

B1040 (FORM 1040) (12/15)

| <b>ADVERSARY PROCEEDING COVER SHEET</b><br>(Instructions on Reverse)  |  | <b>ADVERSARY PROCEEDING NUMBER</b><br>(Court Use Only)   |
|---|--|--|
| <b>PLAINTIFFS</b><br>Lonestar Prospects, Ltd. d/b/a Vista Sand  | <b>DEFENDANTS</b><br>ProFrac Services, LLC |  |
| <b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b><br>David J. Drez III and Paul T. Elkins<br>WICK PHILLIPS GOULD & MARTIN LLP<br>100 Throckmorton Street, Suite 1500, Fort Worth, Texas 76102<br>Telephone: (817) 332-7788; Fax: (817) 332-7789  |  | <b>ATTORNEYS (If Known)</b>  |
| <b>PARTY (Check One Box Only)</b><br><input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input type="checkbox"/> Other<br><input type="checkbox"/> Trustee  |  | <b>PARTY (Check One Box Only)</b><br><input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other<br><input type="checkbox"/> Trustee   |
| <b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b><br>Plaintiff is a Debtor in the Chapter 11 cases being jointly administered under Case No. 20-42004-ELM-1 in this District. This Court has jurisdiction over this action under 28 U.S.C. §§ 157 and 1334(b).<br>In this adversary proceeding, Plaintiff files suit against Defendant for breach of contract. Under an agreement between the parties, Plaintiff agreed to supply, and Defendant agreed 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. Defendant failed to purchase the material and pay the agreed amount owed for such failure.  |  |  |
| <b>NATURE OF SUIT</b><br>(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)   |  |  |
| <b>FRBP 7001(1) – Recovery of Money/Property</b><br><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property<br><input type="checkbox"/> 12-Recovery of money/property - §547 preference<br><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer<br><input checked="" type="checkbox"/> 14-Recovery of money/property - other<br><br><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b><br><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property<br><br><b>FRBP 7001(3) – Approval of Sale of Property</b><br><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)<br><br><b>FRBP 7001(4) – Objection/Revocation of Discharge</b><br><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)<br><br><b>FRBP 7001(5) – Revocation of Confirmation</b><br><input type="checkbox"/> 51-Revocation of confirmation<br><br><b>FRBP 7001(6) – Dischargeability</b><br><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims<br><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud<br><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny<br><br>(continued next column) |  | <b>FRBP 7001(6) – Dischargeability (continued)</b><br><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support<br><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury<br><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan<br><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)<br><input type="checkbox"/> 65-Dischargeability - other<br><br><b>FRBP 7001(7) – Injunctive Relief</b><br><input type="checkbox"/> 71-Injunctive relief – imposition of stay<br><input type="checkbox"/> 72-Injunctive relief – other<br><br><b>FRBP 7001(8) Subordination of Claim or Interest</b><br><input type="checkbox"/> 81-Subordination of claim or interest<br><br><b>FRBP 7001(9) Declaratory Judgment</b><br><input type="checkbox"/> 91-Declaratory judgment<br><br><b>FRBP 7001(10) Determination of Removed Action</b><br><input type="checkbox"/> 01-Determination of removed claim or cause<br><br><b>Other</b><br><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i><br><input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) |
| <input type="checkbox"/> Check if this case involves a substantive issue of state law   |  | <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23  |
| <input type="checkbox"/> Check if a jury trial is demanded in complaint   |  | Demand \$  |
| Other Relief Sought   |  |  |



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**B1040 (FORM 1040) (12/15)**

| <b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b> |  |  |
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| NAME OF DEBTOR<br>VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.     |  | BANKRUPTCY CASE NO.<br>20-42002-ELM-11 |
| DISTRICT IN WHICH CASE IS PENDING<br>Northern District of Texas  | DIVISION OFFICE<br>Fort Worth                              | NAME OF JUDGE<br>Edward L. Morris      |
| <b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>                     |  |  |
| PLAINTIFF  | DEFENDANT  | ADVERSARY PROCEEDING NO.               |
| DISTRICT IN WHICH ADVERSARY IS PENDING                           | DIVISION OFFICE  | NAME OF JUDGE                          |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF)<br>/s/ David J. Drez III    |  |  |
| DATE<br>March 15, 2021   | PRINT NAME OF ATTORNEY (OR PLAINTIFF)<br>David J. Drez III |  |

**INSTRUCTIONS**

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.