

James C. Scott
State Bar No. 24056287.
Jim.scott@kellyhart.com
Elizabeth A. Cuneo
State Bar No. 24100166
Elizabeth.Cuneo@kellyhart.com
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280
Attorneys for ProFrac Services, LLC

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

**VISTA PROPPANTS AND LOGISTICS,
LLC AND MAALT, LP**

DEBTORS

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

PLAINTIFF

v.

PROFRAC SERVICES, LLC

DEFENDANT.

CHAPTER NO.: 11

CASE NO. 20-42002-ELM11

JOINTLY ADMINISTERED

ADVERSARY NO. 21-04013-ELM

DEFENDANT'S ORIGINAL ANSWER

Defendant ProFrac Services, LLC (“**ProFrac**” or “**Defendant**”) hereby files this *Original Answer*. In support of the same, Defendants respectfully show the Court as follows:



Pursuant to Federal Rule of Civil Procedure 8, as made applicable to bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 7008, Defendant, by its attorneys, hereby submits its Answer and Affirmative Defenses to Plaintiff Lonestar Prospects, Ltd. d/b/a Vista Sand's ("**Plaintiff**") Original Complaint (the "**Complaint**"), and states as follows:

**IN RESPONSE TO PLAINTIFF'S ALLEGATIONS SET FORTH IN
"I. OVERVIEW"**

In response to the introductory paragraph in Plaintiff's "Overview" section, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent that any response is required, ProFrac denies the allegations.

**IN RESPONSE TO PLAINTIFF'S ALLEGATIONS SET FORTH IN
"II. PARTIES"**

1. ProFrac lacks sufficient information to admit or deny the allegations set forth in Paragraph 1 of the Complaint and therefore denies them on that basis.

2. ProFrac denies the allegations in Paragraph 2 of the Complaint. ProFrac's principal place of business is at 333 Shops Boulevard, Suite 301, Willow Park, Texas 76087.

**IN RESPONSE TO PLAINTIFF'S ALLEGATIONS SET FORTH IN
"III. JURISDICTION AND VENUE"**

3. ProFrac lacks sufficient information to admit or deny the allegations set forth in Paragraph 3 of the Complaint and therefore denies them on that basis.

4. ProFrac admits the allegations in Paragraph 4 of the Complaint.

5. ProFrac admits the allegations in Paragraph 5 of the Complaint.

**IN RESPONSE TO PLAINTIFF'S ALLEGATIONS SET FORTH IN
"IV. FACTUAL BACKGROUND"**

6. ProFrac lacks sufficient information to admit or deny the allegations set forth in Paragraph 6 of the Complaint and therefore denies them on that basis.

7. In response to the allegations in Paragraph 7 of the Complaint, ProFrac admits that it provides hydraulic fracturing equipment and related services to customers throughout

Texas and surrounding states and that its services require, among other things, high-quality sand. Except as otherwise admitted herein, ProFrac denies the allegations in Paragraph 7.

A. IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN “Vista and ProFrac Enter Into the MPA.”¹

8. ProFrac admits the allegations in Paragraph 8.

9. ProFrac admits that the Master Purchase Agreement (MPA) referenced in Paragraph 9 of the Complaint states that “Seller is engaged in the business of manufacturing and/or supplying goods and products . . . and/or delivery thereof or the provision of services . . . , as may be set forth in a Purchase Order,” and ProFrac further admits that the MPA also states that “Seller is willing to manufacture and/or supply the Products and/or provide the Services to Purchaser, and Purchaser is willing to purchase same from Seller,” though such statements are not the entirety of the terms of the MPA.

10. ProFrac admits the allegations in Paragraph 10 of the Complaint.

B. IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN “Vista agrees to sell, and ProFrac agrees to purchase, specified amounts of sand.”²

11. In response to Paragraph 11 of the Complaint ProFrac admits that it requires ready availability to sand. ProFrac further agrees that Plaintiff included a true and correct excerpt of Paragraph 2(a) of the Addendum, which excerpt speaks for itself.

12. ProFrac admits the allegations in Paragraph 12 of the Complaint.

13. In response to Paragraph 13 of the Complaint, ProFrac admits that Paragraph 2(c) of the Addendum sets forth the terms “[i]n the event that Seller does not supply the required

¹ ProFrac construes the subheading in Plaintiff’s Complaint to be for organizational purposes only and not as containing allegations to which any response is required. However, to the extent responses are required, ProFrac denies the allegations therein.

² ProFrac construes the subheading in Plaintiff’s Complaint to be for organizational purposes only and not as containing allegations to which any response is required. However, to the extent responses are required, ProFrac denies the allegations therein.

quantities in a specified time period or Purchaser does not purchase the required quantities in a specified time period[.]” ProFrac further responds that the provision speaks for itself.

14. ProFrac lacks sufficient information to admit or deny the allegations set forth in Paragraph 14 of the Complaint and therefore denies them on that basis.

15. ProFrac denies the allegations in Paragraph 15 of the Complaint.

C. IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN “ProFrac fails to pay the agreed amount owed for its failure to purchase specified amounts of sand.”³

16. In response to Paragraph 16 of the Complaint, ProFrac responds that the allegations therein contain legal conclusions to which no response is required. To the extent a response is required, ProFrac further responds that Paragraph 2(c)(ii) of the Addendum, to which Plaintiff refers, speaks for itself.

17. In response to Paragraph 17 of the Complaint, ProFrac responds that the allegations therein contain legal conclusions to which no response is required. To the extent a response is required, ProFrac denies that it was ever “notified” of the amounts owed, and further denies that all of the invoices referenced in Paragraph 17 were sent to it.

18. In response to Paragraph 18 of the Complaint, ProFrac responds that the allegations therein contain legal conclusions to which no response is required. To the extent a response is required, ProFrac denies the allegations therein.

D. IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN “Vista invokes the dispute resolution procedure, without success.”⁴

19. ProFrac admits the allegations in Paragraph 19 of the Complaint.

20. ProFrac admits the allegations in Paragraph 20 of the Complaint.

³ ProFrac construes the subheading in Plaintiff’s Complaint to be for organizational purposes only and not as containing allegations to which any response is required. However, to the extent responses are required, ProFrac denies the allegations therein.

⁴ ProFrac construes the subheading in Plaintiff’s Complaint to be for organizational purposes only and not as containing allegations to which any response is required. However, to the extent responses are required, ProFrac denies the allegations therein.

21. ProFrac admits the allegations in Paragraph 21 of the Complaint.

**IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN
“V. CAUSES OF ACTION - BREACH OF CONTRACT”**

22. In response to Paragraph 22 of the Complaint, ProFrac incorporates all of the paragraphs above.

23. In response to Paragraph 23 of the Complaint, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent any response is required, ProFrac denies the allegations therein.

24. In response to Paragraph 24 of the Complaint, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent any response is required, ProFrac denies the allegations therein.

25. In response to Paragraph 25 of the Complaint, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent any response is required, ProFrac denies the allegations therein.

26. In response to Paragraph 26 of the Complaint, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent any response is required, ProFrac denies the allegations therein.

**IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN
“VI. CONDITIONS PRECEDENT”**

27. In response to Paragraph 27 of the Complaint, ProFrac responds that the allegations therein are legal conclusions to which no response is required. To the extent any response is required, ProFrac denies the allegations therein.

**IN RESPONSE TO PLAINTIFF’S ALLEGATIONS SET FORTH IN
“VII. REQUEST FOR RELIEF”**

28. In response to Plaintiff’s request for relief, ProFrac denies that Plaintiff is entitled to its requested relief or to any relief whatsoever.

29. To the extent the allegations and claim for relief in the Complaint are not expressly admitted above, they are denied.

AFFIRMATIVE DEFENSES

Subject to and without waiving the foregoing, ProFrac asserts the following Affirmative Defenses, without assuming the burden of proof for such defenses that would otherwise fall on Plaintiff:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails because the claim is barred, in whole or in part, by the applicable statute of limitations period.
3. The Complaint fails because the contracts or agreements on which Plaintiff bases its claims are invalid, illegal, or otherwise unenforceable against ProFrac.
4. The Complaint fails because of Plaintiff’s prior material breach(es) and/or nonperformance of the parties’ alleged contracts or agreements.
5. The Complaint fails because Plaintiff failed to perform the conditions precedent in the contracts or agreements on which Plaintiff bases its claims.
6. The Complaint fails because of Plaintiff’s breach(es) of the implied covenant of good faith and fair dealing owed to ProFrac.
7. The Complaint fails because of Plaintiff’s repudiation of the parties’ alleged contracts or agreements.
8. The Complaint fails because of Plaintiff’s ratification and/or waiver of ProFrac’s alleged misconduct.

9. The Complaint fails because ProFrac substantially performed under the parties' alleged contracts or agreements.

10. The Complaint fails because ProFrac did not breach the parties' alleged contracts or agreements.

11. The Complaint fails because any alleged duty or obligation which ProFrac may have purportedly owed toward Plaintiff was rendered impossible due to Plaintiff's own acts, omissions, representations and courses of conducts of its agents, attorneys, representatives, affiliates, subsidiaries, predecessors, successors-in-interest, and/or other individuals or entities acting on its behalf, and each of them.

12. The Complaint fails because Plaintiff, though under a duty to do so, has failed and neglected to mitigate its alleged damages and therefore cannot recover against ProFrac, whether as alleged or otherwise.

13. Plaintiff is not entitled to relief on the basis of unclean hands.

14. Plaintiff is not entitled to relief on the basis of accord and satisfaction.

15. Plaintiff is not entitled to relief on the bases of laches.

16. Plaintiff has engaged in conduct and activities with respect to the subject matter of this dispute by reason of which it is estopped to assert any claims or demands against ProFrac.

17. Plaintiff would be unjustly enriched if allowed to recover on its claim.

18. Plaintiff is not entitled to interest and/or attorneys' fees because Plaintiff allowed the sums to add up unnecessarily by failing to take prompt action to collect the alleged debt and/or to file a lawsuit to collect.

19. Plaintiff is not entitled to interest, attorneys' fees, special, consequential, or exemplary damages because of the terms of the parties' purported contracts or agreements.

20. Plaintiff is not entitled to liquidated damages to the extent they are punitive and/or are not enforceable as a matter of law.

21. Without conceding that any act of ProFrac caused damage to Plaintiff in any respect, ProFrac is entitled to offset and recoup against any judgment that may be entered for Plaintiff for all obligations of Plaintiff owing to ProFrac.

22. ProFrac is entitled to a setoff against any damages owed by virtue of the conduct of Plaintiff for any damages allegedly incurred by Plaintiff.

23. The Complaint fails because any purported damages suffered by Plaintiff, the existence of which ProFrac denies, were proximately caused, in whole or in part, by Plaintiff's own acts or omissions or that of third parties over whom ProFrac has neither control nor responsibility, and any recovery by Plaintiff should be reduced by an amount proportionate to the amount by which its own acts or that of third parties contributed to the alleged injuries and damages.

* * *

ProFrac reserves the right to assert any and all additional affirmative defenses that discovery or other evidence may reveal to be appropriate. ProFrac further reserves the right to amend its Answer or otherwise plead in response to Plaintiff's Complaint, and to file such other Motions as it may deem advisable in defense of the case or as warranted by information adduced through the discovery process."

Respectfully submitted,

/s/ James C. Scott

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State Bar No. 24056287

Jim.scott@kellyhart.com

Elizabeth Cuneo

State Bar No. 24100166

Elizabeth.cuneo@kellyhart.com

KELLY HART & HALLMAN LLP

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Telephone: (817) 332-2500

Telecopier: (817) 878-9280

ATTORNEYS FOR PROFRAC SERVICES, LLC

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on June 30, 2021 a true and correct copy of the foregoing *Original Answer* was served upon the following parties through this Court's CM/ECF noticing system:

David J. Drez III

david.drez@wickphillips.com

Paul T. Elkins

paul.elkins@wickphillips.com

WICK PHILLIPS GOULD & MARTIN LLP

100 Throckmorton Street, Suite 1500

Fort Worth, Texas 76102

Attorneys for Plaintiff Lonestar Prospects Ltd. d/b/a Vista Sand

/s/ James C. Scott

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State Bar No. 24056287.
Jim.scott@kellyhart.com
Elizabeth A. Cuneo
State Bar No. 24100166
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DEFENDANT'S CORPORATE OWNERSHIP STATEMENT

Defendant ProFrac Services, LLC (“**ProFrac**” or “**Defendant**”) hereby files this *Corporate Ownership Statement* pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and discloses that ProFrac Holdings, LLC owns 100% of ProFrac Services, LLC’s equity interests.

Respectfully submitted,

/s/ James C. Scott

James C. Scott

State Bar No. 24056287.

Jim.scott@kellyhart.com

Elizabeth A. Cuneo

State Bar No. 24100166

Elizabeth.Cuneo@kellyhart.com

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ATTORNEYS FOR PROFRAC SERVICES, LLC

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I, undersigned counsel, hereby certify that on June 30, 2021 a true and correct copy of the foregoing *Defendant's Corporate Ownership Statement* was served upon the following parties through this Court's CM/ECF noticing system:

David J. Drez III

david.drez@wickphillips.com

Paul T. Elkins

paul.elkins@wickphillips.com

WICK PHILLIPS GOULD & MARTIN LLP

100 Throckmorton Street, Suite 1500

Fort Worth, Texas 76102

Attorneys for Plaintiff Lonestar Prospects Ltd. d/b/a Vista Sand

/s/ James C. Scott

James C. Scott