

David J. Drez III
State Bar No. 24007127
david.drez@wickphillips.com
Paul T. Elkins
State Bar No. 24092383
paul.elkins@wickphillips.com
WICK PHILLIPS GOULD & MARTIN LLP
100 Throckmorton Street, Suite 1500
Fort Worth, Texas 76102
Telephone: (817) 332-7788
Facsimile: (817) 332-7789

**COUNSEL FOR LONESTAR
PROSPECTS, LTD. D/B/A VISTA SAND**

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

IN RE:

VISTA PROPPANTS AND LOGISTICS,
LLC, ET AL.,

Debtors.

LONESTAR PROSPECTS, LTD. D/B/A
VISTA SAND

Plaintiff.

vs.

PROFRAC SERVICES, LLC

Defendant.

Chapter 11

Case No. 20-42002-ELM-11

Jointly Administered

Adversary No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

Lonestar Prospects, Ltd. d/b/a Vista Sand ("Vista")¹ files this Original Complaint against ProFrac Services, LLC ("ProFrac"), and respectfully shows as follows:

¹ Plaintiff Lonestar Prospects, Ltd. d/b/a Vista Sand is a Debtor in the above-styled Chapter 11 cases, along with the following entities: Vista Proppants and Logistics, LLC; VPROP Operating, LLC; Lonestar Prospects Management,



I. OVERVIEW

ProFrac and Vista entered a contract that obligated Vista to supply, and ProFrac to purchase, specified amounts of frac sand over a specified time period for a certain price. The parties also agreed that, if either party failed to meet its obligations, the other party would receive a reduced, set payment for the other's failure. ProFrac failed to purchase the sand and pay the agreed amount owed for such failure. After notice and demand, ProFrac continues to refuse to pay Vista the amounts owed. Accordingly, Vista now sues.

II. PARTIES

1. Lonestar Prospects, Ltd. d/b/a Vista Sand is a Texas limited partnership with its principal place of business at 4413 Carey Street, Fort Worth, Tarrant County, Texas 76119.

2. ProFrac Services, LLC is a Texas limited liability company with its principal place of business at 17018 Interstate 20, Cisco, Eastland County, Texas 76437. ProFrac can be served by personal service through its registered agent, Corporation Service Company, 211 East 7th Street, Ste. 610, Austin, Travis County, Texas 78701, or anywhere it may be found.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 157 and 1334(b) in that this action arises under, arises in, or relates to cases pending under chapter 11 of the Bankruptcy Code. Further, the Plan and Confirmation Order specifically retained this Court's jurisdiction to "resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's

L.L.C.; MAALT Specialized Bulk, LLC; Denetz Logistics, LLC; and MAALT, LP. The location of the Debtors' service address is 4413 Carey Street, Fort Worth, Texas 76119-4219.

obligations incurred in connection with the Plan.” Plan, Art. XI, ¶ 10; *see also* Confirmation Order, ¶ 80.

4. Venue is proper in this district under 28 U.S.C. §§ 1408 or 1409 because Vista’s above-captioned bankruptcy case is pending in this Court.

5. This Court has personal jurisdiction over ProFrac because it is organized under the laws of the state of Texas and maintains its principal place of business in Texas.

IV. FACTUAL BACKGROUND

6. Vista is an in-basin provider of frac sand solutions that offers leading E&P and oilfield service companies high-quality, fine grade sand. Vista’s sand meets applicable industry specifications and customer requirements for a large addressable market of wells.

7. ProFrac provides hydraulic fracturing equipment and related services to customers throughout Texas and surrounding states. ProFrac’s services require, among other things, high-quality sand from vendors like Vista, often with minimal advance notice.

A. Vista and ProFrac enter into the MPA.

8. Vista and ProFrac entered a Master Purchase Agreement for Products and/or Services (“MPA”) dated November 27, 2017, which was prepared by ProFrac.

9. The MPA acknowledges that Vista “is engaged in the business of manufacturing and/or supplying goods and products” and that ProFrac “is willing to purchase same from [Vista].” MPA, p. 1.

10. In June 2018, Vista and ProFrac executed a First Amendment to the MPA (“Amendment”). The Amendment attached and fully incorporated a First Addendum to the MPA (“Addendum”), effective the same date.

B. Vista agrees to sell, and ProFrac agrees to purchase, specified amounts of sand.

11. ProFrac's needs require ready availability to large amounts of sand. Accordingly, in paragraph 2(a) of the Addendum, Vista agreed to supply, and ProFrac agreed to purchase, specific quantities of sand during defined "Time Period(s)," as set forth below:

(a) During the period of July 1, 2018 through December 31, 2020, Purchaser shall purchase from Seller 100 mesh and 40/70 sand as follows:

- (i) During the period of July 1, 2018 through December 31, 2018, Purchaser shall purchase 100,000 tons of 100 mesh sand and 100,000 tons of 40/70 sand from Seller FOB Seller's loading facility in the Monahans, Texas area;
- (ii) During the period of January 1, 2019 through December 31, 2019, Purchaser shall purchase 200,000 tons of 100 mesh sand and 200,000 tons of 40/70 sand from Seller FOB Seller's loading facility in the Monahans, Texas area; and
- (iii) During the period of January 1, 2020 through ~~December 31, 2020~~, Purchaser shall purchase 200,000 tons of 100 mesh sand and 200,000 tons of 40/70 sand from Seller FOB Seller's loading facility in the Monahans, Texas area

LW (ME)
July 1, 2020

12. The purchase price for the sand was \$38.00 per ton for both 100 mesh sand and for 40/70 sand. Addendum, ¶ 2(b).

13. Under paragraph 2(c) of the Addendum, the parties agreed that, if either party failed to supply, or purchase, the required quantities of sand during a Time Period, it would make up the shortfall amount during a "True Up Period." Addendum, 2(c)(i)–(ii).

14. To meet its obligations under the Addendum, Vista sourced, maintained access to, and set aside large quantities of sand to meet ProFrac's needs during each Time Period.

15. ProFrac failed to purchase the required amounts of sand from Vista during all three Time Periods and applicable True Up Periods.

C. ProFrac fails to pay the agreed amount owed for its failure to purchase specified amounts of sand.

16. The parties further agreed that if ProFrac failed to purchase the required amounts of sand during a Time Period and applicable True Up Period, ProFrac would pay Vista \$10.00 per

ton for each ton that was not purchased during the Time Period or applicable True Up Period.² Addendum, Paragraph 2(c)(ii).

17. When ProFrac failed to purchase the required amount of sand during each period, Vista notified ProFrac of the amounts owed, as set forth below.

Period	Amount Owed	Date Invoiced
July 1, 2018 – December 31, 2018	\$1,297,724.80	September 30, 2019
January 1, 2019 – December 31, 2019	\$3,064,601.80	March 31, 2020
January 1, 2020 – June 30, 2020	\$3,950,020.90	September 30, 2020

18. Despite these notices, ProFrac failed and refused to pay the amounts owed to Vista.

D. Vista invokes the dispute resolution procedure, without success.

19. Under the MPA, Vista agreed it would “not resort to litigation until a collaborative process has been tried and failed.” MPA, ¶ 20. The “collaborative process” under the MPA includes written notice of the controversy, a written response, and a meeting between the parties. *Id.*

20. On January 27, 2021, Vista provided ProFrac a written Notice of Controversy as required by the MPA. ProFrac responded in writing, and the parties met in an attempt to resolve the controversy on February 15, 2021.

21. Despite its efforts, Vista was unable to resolve the controversy, necessitating this lawsuit.

² This provision works both ways: if Vista failed to sell the required quantities of sand during a period, it agreed to pay ProFrac \$10 per ton for each ton that was not supplied to ProFrac during the Time Period or applicable True Up Period. Addendum, 2(c)(i).

**V.
CAUSE OF ACTION – BREACH OF CONTRACT**

22. Vista incorporates all preceding paragraphs by reference.
23. The MPA, Amendment, and Addendum are each a valid and enforceable agreement (collectively, the “Contract”).
24. Vista performed, tendered performance of, or was excused from performing its obligations under the Contract.
25. ProFrac breached its obligations under the Contract, including by failing to purchase the required amounts of sand during the Time Periods or applicable True Up Periods and failing to pay the agreed amounts owed for such failure to purchase.
26. Vista has suffered, and continues to suffer, damages as a direct and actual result of the breaches of the Contract.

**VI.
CONDITIONS PRECEDENT**

27. All conditions precedent have been performed, have occurred, and/or have been waived.

**VII.
REQUEST FOR RELIEF**

THEREFORE, Vista respectfully requests that ProFrac be cited to appear and answer, and that, upon final hearing, Vista be awarded all relief requested herein, including, but not limited to: all actual, special, direct, consequential, and exemplary damages to which Vista is entitled; costs of court; pre- and post-judgment interest, as allowed by law; reasonable and necessary attorneys’ fees and costs through trial and appeal as allowed by law, including conditional appellate fees, if any; and all other relief to which Vista may be entitled.

Respectfully submitted,

/s/ David J. Drez III

David J. Drez III

State Bar No. 24007127

david.drez@wickphillips.com

Paul T. Elkins

State Bar No. 24092383

paul.elkins@wickphillips.com

WICK PHILLIPS GOULD & MARTIN LLP

100 Throckmorton Street, Suite 1500

Fort Worth, Texas 76102

Telephone: (817) 332-7788

Facsimile: (817) 332-7789

COUNSEL FOR PLAINTIFF

LONESTAR PROSPECTS, LTD.

D/B/A VISTA SAND