND
6004; AND (IV) GRANTING RELATED RELIEF**

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, “Vista” or the “Debtors”) hereby file this *Debtors' Emergency Motion for Order (I) Authorizing Debtors to Pay Certain*

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.



Prepetition Employee Wages, Other Compensation and Reimbursable Employee Expenses; (III) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations Pursuant to Sections 105(a), 363(a), and 507(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, and (IV) Granting Related Relief (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

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 this 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.

Background

2. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (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.

3. 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.

4. 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.

Relief Requested

5. The Debtors request the entry of an order, substantially in the form attached to the Motion as **Exhibit A** (the "Order"), (i) authorizing, but not directing, the Debtors to (a) pay, in their sole discretion, all obligations related to wages, salaries, other compensation, payroll taxes and deductions, reimbursable employee expenses, payroll benefit providers, employee benefits, and service fees (collectively, the "Employee Obligations") and all costs related to the foregoing, and (b) maintain and continue to honor their practices, programs, and policies in place for their employees, as such may be modified, amended, or supplemented from time to time in the ordinary course of business,² and (ii) authorizing and directing the Debtors' banks and financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the Employee Obligations, subject to the terms set forth in the Order attached hereto. The Debtors are not seeking authority to pay any employee of any of their non-Debtor affiliates. Additionally, the Debtors seek to modify the automatic stay in favor of claimants seeking to recover under the Workers' Compensation Program (defined below); provided, however, that such claims are pursued in accordance with the Workers' Compensation

² The summary of the Debtors' various Employee Obligations provided herein is qualified entirely by the Debtors' official policies or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and their Employees (as defined herein) (each, an "Official Policy"). In the event of any inconsistency or ambiguity between the summary contained in the Motion and an Official Policy, the terms of such Official Policy shall govern.

Program, and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Program.

Overview of the Debtors' Workforce

6. Vista's business has historically been conducted through three affiliated entities and their respective subsidiaries: (i) Lonestar Ltd., which is in the business of mining, processing, transporting and selling industrial sand; (ii) MAALT, which specializes in the transloading of sand from rail to truck; and (iii) Bulk, which provides commercial trucking services through its fleet of commercial trucks, trailers and related assets, used in the transportation of frac sand and related commodities and specializes in the implementation of frac sand logistics solutions focused on the transportation of sand from in-basin terminals to the wellhead. As set forth in the First Day Declarations, the Debtors have substantially reduced their business operations in the wake of the global pandemic and the global oil price crash.

7. As of the Petition Date, Vista employs 56 full-time employees (the "Employees") and no part-time employees. Included among the Employees are certain executives, equipment operators, mechanics, supervisors, electricians, and dispatchers, among others. Many of the Employees have specific skill sets and expertise that are essential to the Debtors' operations. The Employees are critical to the preservation of the Debtors' estates during the Chapter 11 Cases. Additionally, the Employees responsible for the Debtors' limited business operations, including information technology, accounting and finance, and other related tasks are equally as important to the business operations. Their skills, knowledge, and understanding with respect to the Debtors' infrastructure and limited business operations are required for the effective reorganization of the Debtors' businesses.

Employee Obligations

A. Wages Obligations

8. The Debtors typically pay obligations relating to Employee wages and salaries on a biweekly basis. In the ordinary course of business, the Debtors pay their Employees through Paycom Software, Inc. (“Paycom”), a third-party service provider, which makes payments either directly to Employees through direct deposits with funds advanced by the Debtors or by check. The Debtors advance funds to Paycom approximately two (2) days prior to the Debtors’ regularly-scheduled payroll. Subsequently, Paycom makes payments to the Employees and to various third parties as described below.

9. The Debtors estimate their average bi-weekly payroll to be approximately **\$297,000**. The Debtors’ most recent bi-weekly payroll was funded to Paycom on June 3, 2020, prior to the Debtors’ filing, and covers the time period from May 18, 2020, to May 31, 2020, for the mining and executive Employees and from May 17, 2020, to May 30, 2020, for the transload Employees. The Debtors estimate that, as of the Petition Date, approximately **\$203,000** in wages and salaries earned by the Employees prior to the Petition Date have accrued and remain unpaid (collectively, the “Unpaid Wage Obligations”). The Debtors do not believe that any of the Employees are owed prepetition Wage Obligations in an amount exceeding the \$13,650 priority cap imposed by Section 507(a)(4) of the Bankruptcy Code (the “Priority Wage Cap”) and, accordingly, do not seek relief to pay any prepetition Unpaid Wage Obligations in excess of such cap. The Debtors seek authority, but not direction, to pay all Unpaid Wage Obligations to the extent permitted by Section 507(a)(4) of the Bankruptcy Code and to continue to satisfy all Wage Obligations in the ordinary course of business.

B. Payroll Taxes and Deductions

10. In various jurisdictions, the Debtors are required by law to withhold amounts from the Wage Obligations related to income taxes, healthcare taxes, and other social welfare benefits, including social security, Medicare taxes, and unemployment insurance (collectively, the “Withholding Taxes”) and to remit the same and certain other amounts to the appropriate taxing authorities (collectively, the “Taxing Authorities”) according to schedules established by such Taxing Authorities.

11. In certain circumstances, the Debtors are also required to make additional payments from their own funds in connection with the Withholding Taxes (the “Employer Taxes” and, together with the Withholding Taxes, the “Payroll Taxes”). In the aggregate, the Payroll Taxes, including both the Employee and Employer portions, total approximately **\$60,000** for each bi-weekly payroll. As of the Petition Date, the Debtors estimate that they owe approximately **\$41,000** on account of prepetition Payroll Taxes.

12. During each applicable pay period, the Debtors, directly through Paycom, also routinely withhold other amounts from certain Employees’ gross pay, including garnishments, child support, and deductions related to various Retirement Plans and other Employee Benefits (each hereinafter defined) (collectively, the “Deductions” and, together with the Payroll Taxes, the “Payroll Taxes and Deductions”). As of the Petition Date, the Debtors estimate that they owe approximately **\$10,000** on account of prepetition Deductions.

13. To the extent any of the Payroll Taxes and Deductions may not have been forwarded to the appropriate third-party recipients or checks or electronic transfers in respect thereof may not have cleared prior to the Petition Date, the Debtors seek authority to remit such Payroll Taxes and Deductions (and to continue to forward Payroll Taxes and Deductions on a

post-petition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business.³

C. Reimbursable Expenses

14. In the ordinary course of business, the Debtors reimburse certain Employees in accordance with the Debtors' policies for reasonable, customary, and approved expenses incurred on behalf of the Debtors in the scope of such Employees' employment and service, including travel mileage, hotel rooms, meals, vehicle, equipment, and business-related telephone charges (collectively, the "Reimbursable Expenses"). The Debtors reimburse the Reimbursable Expenses as part of the scheduled payroll immediately following the Debtors' approval. Because of the irregular nature of requests for Reimbursable Expenses, it is difficult to determine the amount of Reimbursable Expenses outstanding at any given time.⁴ The Debtors estimate that Reimbursable Expenses average approximately **\$1,000** per month, and approximately one month of Reimbursable Expenses may remain outstanding as of the Petition Date. The Debtors seek authority, but not direction, to pay any unpaid prepetition Reimbursable Expenses and to continue to satisfy all Reimbursable Expenses postpetition in the ordinary course of business.

D. Vacation and Paid Time Off

15. The Debtors provide the Employees with paid time off ("PTO") for vacation, illness, and other personal leave. Vacation accrues per pay period, and the available leave is dependent upon an Employee's length of employment. If an Employee does not use his or her vacation time in a given year, the Employee may cash out⁵ up to forty-eight (48) hours or carry over up to forty-eight (48) hours of vacation for use in the following calendar year but loses any

³ All Payroll Taxes and Deductions are administered by Paycom.

⁴ Certain Employees have had to use their own personal credit cards for business operation expenses.

⁵ Bulk and MAALT Employees are not entitled to cash out or carry over PTO. The cash out and carry over policies only apply to Lonestar Management Employees.

unused hours in excess of forty-eight (48) hours. If an Employee is terminated or resigns, such Employee is paid for any unused vacation time if the Employee has been employed for more than one year and was not terminated due to misconduct or unacceptable performance. The cash balance of PTO as of the Petition Date is **\$205,000** with two (2) Employees having a cash-out balance greater than \$10,000.

16. By this Motion, the Debtors seek authority to honor their respective vacation and other leave policies to all Employees in the ordinary course of Debtors' business. The Debtors request authority to permit their Employees to use accrued vacation and other leave, and are asking for authority, but not direction, to pay Employees for unused PTO in accordance with their prepetition policies; provided, however, that any payment of a cash-out PTO balance that accrued prior to the Petition Date will be subject to the Priority Wage Cap.

Benefit Services Providers

17. The Debtors engage certain benefit service providers (each, a "Benefit Service Provider") to help administer payroll and provide other services. The scope of services provided varies from contract to contract, but in each instance, the Debtors pay a fee to the Benefit Service Provider (the "Benefit Service Provider Fees").

18. As mentioned above, Paycom is a Benefit Service Provider, which facilitates the administration of payroll and payment of payroll taxes and deductions for Employees. The Debtors also engage certain other Benefit Service Providers to assist with employment related functions.

19. The Debtors estimate that Benefit Service Provider Fees average approximately \$9,200 per month, and approximately **\$1,000** of Benefit Service Provider Fees may remain outstanding as of the Petition Date. The Debtors seek authority to honor the prepetition Benefit

Service Provider Fees and to satisfy all postpetition Benefit Service Provider Fees in the ordinary course of business.

Employee Benefit Plans

20. The Debtors maintain various employee benefit plans and policies for health care, dental, vision, disability, life, accidental death and dismemberment insurance, 401(k) savings plans, workers' compensation and employee assistance for mental health needs (collectively, and as discussed in more detail below, the "Employee Benefits"). The Employee Benefits are administered by several different providers (collectively the "Benefits Providers"), depending upon the benefit.

21. Each Benefits Provider charges the Debtors either an annual or a monthly premium for the provision of the Employee Benefits. These premiums are either wholly or partially borne by the Debtors. When the Debtors fund only a portion of these premiums, covered Employees contribute their pro rata portion of the remainder, which is withheld from these Employees' paychecks. Pursuant to this Motion, the Debtors seek authority, but not direction, to pay certain prepetition amounts in respect of the Employee Benefits and to continue the Employee Benefits programs in the ordinary course of business, and to make payments thereunder.

A. Health Benefits

22. All regular, full-time Employees are eligible to receive medical, prescription drug, dental, and vision insurance coverage (collectively, the “Health Benefits”), provided by various health care providers, including:

- Blue Cross and Blue Shield of Texas – Medical and Pharmacy
- HSA Bank – Health Savings Accounts
- BlueCross Blue Shield – Dental⁶
- Dearborn National/EyeMed – Vision
- Teladoc – Online Doctor Service/Telemedicine

As part of the Health Benefits, Employees may choose from a PPO Plan, a Base Health Savings Account (“HSA”) Plan, or a Buy Up HSA Plan. Amounts contributed to the HSA are deducted from an Employee’s payroll and deposited into an account over which such Employee has control.

23. The Debtors pay the employer portion for the Health Benefits, and the Employees’ portion of premiums for the Health Benefits is deducted from each participating Employees’ payroll amount. The Employees’ contribution for Health Benefits depends on their elections while the Debtors’ portion ranges from \$0 to \$528⁷ per pay period. The Debtors estimate that obligations for premiums under the Health Benefits plans average approximately **\$344,000** per month⁸ (**\$337,000** in Medical/Dental; **\$3,500** in Vision; and **\$3,500** in Telehealth Benefits), and approximately one month of obligations, **\$344,000**, for premiums under the Health

⁶ The Employee contributions for medical, health savings accounts, dental, and vision are deducted on a pre-tax basis.

⁷ This is the highest amount possible under all of the Debtors’ Health Benefits plans, which includes separate Health Benefits for Lonestar Management, MAALT, and Bulk Employees. This amount assumes that a Bulk Employee has enrolled in health, dental, and vision insurance for the Employee and the Employee’s family.

⁸ The estimate of obligations for premiums under the Health Benefits plans is based on an average of the last three months of expenses paid by the Debtors.

Benefits plan may remain outstanding as of the Petition Date (the “Unpaid Health Benefits”). Considering that the Health Benefits are vital to the Debtors’ Employees, the Debtors seek authority to remit any Unpaid Health Benefits and to continue providing the Health Benefits in the ordinary course of business on a post-petition basis.

B. Life and Accidental Death and Dismemberment Insurance

24. The Debtors provide basic group term life, accidental death, long-term disability, and certain other risk and disability insurance benefits (collectively, the “Employee Insurance Coverage”). The Debtors provide Basic Life and Accidental Death and Dismemberment Insurance through Mutual of Omaha (“Mutual of Omaha”) at the Debtors’ cost. The Basic Life and Accidental Death and Disability (“AD&D”) Insurance benefit is equal to \$25,000. Additionally, Employees may elect to purchase additional Voluntary Life and AD&D insurance life insurance on behalf of the Employee, his or her spouse, or child; however, the premium for Voluntary Life and AD&D insurance is borne by the Employee and paid through Payroll Deductions.

25. In addition, each Employee that works at least thirty hours per week may elect to receive short or long-term disability insurance through Mutual of Omaha. The short-term disability plan entitles an Employee to receive 60% of their income, with a weekly benefit of up to \$1,000 for up to 12 weeks. The long-term disability plan entitles an Employee to receive 60% of their income of up to \$6,000 per month for various periods of duration, depending on age. The Debtors pay 0% of the cost for long term disability, while the Employee is responsible for 100% of the cost of the short and/or long-term disability to the extent coverage is elected.

26. In order to retain the Employee Insurance Coverage, the Debtors are required to pay premiums to the providers of the Employee Insurance Coverage. The Debtors estimate that

monthly Employee Insurance Coverage premiums average approximately **\$45,000** per month, and approximately one month of obligations for premiums under the Employee Insurance Coverage may remain outstanding as of the Petition Date (the “Unpaid Employee Insurance Coverage Premiums”). The Debtors seek authority to pay such Unpaid Employee Insurance Coverage Premiums and to continue the Employee Insurance Coverage on a post-petition basis in the ordinary course of business.

C. Retirement Plans

27. The Debtors also provide certain eligible Employees with retirement benefits. The Debtors maintain a retirement savings plan with Principal Financial Services, Inc. (“Principal”) for the benefit of all Employees who meet the requirements of Section 401(k) of the Internal Revenue Code (the “401(k) Plan”). The 401(k) Plan is a defined contribution 401(k) profit sharing plan and is compliant with ERISA 404(c). Employees have the option to contribute to a Roth 401(k) as well as a traditional 401(k). All amounts contributed to the 401(k) Plan are wired directly from the Debtors to Principal.

28. Employees are automatically enrolled in the 401(k) Plan. Instead, Employees must make an election to participate in the 401(k) Plan. Employees become eligible to participate in the 401(k) Plan 60 days after the date of hire. Employees who are 50 years of age or older who already contribute the maximum amount under the 401(k) Plan may also make a “catch-up contribution” up to \$6,000 for a total combined contribution allowance of \$25,000. The 401(k) Plan currently has a total of 661 participants, including 44 active participants and 617 inactive participants. The Debtors do not match 401k contributions.

29. In the first quarter of 2020, the Debtors withheld an aggregate amount of approximately **\$17,000** each month from participants’ paychecks on account of their 401(k)

contributions. As of the Petition Date, the Debtors estimate that they hold approximately **\$12,000** related to Employee 401(k) Plan contributions that have not been remitted to the 401(k) Plan (the “Unremitted 401(k) Contributions”); however, to the extent the Debtors do owe any Unremitted 401(k) Contributions, the Debtors seek authority to pay such amounts. Thus, the Debtors seek authority, to the extent applicable, to: (a) release the Unremitted 401(k) Contributions, if any, held in trust for their Employees; and (b) continue operating the 401(k) Plan and to make all prepetition and postpetition payments thereunder in the ordinary course of business, including any associated administration fees.

D. Workers’ Compensation Program

30. The Debtors also provide Employees with workers’ compensation and employer’s liability coverage (the “Workers’ Compensation Program”) through First Liberty Insurance Corp. The Debtors are responsible for the full amount of the premiums for the Workers’ Compensation Program for the benefit of Employees. Premiums are adjusted annually based on claims made during the previous year. On average, the Debtors have historically paid approximately **\$906,000** in annual Workers’ Compensation premiums. Prior to the Petition Date, the Debtors renegotiated coverage for 2020. Under the Debtors’ current Workers Compensation Program, premiums have been reduced to approximately **\$5,000 per month**. The Debtors reasonably believe there are no amounts due and outstanding as of the Petition Date under the Workers’ Compensation Program. Nonetheless, the Debtors seek authority, but not direction, to pay any and all prepetition obligations related to the Workers’ Compensation in the event that the Debtors subsequently incur such outstanding prepetition obligations. Additionally, the Debtors request authority to continue the Workers’ Compensation Program and make post-petition payments thereunder in the ordinary course of business.

E. Employee Assistance Program

31. The Debtors provide the Employees with access to Employee Assistance Program (“EAP”) through Mutual of Omaha. The EAP provides Employees access to a website, a 1-800 number, and free counseling and referral programs for mental health needs. The Debtors’ cost to provide this EAP is included into the premiums paid by the Debtors to Mutual of Omaha.

Basis for Relief Requested

A. Certain of the Employee Obligations are Entitled to Priority Treatment

32. Pursuant to Section 507(a)(4)(A) of the Bankruptcy Code, claims of Employees for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days of the petition date are granted priority unsecured status up to \$13,650 per employee. 11 U.S.C. § 507(a)(4)(A). Additionally, Section 507(a)(5) of the Bankruptcy Code provides that claims for contributions to employee benefit plans are also afforded priority unsecured status up to \$13,650 per employee covered by applicable benefits plans, less any amount paid pursuant to Section 507(a)(4). *See* § 507(a)(5)(A).

33. Many of the prepetition Employee Obligations constitute priority claims under Sections 507(a)(4) or (5) of the Bankruptcy Code. To the extent such claims are afforded priority status, the Debtors are required to pay these claims in full to confirm a Chapter 11 plan. *See* § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). As priority claims, the Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied and would be entitled to payment in full under any plan of reorganization.

Authorizing the Debtors to make these payments at this time will affect only the timing of such payments.

B. Payment of Payroll Taxes and Deductions is Required by Law

34. The Debtors also seek authority to pay Payroll Taxes and Deductions to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including Employee contributions to the Employee Benefit Plans, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* § 541(b). Further, federal and state laws require the Debtors and their officers to remit certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich. (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that this Court authorize them to remit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

C. Ample Authority Exists to Authorize the Debtors to Honor Employee Obligations

35. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174-75 (Bankr. S.D.N.Y. 1989) (granting authority to pay

prepetition wages); *see also* *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were potential lien claimants). As set forth herein, in authorizing payments of certain prepetition obligations, including Employee Obligations, courts have relied on several legal theories, based on Sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code.

36. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *See also In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay claims “reasonably believe[d]” to be authorized under the *CoServ* test or whose payment was necessary “in the exercise of their business judgment . . . in order for [the] [d]ebtors to continue their respective businesses”).

37. The Court may grant the relief requested herein pursuant to Section 363(b) of the Bankruptcy Code. Section 363(b) provides, in pertinent part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have long recognized that, where a sound business justification can be articulated, payment of prepetition claims under Section 363(b) of the

Bankruptcy Code is permitted. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to Section 363(b) of the Bankruptcy Code; relief appropriate where payment was needed to “preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale.”); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (use of assets outside the ordinary course of business permitted if “sound business purpose justifies such actions”); *see also Armstrong*, 29 B.R. at 397 (relying on Section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

38. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to Section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court 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). Courts generally recognize that payments to prepetition creditors are appropriate pursuant to Section 105(a) of the Bankruptcy Code under the “doctrine of necessity” or the “necessity of payment” rule, where such payments are necessary to the continued operation of the debtor’s business. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 487 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”). Under Section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, when nonpayment of a

prepetition obligation would trigger a withholding of goods or services essential to the debtors' business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that Section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

39. Courts have repeatedly recognized the importance of employees to a debtor's reorganization and the severe harm to employees that can arise if courts do not grant motions such as this one. *In re Braniff, Inc.*, 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998) (approving payment of prepetition employee wage claims due to the vital role the employees play to the debtor's reorganization). Courts have regularly granted motions to pay prepetition employee wages and honor employee benefits when the employees' continued efforts are necessary to the debtor's effective reorganization. *See, e.g., In re The Nat'l Benevolent Ass'n of the Christian Church (Disciples of Christ), et al.*, Chapter 11 Case No. 04-50948 (Bankr. W.D. Tex. Feb. 18, 2004) (Order Authorizing Debtors' Expedited Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits); *In re JIT Holdings, Inc.*, Chapter 11 Case No. 02-21102 (Bankr. S.D. Tex. May 24, 2002) (Order Authorizing the Debtor to Pay and Honor Prepetition Personal and Paid Leave Policies, and Pay Medical Benefits and Reimbursable Employee Expenses); *In re Kitty Hawk, Inc.*, Case No. 00-42141-BJH (Bankr. N.D. Tex. May 4, 2000) (Order Granting Motion to Pay Pre-Petition Debt for Salaries, Wages, Employee Benefits and Payroll Taxes).

40. Accordingly, pursuant to Sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, this Court is empowered to grant the relief requested herein and such relief is

necessary, in the Debtors' discretion and business judgment, in order to prevent harm to the Debtors' businesses.

41. In this case, the relief requested will benefit the Debtors' estates and creditors by allowing the Debtors' reorganization efforts to continue without interruption. As stated previously, the Debtors believe that the vast majority of the Employee Obligations constitute priority claims. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce and hinder the Debtors' ability to successfully reorganize. Moreover, the loss of valuable individuals and the recruiting efforts that would be required to replace them would be a massive and costly distraction at a time when the Debtors should be focusing on implementing a successful reorganization. For these same reasons, failure to pay the Employee Obligations will adversely impact the Debtors' relationships with their Employees at a time when the Employees' support is critical to the Debtors' success in Chapter 11.

42. Due to the nature of the Debtors' businesses, Employees of an equivalent level of skill and knowledge would be difficult and costly for the Debtors to find and to integrate into their restructuring efforts in an efficient manner. It is necessary that the Debtors continue to maintain Employee Benefits. Satisfying prepetition and post-petition obligations related to the Employee Benefits will ultimately allow the Debtors to focus on effecting a more cost-efficient reorganization. The Debtors also believe it is necessary to continue payment of the Benefit Service Provider Fees in order to maintain the smooth administration of programs related to the Employee Obligations. Without the continued services of the Benefit Service Providers, the Debtors will be unable to continue to honor their Employee Obligations in an efficient and cost-effective manner.

43. Furthermore, the payment of Payroll Taxes similarly will not prejudice other creditors of the Debtors' estates as the relevant Taxing Authorities will generally hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to the Payroll Taxes. Moreover, the portion of the Payroll Taxes withheld from an Employee's wages on behalf of the applicable Taxing Authority are held in trust by the Debtors, and thus, are not property of the Debtors' estates under Section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 62-63 (1990) (holding that withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtors' estates). Failure to remit Payroll Taxes to a Taxing Authority may give rise to personal liability for the Debtors' officers and directors. 26 U.S.C. § 6672; *see In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (failure to pay trust fund taxes may give rise to personal liability for a company's officers). As such, payment of Payroll Taxes is reasonable and in the best interest of the Debtors' estates and all parties in interest.

D. The Automatic Stay Should be Modified for Workers Compensation Claims

44. The Debtors also seek to modify the automatic stay with respect to workers compensation claims. Section 362(a) of the Bankruptcy Code, commonly known as the "automatic stay," operates to stay

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1). Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* § 362(d)(1).

45. To the extent the Debtors' Employees hold valid claims under any of the Debtors' workers' compensation policies, the Debtors seek authorization, under Section 362(d) of the Bankruptcy Code, to permit these Employees to proceed with their claims in the appropriate

judicial or administrative forum, subject to the conditional lift stay terms set forth in the Order. The Debtors believe cause exists to modify the automatic stay because prohibiting the Debtors' Employees from proceeding with their claims could have a detrimental effect on the financial well-being and morale of such employees and lead to their departure. Thus, solely with respect to workers' compensation claims, the Debtors seek to modify the automatic stay; provided, however, that such claims are pursued in accordance with the Workers' Compensation Program, and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Program. All other claims, including any claims relating to matters covered by other Employee Obligations, will remain subject to the automatic stay.

46. Pursuant to this Motion, the Debtors do not seek a waiver, termination, or modification of the automatic stay with respect to any other claims or matters, and nothing in this Motion should be construed as a request therefor.

E. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers Requested to Pay the Employee Obligations

47. The Debtors have sufficient funds to pay the amounts described based on anticipated access to cash collateral and DIP financing, provided that any such access to cash collateral and DIP financing will be subject to the terms, conditions, limitations, and requirements under any financing or cash collateral orders entered in the Chapter 11 Cases, together with any approved budget thereto. Under the Debtors' existing cash management system, the Debtors can identify checks or wire transfer requests as relating to an authorized payment made to Employees or on account of Employee Obligations. Accordingly, when requested by the Debtors, the Debtors request that the Court authorize its financial institutions to receive process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein, to the extent of available, cleared funds in the Debtors' accounts and be subject

to the terms, conditions, limitations, and requirements under any financing or cash collateral orders entered in the Chapter 11 Cases, together with any approved budget thereto. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the Employee Obligations dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

Request for Waiver of Stay

48. To the extent that the relief sought in this Motion constitutes a use of property under Bankruptcy Code Section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their business and preserve the value of the estates.

Reservation of Rights

49. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for or validity of any claim of the Employees, Benefit Service Providers, Taxing Authorities, or Benefits Providers under applicable nonbankruptcy law, (iii) a waiver of any claims or causes of action which may exist against any Employee, Benefit Service Provider, Taxing Authority, or Benefits Provider or (iv) an assumption, adoption or rejection of any contract or lease between the Debtors and any third party under Section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim and any payment made pursuant to the Court's order granting this Motion is

not intended and should not be construed as a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

50. 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 Ares Capital Corporation; (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.

Conclusion

WHEREFORE, based on the foregoing, the Debtors respectfully request that the Court (i) grant the Motion, and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 9th day of June, 2020.

HAYNES AND BOONE, LLP

By: /s/ David L. Staab

Stephen M. Pezanosky

State Bar No. 15881850

Ian T. Peck

State Bar No. 24013306

David L. Staab

State Bar No. 24093194

301 Commerce Street, Suite 2600

Fort Worth, TX 76102

Telephone: 817.347.6600

Facsimile: 817.347.6650

Email: stephen.pezanosky@haynesboone.com

Email: ian.peck@haynesboone.com

Email: david.staab@haynesboone.com

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, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

**ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION
EMPLOYEE WAGES, OTHER COMPENSATION AND REIMBURSABLE
EMPLOYEE EXPENSES; (II) CONTINUING EMPLOYEE BENEFITS PROGRAMS;
(III) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS PURSUANT TO
SECTIONS 105(a), 363(a), AND 507(a) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 6003 AND 6004; AND (IV) GRANTING RELATED RELIEF**

Upon the Debtors' Emergency Motion for Order (I) Authorizing Debtors to Pay Certain

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.

*Prepetition Employee Wages, Other Compensation and Reimbursable Employee Expenses; (II) Continuing Employee Benefits Programs; (III) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations Pursuant to Sections 105(a), 363(a), and 507(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004; and (IV) Granting Related Relief (the “Motion”)² of Vista Proppants and Logistics, LLC, et al. (collectively, the “Debtors”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984) (Woodward, H.O.); and consideration of the Motion and the requested relief 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; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,*

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, in their discretion, to pay and remit in the ordinary course of business and in accordance with the Debtors’ prepetition policies and programs, prepetition Employee Obligations and all costs incident to the foregoing in accordance with the

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

Debtors' customary policies, including, but not limited to, (i) Unpaid Wage Obligations, (ii) Payroll Taxes and Deductions, (iii) Reimbursable Expenses, (iv) Benefit Service Provider Fees, (v) unused PTO, (vi) Employee Benefits and fees related thereto in the ordinary course of business as they come due, and (vii) to the extent applicable, any Unremitted 401(k) Obligations.

3. The Debtors are authorized, but not required, to maintain and continue to honor on a postpetition basis their practices, programs and policies in place for the benefit of their Employees as were in effect as of the Petition Date, as such may be modified, amended, or supplemented from time to time in the ordinary course of business.

4. Subject to the terms, conditions, and limitations of any DIP Orders (as defined below), the Debtors' banks and financial institutions (collectively, the "Banks") on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, to the extent of available, cleared funds in such accounts, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order. If any of the Banks honors a prepetition check or other item drawn on any account that is the subject of this Order, including the payment of Employee Obligations: (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, such Banks shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

5. The Banks are authorized to rely upon the representations of the Debtors as to which checks and transfers to honor with respect to the payment of Employee Obligations.

6. The Banks are prohibited from placing any holds on, or attempting to reverse or otherwise interfere with, any checks or transfers to the Employees' accounts on account of the Employee Obligations and the costs and expenses incident thereto.

7. The Debtors are authorized, but not directed, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the Employee Obligations dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

8. The Debtors are authorized, but not directed, to pay all postpetition costs and expenses incident to the Employee Obligations, including administrative and processing fees (including but not limited to, the Benefit Service Provider Fees) to outside professionals in the ordinary course of business.

9. Notwithstanding anything in this Order to the contrary, (a) payments authorized by, and any authorizations contained in, this Order are subject to the terms, conditions, limitations, and requirements of any cash collateral or DIP financing orders entered in these Chapter 11 Cases (together with any approved budgets in connection therewith, the "DIP Financing Orders") and (b) to the extent there is any inconsistency between the terms of such DIP Financing Orders and any action taken or proposed to be taken hereunder, the terms of such DIP Financing Orders shall control.

10. Nothing contained in this Order or any action taken by the Debtors in implementing this Order shall be deemed (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for or validity of any claim of the Employees, Benefit Service Providers, Taxing Authorities, or Benefits Providers under applicable nonbankruptcy law, (iii) a waiver of any

claims or causes of action which may exist against any Employees, Benefit Service Providers, Taxing Authorities, or Benefits Providers, or (iv) an assumption, adoption or rejection of any contract or lease between the Debtors and any third party under Section 365 of the Bankruptcy Code.

11. Notwithstanding any other provision of this Order, no payments to any individual Employee on account of prepetition wages, salaries, Reimbursable Expenses, unused PTO, or commissions, including severance earned by such individual Employee or, or on account of contributions to an employee benefit plan shall exceed the amounts set forth in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

12. Pursuant to Section 362(d) of the Bankruptcy Code, the automatic stay is modified to allow holders of workers' compensation claims to proceed in adjudicating such claims in the appropriate forum; provided, however, that such claims must be pursued in accordance with the Workers' Compensation Program, and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Program.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

14. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. Notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

Stephen M. Pezanosky

State Bar No. 15881850

Ian T. Peck

State Bar No. 24013306

David L. Staab

State Bar No. 24093194

301 Commerce Street, Suite 2600

Fort Worth, TX 76102

Telephone: 817.347.6600

Facsimile: 817.347.6650

Email: stephen.pezanosky@haynesboone.com

Email: ian.peck@haynesboone.com

Email: david.staab@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS