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**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.,	§	Case No. 20-42002-ELM-11
	§	
Debtors	§	Jointly Administered
<hr/>		
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adversary No. 20-04064-elm
	§	
SEQUITUR PERMIAN, LLC,	§	Removed from Cause No. CV19-003 in
	§	the 51st Judicial District Court, Irion
Defendant.	§	County, Texas
	§	

**MOTION TO EXCLUDE UNDISCLOSED EVIDENCE OF DAMAGES,
DISMISS CLAIMS, AND SUPPORTING BRIEF**

Plaintiff and Third-Party Defendant move to exclude all evidence of damages in connection with Defendant's claims of fraudulent inducement and negligent misrepresentation (including Defendant's trial exhibits 130 through 134), and dismiss those claims because Defendant will not



be able to prove an essential element of those claims, and in support thereof show the Court as follows:

1. Despite Maalt, LP's ("Maalt") timely request, Sequitur Permian, LLC ("Sequitur") has not disclosed either the amount of damages it seeks under its counterclaim and third-party claim or the method by which it calculated any damages. As a result, under both the Federal and Texas rules, Sequitur is precluded from introducing any evidence at trial of damages with respect to its fraudulent inducement and negligent misrepresentation claims. Because Sequitur will not be able to prove either of its claims of negligent misrepresentation or fraudulent inducement, dismissal of those claims is warranted. *Macro Niche Software, Inc. v. 4 Imaging Solutions, L.L.C.*, 2014 WL 12599512 *2 (S.D. Tex. 2014).

2. On March 27, 2019, Maalt sent its request for disclosures to Sequitur under Texas Rule of Civil Procedure 194.2 seeking among other things disclosure of "the amount and any method of calculating economic damages." Texas Rule of Civil Procedure 194.2(d).¹ See Exhibit "A" attached hereto and incorporated by reference.

3. On May 10, 2019, Sequitur responded to Maalt's request with the following:

(d) The amount and any method of calculating economic damages:

RESPONSE:

This will be supplemented upon further discovery.

¹ While the Court instructed the parties that disclosures made while the case was in the state court would not have to be repeated under Federal Rule of Civil Procedure 26, it should be noted that the Federal rules require essentially the same disclosure. Rule 26(a)(1)(A)(iii) requires a disclosure of the computation of each category of damages claimed by the disclosing party, and also requires production of documents on which such calculations are based.

4. On June 6, 2019, Sequitur served its First Amended Response to Request for Disclosure on Maalt. Again, Sequitur responded to the damages disclosure requirement with the following:

(d) The amount and any method of calculating economic damages:

RESPONSE:

This will be supplemented upon further discovery.

5. On February 18, 2020, Sequitur again supplemented its disclosures by serving its Second Amended Response to Request for Disclosure on Maalt. Again, its disclosures stated:

(d) The amount and any method of calculating economic damages:

RESPONSE:

This will be supplemented upon further discovery.

6. On December 31, 2020, Sequitur served its Defendant, Sequitur Permian, LLC's Supplemental Rule 26(a)(2) Disclosures. That document did not provide any information satisfying either the Texas state court damages disclosure requirement or the Federal Rule 26(a)(1)(A)(iii) damages disclosure requirement.

7. For the first time on May 24, 2021, Sequitur provided documents that it appears will be used to support some type of damage claim and calculation – trial exhibits 130 through 134. Those exhibits are comprised of 624 pages of documents that have not been produced to Maalt even though requested in requests for production of documents. All of those documents were requested by Maalt through the following document requests:

- 28. Any contracts for the construction of improvements by SEQUITUR at the Terminal.²**
- 30. Any documents related to contracts for the construction of improvements by SEQUITUR at the Terminal.³**
- 16. All documents identifying the equipment, machinery and other property placed at the TERMINAL by SEQUITUR for the purpose of performing crude oil transloading and handling operations.⁴**

See Exhibits “B” and “C” attached hereto and incorporated by reference. Sequitur did not object to those requests, but responded in each instance that documents were being produced. However, Sequitur never produced the documents bearing Bates Nos. 2354 through 2974 which are now identified as its trial exhibits 130 through 134. Those documents relate to no issues other than Sequitur’s claim for damages under its fraudulent inducement and negligent misrepresentation claims.

8. In sum, Sequitur has not produced either the amount of damages it seeks, the method of calculating those damages, or the documents that support its damage claim although requested by Maalt. For two years, Sequitur has laid behind the log.⁵

² Plaintiff’s First Request for Production served on March 27, 2019.

³ Plaintiff’s First Request for Production served on March 27, 2019.

⁴ Plaintiff’s Second Request for Production served on June 7, 2019.

⁵ Notably, Sequitur’s pleadings are also silent as to the amount and nature of damages it seeks through its counterclaim and third-party claims other than the general statement that it seeks “reliance damages” “in an amount over \$4,000,000.” Its pleadings do not state what those reliance damages consist of or the amount it actually seeks. Doc. 45.

9. Under Federal Rule of Civil Procedure 37(c)(1), “if a party fails to disclose this information [damage calculations], ‘the party is not allowed to use that information ... at trial, unless the failure was substantially justified or is harmless.’” *Macro Niche Software* at *1. In that case, the plaintiff failed to disclose its damage calculations under Rule 26(a)(1)(A)(iii). The court stated that in determining whether the failure was substantially justified or harmless, the courts should consider (i) the party’s explanation for its failure to disclose, (ii) the importance of the evidence, (iii) the potential prejudice to the opposing party in allowing the evidence, and (iv) the availability of a continuance. The court determined that while evidence of damages is important, since trial was scheduled to start in about a week the defendants would have little time to review the plaintiff’s damage evidence, plaintiff did not justify its failure to disclose, and a trial continuance would delay resolution, disallowance of the evidence was warranted. *Id.* It then held:

[T]he Court finds Plaintiffs’ failure to disclose their damage computations was not substantially justified and is not harmless. Therefore, pursuant to Rule 37(c)(1), Plaintiffs are not allowed to present evidence of damage computation at trial. Because Plaintiffs are not allowed to present evidence on damage computation when damages are an essential element of all of their claims, Plaintiffs will not be able to prove any of their claims at trial. Therefore, the Court dismisses Plaintiffs remaining claims against Defendants pursuant to Rule 37(c)(1)(C).

10. Similarly, in *Moore v. CITGO Refining and Chemical Co., LP*, 2012 WL 12894290 (S.D. Tex. 2012), the court noted that “after over a year of discovery, not one Plaintiff has yet to provide CITGO with any calculation or estimation of the damages he is seeking.” *Id.* at *2. The court ordered that no evidence of damages would be admitted at trial despite the implications to the plaintiffs’ claims finding that allowing the plaintiffs to develop their calculations and

methodologies shortly before trial would “not only prejudice CITGO, it would reward Plaintiff’s conduct of not complying with the discovery rules[.]”

11. The courts of the Northern District have applied the same standard in determining whether undisclosed damages evidence should be considered in the summary judgment context. In *Super Future Equities Inc. v. Wells Fargo Bank Minnesota NA*, 2007 WL 4410370 (N.D. Tex. 2007), Judge Boyle disallowed evidence of damages in a summary judgment proceeding finding that the defendants would be harmed by the damages evidence since they relied on the lack of damages evidence in preparing their motions for summary judgement. *Id.* at *7. In *Jacked Up LLC v. Sara Lee Corp.*, 2019 WL 1098992 (N.D. Tex. 2019), Judge Lindsay applied the Rule 37(c)(1) standard and refused to consider undisclosed damages evidence in ruling on a motion for summary judgment. Applying the four factors, Judge Lindsay found that while the damages evidence was important to the plaintiff’s claim, there was no justification offered for the failure to disclose. He also found that if the plaintiff’s failure to disclose was excused, the defendant would be harmed because discovery would have to be reopened thus delaying the resolution of the case. The court concluded “it would be fundamentally unfair to subject Sara Lee to a continuance under these circumstances, especially given Jacked Up’s failure to offer any explanation for its failure to disclose [its witness’] damage calculation years earlier in compliance with Rule 26.” *Id.* at *9.

12. In this case, consideration of the four factors dictates that Sequitur’s damages evidence be excluded under Rule 37(c)(1). First, Maalt does not dispute the importance of the evidence to Sequitur’s claims; however, consideration of the other factors outweighs it. Under the second factor, Maalt will suffer significant prejudice if the evidence is allowed. Maalt has spent

substantial time and money preparing for trial under the current scheduling order and based on the parties' disclosure and other discovery. It has spent significant time and money resisting Sequitur's repeated attempts to delay the resolution of this case. In fact, the trial of this case has already been continued multiple times, primarily due to Sequitur's motions for continuance:

- The Irion County District Court set an Initial Trial Setting of February 24, 2020.
- The parties agreed to a continuance with new trial setting of June 8, 2020.
- Sequitur filed its motion to continue the June 8, 2020 trial setting until November 2020, and the Irion County District Court continued the June 8 trial and reset trial for August 24, 2020 in response.
- After this action was removed to this Bankruptcy Court, this Court held a status conference on September 28, 2020. At the hearing, Maalt stated it could be ready for trial in February 2021 while Sequitur requested a trial setting in June 2021. Ultimately, the Court set docket call for May 3, 2021, with trial to be completed during the May 2021.
- Sequitur filed yet another motion for continuance (Doc. 95) seeking a continuance of the May 2021 trial setting. The Court granted a continuance and set docket call for June 7, 2021.
- Sequitur filed yet another motion trying to delay the trial of this case when it filed its Motion to Stay Pending Direct Appeal (Doc. 135) based on what was clearly a meritless motion to certify a direct appeal of this Court's summary judgment orders.
- Sequitur announced in docket call on June 7, 2021 that it was completely unavailable to try this case in July or August since all of its lawyers (4 partners in two law firms) and all of its witnesses scheduled *vacations* in a manner that prevents them from trying this case.

Sequitur's unabashed and continual efforts to delay the resolution of this case should not be rewarded due to its failure to comply with a routine discovery obligation.

13. Third, a trial continuance will not cure the prejudice to Maalt, it would only exacerbate it. Not only would Maalt be required to reprepare for trial with the new evidence, it would also have to engage in extensive discovery in order to prepare a defense with respect to the new damages evidence. It is important to this consideration to note that Sequitur did not plead its negligent misrepresentation and fraudulent inducement claims until December 20, 2019, a month after Maalt deposed the Sequitur employees who were primarily involved in the parties' dealings. At least three of those employees, Braden Merrill, Mike van den Bold, and Tony Wroten (who were all deposed before Sequitur plead the negligent misrepresentation and fraudulent inducement claims) would have to be re-deposed to ascertain the connection between the damages evidence and the alleged misrepresentations underlying Sequitur's claims. In addition, Maalt would be required to depose two other Sequitur employees, Nicholas Ethridge and Russ Perry, both individuals involved in the construction of the terminal improvements in order to determine the connection between the claimed expenses and the construction as well as the relationship between the damage claims and the alleged tortious conduct. While Sequitur may not oppose reopening discovery for that purpose, it does not cure the prejudice to Maalt that (a) it would incur substantial costs in taking those depositions and (b) the resolution of this case would be delayed yet again by Sequitur through its own failure to comply with its discovery obligations. In other words, it would play right into Sequitur's game plan to drive up Maalt's costs and delay the trial as much as possible.

14. Fourth, Sequitur has had two years to make what is now a basic, standard disclosure in every federal and state case, but did not do so despite supplementing or amending its disclosures three times. Even today, Sequitur's statement of its contentions in the proposed Pretrial Order does not state the amount of damages it seeks, or how it would calculate such damages. (Doc. 190.) In its proposed findings of fact and conclusions of law filed on June 4, 2021, Sequitur merely asks for a finding that, "Sequitur is entitled to recover all damages it incurred in reliance on Maalt's and Vista Proppants and Logistics, LLC's fraudulent or negligent misrepresentations" (Doc. 192.) It offers not even a glimpse of the amount it seeks, the components of the claimed damages, or the manner in which the claimed damages will be calculated. Sequitur has no legitimate reason for not making the required disclosures or timely producing the new documents.

15. Excusing Sequitur from its failure to disclose its damages amount and calculations, and timely produce the requested documents, would be harmful and fundamentally unfair to Maalt.

PRAYER

WHEREFORE, Plaintiff and Third-Party Defendant, pray that this motion be granted, that Defendant's counterclaims and third-party claims be dismissed, and that the Court award all other relief to which Plaintiff is entitled.

Respectfully submitted,

By: /s/ James Lanter

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ATTORNEYS FOR PLAINTIFF, MAALT, LP
and THIRD-PARTY DEFENDANT VISTA
PROPPANTS AND LOGISTICS, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on June 8, 2021.

/s/ James Lanter
James Lanter

CERTIFICATE OF CONFERENCE

In accordance with LBR 7007-1, I attempted to confer with Defendant's attorneys of record via email regarding this motion, but did not receive a response to the email. Due to the nature of the relief requested, it is presumed that the motion is opposed.

/s/ James Lanter
James Lanter

EXHIBIT A

No. 19-003

MAALT, LP	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC	§	
	§	
Defendant.	§	51ST JUDICIAL DISTRICT

PLAINTIFF'S REQUEST FOR DISCLOSURES

Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that the Defendant disclose, within 30 days of the service of this request, the information and material described in Rule 194.2.

Respectfully submitted,

By: /s/ James Lanter

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ATTORNEYS FOR PLAINTIFF
MAALT, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's electronic filing service on the March 27, 2019, upon:

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**GOSSETT, HARRISON,
MILLICAN & STIPANOVIC, P.C.**

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/s/ James Lanter

EXHIBIT B

No. 19-003

MAALT, LP	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC	§	
	§	
Defendant.	§	51ST JUDICIAL DISTRICT

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION

Plaintiff Maalt, LP ("Maalt") submits the following requests for production of documents in accordance with the Texas Rules of Civil Procedure. The responses and any objections to these Requests must be served on the undersigned attorney for Plaintiff within thirty (30) days of the date of service.

DEFINITIONS

1. "PLAINTIFF" or "MAALT" shall refer to Plaintiff Maalt LP, as well as any agent or employee acting on its behalf.
2. "DEFENDANT" or "SEQUITUR" shall refer to Defendant Sequiter Permian, LLC, as well as any agent or employee acting on its behalf.
3. "PLAINTIFF'S PETITION" shall refer to Plaintiff's Original Petition, as well as any additional amended petition that is filed in this action.
4. The "TERMINAL SERVICES AGREEMENT" shall refer to the Terminal Services Agreement dated August 6, 2018 entered into between MAALT and SEQUITUR. The capitalized terms used in these Requests incorporate the definitions provided in the TERMINAL SERVICES AGREEMENT and have the same definition for purposes of these requests for production.

5. The term "communication" means all contact, oral or written, formal or informal, at any time or place under any circumstances whatsoever, whereby any information of any nature was transmitted or received.

6. The term "person" includes, without limiting the generality of its meaning, every natural person, corporate entity, partnership, association, joint venture, governmental body or agency.

7. The term "date" means the exact day, month and year, if known, or if not known the best approximation thereof which shall be explicitly indicated as an approximate date when given.

8. The term "document" shall be synonymous in meaning and equal in scope to the usage of this term in Rule 192.3(b) of the Texas Rules of Civil Procedure. A draft of a non-identical copy is a separate document within the meaning of this term.

9. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

10. The term "you," "your," or "yours" shall refer to SEQUITUR.

REQUESTS FOR PRODUCTION

1. Any document relied upon to answer an interrogatory.
2. Any documents related to or containing communications with any governmental body or official regarding the Terminal or approval of operations at the Terminal.
3. Any documents related to or containing internal SEQUITUR communications concerning the Terminal.
4. Any documents related to or containing internal SEQUITUR communications concerning the TERMINAL SERVICES AGREEMENT.
5. Any documents related to or containing internal SEQUITUR communications concerning its efforts to procure rail transportation services for the Product.

6. Any documents related to or containing external SEQUITUR communications concerning the unavailability, interruption, delay, or curtailment of rail transportation services for the Product.
7. Any documents related to or containing external SEQUITUR communications concerning the Terminal.
8. Any documents related to or containing external SEQUITUR communications concerning the TERMINAL SERVICES AGREEMENT.
9. Any documents related to or containing external SEQUITUR communications concerning its efforts to procure rail transportation services for the Product.
10. Any documents related to or containing external SEQUITUR communications concerning the unavailability, interruption, delay, or curtailment of rail transportation services for the Product.
11. Any documents related to SEQUITUR'S efforts to procure rail transportation services for the Product.
12. Any documents related to the unavailability, interruption, delay, or curtailment of rail transportation services for the Product.
13. All documents containing the statement of any person, including Plaintiff, containing facts relevant to any issue in this case, including notes or conversations.
14. All notes or documents prepared by any employee or agent of SEQUITUR before the filing of this lawsuit and which relates to SEQUITUR'S efforts to procure rail transportation services for the Product.
15. All notes or documents prepared by any employee or agent of SEQUITUR before the filing of this lawsuit and which relates to the alleged unavailability, interruption, delay, or curtailment of rail transportation services for the Product.
16. Any documents that Defendant contends constitutes a statement or admission by MAALT (other than documents produced by MAALT in this litigation).
17. Any documents related to SEQUITUR'S estimates or projections of revenues and costs associated with its operations under the TERMINAL SERVICES AGREEMENT.
18. Any documents related to SEQUITUR'S internal projections of costs to obtain rail transportation services for the Product.
19. Any documents related to proposals, bids, or other documents that discuss costs that SEQUITUR would actually incur to obtain rail transportation services for the Product.

20. Any documents related to or containing external SEQUITUR communications concerning efforts to contract for the delivery of Product to the Terminal.
21. Any documents related to or containing internal SEQUITUR communications concerning efforts to contract for the delivery of Product to the Terminal.
22. Any bids, proposals, and other documents prepared by SEQUITUR in connection with its efforts to have Product delivered to the Terminal for transloading.
23. Any marketing materials prepared by SEQUITUR in connection with its anticipated activities at the Terminal under the TERMINAL SERVICES AGREEMENT.
24. Any policies, procedures, and other documents prepared by SEQUITUR in connection with its anticipated activities at the Terminal under the TERMINAL SERVICES AGREEMENT.
25. Any plans, drawings, specifications, and other documents prepared by or on behalf of SEQUITUR in connection with the construction of improvements at the Terminal under the TERMINAL SERVICES AGREEMENT.
26. Any documents prepared by or on behalf of SEQUITUR in connection with seeking Regulatory Approvals for the activities to be conducted under the TERMINAL SERVICES AGREEMENT.
27. Any photos of the Terminal.
28. Any contracts for the construction of improvements by SEQUITUR at the Terminal.
29. Any correspondence between SEQUITUR and any actual or potential customer regarding the services to be offered by SEQUITUR at the Terminal.
30. Any documents related to contracts for the construction of improvements by SEQUITUR at the Terminal.
31. Any documents related to or containing internal SEQUITUR communications concerning the construction of improvements by SEQUITUR at the Terminal.
32. Any documents related to or containing external SEQUITUR communications concerning its efforts to procure Product for transloading at the Terminal.
33. Any documents related to or containing internal SEQUITUR communications concerning its efforts to procure Product for transloading at the Terminal.
34. Any documents containing Regulatory Approvals obtained by SEQUITUR for the transloading of Product at the Terminal.

Respectfully submitted,

By: /s/ James Lanter

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**ATTORNEYS FOR PLAINTIFF
MAALT, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's electronic filing service on the March 27, 2019, upon:

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/s/ James Lanter

EXHIBIT C

No. 19-003

MAALT, LP	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC	§	
	§	
Defendant.	§	51ST JUDICIAL DISTRICT

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION

Plaintiff Maalt, LP ("Maalt") submits the following requests for production of documents in accordance with the Texas Rules of Civil Procedure. The responses and any objections to these Requests must be served on the undersigned attorney for Plaintiff within thirty (30) days of the date of service.

DEFINITIONS

1. "PLAINTIFF" or "MAALT" shall refer to Plaintiff Maalt LP, as well as any agent or employee acting on its behalf.
2. "DEFENDANT" or "SEQUITUR" shall refer to Defendant Sequiter Permian, LLC, as well as any agent or employee acting on its behalf.
3. "PLAINTIFF'S PETITION" shall refer to Plaintiff's Original Petition, as well as any additional amended petition that is filed in this action.
4. The "TERMINAL SERVICES AGREEMENT" shall refer to the Terminal Services Agreement dated August 6, 2018 entered into between MAALT and SEQUITUR. The capitalized terms used in these Requests incorporate the definitions provided in the TERMINAL SERVICES AGREEMENT and have the same definition for purposes of these requests for production.

5. The term "communication" means all contact, oral or written, formal or informal, at any time or place under any circumstances whatsoever, whereby any information of any nature was transmitted or received.

6. The term "person" includes, without limiting the generality of its meaning, every natural person, corporate entity, partnership, association, joint venture, governmental body or agency.

7. The term "date" means the exact day, month and year, if known, or if not known the best approximation thereof which shall be explicitly indicated as an approximate date when given.

8. The term "document" shall be synonymous in meaning and equal in scope to the usage of this term in Rule 192.3(b) of the Texas Rules of Civil Procedure. A draft of a non-identical copy is a separate document within the meaning of this term.

9. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

10. The term "you," "your," or "yours" shall refer to SEQUITUR.

REQUESTS FOR PRODUCTION

1. Any documents related to or containing communications between SEQUITUR and BP Energy Company concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
2. Any documents related to or containing communications between SEQUITUR and EnMark Services, Inc. concerning (i) the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL, and (ii) the transloading of crude oil at the TERMINAL.
3. Any documents related to or containing communications between SEQUITUR and Fusion Industries, LLC concerning (i) the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL, and (ii) the transloading of crude oil at the TERMINAL.

4. Any documents related to or containing communications between SEQUITUR and JET Specialty, Inc. concerning (i) the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL, and (ii) the transloading of crude oil at the TERMINAL.
5. Any documents related to or containing communications between SEQUITUR and Jupiter MLP, LLC (and any of its affiliated entities) concerning (i) the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL, and (ii) the transloading of crude oil at the TERMINAL.
6. Any documents related to or containing communications between SEQUITUR and Macquarie Energy North America Trading, Inc. concerning (i) the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL, and (ii) the transloading of crude oil at the TERMINAL.
7. Any documents related to or containing communications between SEQUITUR and Macquarie Energy North America Trading, Inc. concerning Jupiter MLP, LLC and/or any of its affiliates.
8. Any documents related to or containing communications between SEQUITUR and murex, Ltd. concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
9. Any documents related to or containing communications between SEQUITUR and Shell concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
10. Any documents related to or containing communications between SEQUITUR and Texas-Pacifico Transportation, Ltd. concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
11. Any documents related to or containing communications between SEQUITUR and Tom Thorp Transports, Inc. concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
12. Any documents related to or containing communications between SEQUITUR and Valero concerning the availability, unavailability, interruption, delay, or curtailment of rail transportation services to the TERMINAL.
13. All financial projections and pro formas prepared by or on behalf of, or provided to, SEQUITUR relating to the TERMINAL SERVICES AGREEMENT.
14. All financial projections and pro formas prepared by or on behalf of, or provided to, SEQUITUR relating to arbitrage opportunities that may arise with respect to the TERMINAL SERVICES AGREEMENT.

15. All documents related to the negotiation by SEQUITUR of agreements for the throughput of crude oil through the TERMINAL including, but not limited to, drafts of agreements and other documents.
16. All documents identifying the equipment, machinery and other property placed at the TERMINAL by SEQUITUR for the purpose of performing crude oil transloading and handling operations.
17. All documents identifying the equipment, machinery and other property removed from the TERMINAL by SEQUITUR for the purpose of performing crude oil transloading and handling operations.
18. All documents relating to SEQUITUR's efforts to obtain locomotive power agreements with any other person or entity.

Respectfully submitted,

By: /s/ James Lanter

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pwickes@wickeslaw.com

**ATTORNEYS FOR PLAINTIFF
MAALT, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's electronic filing service on the June 7, 2019, upon:

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/s/ James Lanter

**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.,	§	Case No. 20-42002-ELM-11
	§	
Debtors	§	Jointly Administered

MAALT, LP,
Plaintiff,

vs.

SEQUITUR PERMIAN, LLC,
Defendant.

§	
§	
§	
§	
§	
§	Adversary No. 20-04064-elm
§	
§	Removed from Cause No. CV19-003 in
§	the 51st Judicial District Court, Irion
§	County, Texas

**ORDER ON PLAINTIFF'S MOTION TO EXCLUDE EVIDENCE OF DAMAGES,
DISMISS CLAIMS, AND SUPPORTING BRIEF**

ON THIS DAY, the Court considered the Motion to Exclude Undisclosed Evidence of Damages and Dismiss Claims filed by Plaintiff, Maalt, LP (“Maalt”), and Third-Party Defendant, Vista Proppants and Logistics, LLC (“Vista”), the response filed by Sequitur Permian, LLC (“Sequitur”), Defendant, and any reply. After giving consideration to the Motion and all related documents, the Court is of the opinion that it should be granted.

IT IS, THEREFORE ORDERED THAT:

1. Defendant’s trial exhibits 130 through 134, consisting of documents Bates Numbered 2354 through 2974 are excluded from evidence in the trial of this case under Federal Rule of Civil Procedure 37(c)(1) as they were not timely disclosed in response to relevant discovery requests;
2. Defendant is precluded from presenting any evidence of damages it alleges were sustained by it under its claims of fraudulent inducement and negligent misrepresentation because it has not timely disclosed the amount and method of calculating damages claimed under those theories as required by both the Texas Rule of Civil Procedure 194.2 and Federal Rule of Civil Procedure 26(a)(1)(A)(iii); and
3. Because Defendant will not be able to prove an essential element of both its fraudulent inducement and negligent misrepresentation claims at trial, those claims are dismissed.

END OF ORDER

Submitted by:

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