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Local Counsel for Sequitur Permian, LLC

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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

DEFENDANT, SEQUITUR'S MOTION FOR LEAVE TO AMEND COUNTERCLAIMS AND THIRD-PARTY COMPLAINT PURSUANT TO RULE 15

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); 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.

2042002201103000000000003

SEQUITUR PERMIAN, LLC ("Sequitur" or "Defendant") files this *Motion for Leave to Amend Counterclaims and Third-Party Complaint Pursuant to Rule 15* and would respectfully show until the Court the following:

1. Pursuant to Federal Rule of Civil Procedure 15, Sequitur respectfully moves this Court for an Order granting Sequitur leave to amend their counter-claim and third-party complaint which was filed in the state court action. FED. R. CIV. P. 15. A copy of the requested amended counterclaim and third-party complaint, titled Sequitur Permian, LLC's *Fourth Amended Counterclaims and Third Amended Third-Party Claims,* is attached hereto as **Exhibit A**.

2. A copy of Sequitur's proposed order granting the relief requested herein is attached hereto as **Exhibit B**.

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF CONFERENCE

I certify that prior to filing this Motion the relief requested was discussed with opposing counsel and opposing counsel indicated that they were opposed to the amendment.

/s/ Matthew A. Kornhauser
Matthew A. Kornhauser

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2020 a copy of the foregoing Motion was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

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EXHIBIT A

[Fourth Amended Counterclaims and Third Amended Third-Party Claims]

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In re:	§	**Chapter 11**
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Debtors.	§	
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Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	

SEQUITUR PERMIAN, LLC'S FOURTH AMENDED COUNTERCLAIMS AND THIRD AMENDED THIRD-PARTY CLAIMS

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); 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.

COMES NOW, Defendant/Counter-Plaintiff/Third-Party Plaintiff, SEQUITUR PERMIAN, LLC ("Sequitur"), in the above styled and numbered cause and file this its Fourth Amended Counterclaims and Third Amended Third-Party Claims and in support thereof would show unto the Court, as follows:

I. PARTIES

1. Sequitur has appeared herein and can be served through its counsel of record.

2. Maalt, LP ("Maalt") has appeared herein and can be served through its counsel of record.

3. Vista Proppants and Logistics, LLC ("Vista") is a Delaware limited liability company that can be served in the State of Texas through its CEO, Gary Humphreys, or its President, Marty Robertson, at 4413 Carey St., Fort Worth, Texas 76119, or wherever else they may be found.

II. FACTS IN SUPPORT OF COUNTERCLAIMS/THIRD-PARTY CLAIMS

4. Sequitur is in the crude oil production business, with a primary focus of approximately 88,000 net acres including Irion County, Texas as part of the Wolfcamp Shale. In about May of 2018, in furtherance of its effort to most efficiently and cost-effectively transport the crude oil produced by Sequitur to refineries in southeast Texas and Louisiana, Sequitur was looking to obtain access to a transloading facility or rail terminal in or around Irion County, Texas. The purpose of obtaining a transloading facility would be to transfer crude oil that is delivered to the facility by trucks or via pipeline into train railcars, which is an efficient, cost-effective, and safe way to transport crude oil to refineries near the Gulf Coast.

5. On May 4, 2018, Sequitur had initial discussions with an employee of Vista, of which the Maalt is an affiliate, regarding a rail depot that Maalt owned in Barnhart, Texas that

could be converted into the crude-by-rail transloading facility (the "Terminal") to which Sequitur sought access. Vista had experience elsewhere in the Permian Basin for transporting frac sand (a proppant) via railcar at similar facilities. Vista told Sequitur that they were receiving inquiries from other companies, but that they were more interested in doing business with Sequitur because they could offer future additional revenue streams.

6. During the May 2018 discussions, Sequitur made it clear that it wanted only a 15-month term on the Terminal services contract, as opposed to the two-year term that Vista indicated was more typical. In addition to a shorter-term contract, Sequitur made clear that it was fundamental to the viability of its use of the proposed Terminal that both industry-approved railcars and locomotives (train engines) be available at the right time and at the right price, in light of the fluctuating price of crude oil. At the time, crude oil barrels were selling in the Midland Basin at a steep discount to those sold on the Gulf Coast. Therefore, if Sequitur or its downstream oil buyers could sell barrels of oil for more on the Gulf Coast, less transport costs, than they could sell barrels of oil for in Midland, additional earnings would be achieved.

7. In light of Sequitur's specific requirements for the proposal, on May 9, 2018, Jon Ince, then-Senior Manager of Logistics with Vista, introduced Sequitur to Jonas Struthers of FeNIX FSL, a rail car lease broker with whom Sequitur initially discussed renting rail cars through. Ince described Jonas Struthers as "the railcar guy" who had "been a great partner for me in the past with our sand cars." Ince stated that Struthers would "be able to get you cars that you need for your fleet" and "at a really good rate." Ince also noted that Struthers would "be more in the know on regulations and exact timing on when [CP-1232 railcars] are being phased out for the [DOT-117R railcars]."

8. On May 10 and 11, 2018, in an internal email among Vista employees, Ince outlined the terms sought by Sequitur, including to transload crude oil from [November 1,] 2018 to December 31, 2019, for about 20-30 railcars loaded per day with a minimum of approximately 15 railcars. Ince also noted that Sequitur was also "[l]ooking to place tankage on our property for [a] pipeline connection with [a] long-term lease." Chris Favors ("Favors"), Business Development officer with Vista, also indicated that JupiterMLP, LLC (the parent of affiliate, Jupiter Marketing & Trading, LLC) (collectively "Jupiter) was also "interested in" the Terminal but that Vista had decided it was "moving forward" with the proposed Terminal services contract with Sequitur.

9. On May 16, 2018, in another internal email among Vista employees, Ince compared the proposals of both Sequitur and Jupiter for use of the Barnhart Terminal. Ince noted in the email that Sequitur had "no rail experience" and also that Sequitur was willing "to entertain" Vista as the manager of its fleet of railcars. Significantly, Ince opened the email noting that Union Pacific Railroad is "requiring DOT 117 crude cars on all new freight quotes" and that such cars "are not available until Q3-Q4 of this year."

10. On June 1, 2018, Sequitur and Vista entered into a Letter of Intent ("LOI") regarding the use of the Terminal. The initial term of the LOI was through June 26, 2018 and was extended by written amendments to July 23, 2018. The LOI reflected the parties' intent to enter into a Terminal Services Agreement for a term of September 2018 to December 2019.

11. On June 1, 2018, Sequitur emailed Favors regarding progress being made on a draft of the proposed Terminal Services Agreement between Sequitur and Vista (ultimately Maalt), as well as Sequitur's purchase of eight new transloaders for installation at the Terminal, at a cost of over $2,200,000, and its efforts to address regulatory and surface use issues.

12. On June 5, 2018, Struthers emailed Ince, Morris, and others at Vista explaining that the "market for 117s right now is upwards of $1100 on a 3 year lease." Struthers indicated that the older 1232 model railcars might be able to be retrofitted to meet the DOT-117 standards and at a lower price, but there were still "unanswered questions" from the American Association of Railroads and the Federal Railroad Administration regarding the proposed attempted at retrofitting.

13. Realizing that the train business was one that Sequitur was inexperienced with and could not learn overnight, Sequitur decided to seek a business venture with a large oil trader with access to leased rail cars. Sequitur reached out to several companies, including, but not limited to Shell and BP.

14. On June 5, 2018, Favors emailed Braden Merrill, VP & CFO of Sequitur, and Travis Morris, the Chief Commercial Officer of Jupiter, regarding Vista working with both Sequitur and Jupiter regarding "Vista's Barnhart terminal." Favors introduced Jupiter to Sequitur, and Favors's colleague, Ince described Jupiter as the "real deal and a partner who could get it done." Favors went on to inquire as to whether a conference call should be scheduled among Vista, Sequitur, and Jupiter that day or the following day. A conference call took place that day, and Sequitur was informed that Jupiter had trucking capabilities and also had relationships with railroad companies, which, as noted above, were requirements for the proposed Terminal to be viable. Braden Merrill of Sequitur thanked Favors and Ince for the introduction to Jupiter.

15. On June 6, 2018, Favors emailed Travis Morris regarding changes to a draft terminal services agreement between Vista and Jupiter. Favors stated that "[w]e can easily amend the contract to include Barnhart volume if the Sequit[u]r opportunity doesn't pan out."

16. Sequitur initially selected Shell as a business venture partner and proceeded in ordering the equipment that was needed to build out the Terminal, including the transloaders contemplated under the original LOI. Sequitur had committed approximately $4 million to the Terminal project. However, neither Shell nor BP were able to secure rates from BNSF or UP.

17. On June 20, 2018, Travis Morris with Jupiter emailed Ince and Favors of Vista attaching an executed agreement between Vista and Jupiter. Morris also stated that "I am getting on the phone with Sequitur today so we can try to close the Barnhart deal." Morris also noted that "I do not have firm railcars yet, but we are working several sets with Jonas Struthers."

18. From late June, and during July, and the first week of August 2018, Vista and Sequitur continued negotiations and exchanged drafts of the Terminal Services Agreement for the exclusive use of the Terminal in Barnhart. Then, on August 3, 2018, Favors emailed Braden Merrill of Sequitur and Sequitur's President, Mike van den Bold, pressuring Sequitur to execute the Terminal Services Agreement. Favors stated that "I am receiving heavy pressure to get the agreement fully executed" and that "[w]e have been offered slightly better terms from [an]other party that said they will execute an agreement today." At this time, Favors told Merrill that Jupiter was offering to pay $8 million up front to Vista and Maalt for exclusive use of the Terminal, cutting out Sequitur. Favor's statements to Merrill were knowingly false when made, were made with conscience indifference to the truth of the statements, or were negligently made, and were intended to induce, and in fact did induce, Sequitur to sign the Terminal Services Agreement, and Sequitur reasonably relied on such false, reckless, or negligent statements. Merrill told Favors that Sequitur had already purchased the necessary equipment for the Terminal project and was in the hole for millions of dollars due to Sequitur's reliance on the LOI. Favors again mentioned that Sequitur should do a business venture with Jupiter because Jupiter was already able to ship on the railroads.

19. On August 6, 2018, Merrill of Sequitur had a conference call with Vista and Jupiter representatives regarding the availability of railcars and locomotives. Sequitur was told that Jupiter had access to 1600 railcars and could manage 10 to 12 locomotives a month. Also, as a result of that call, later that same day, Sequitur's President forwarded via email to Favors of Vista and Maalt, the Terminal Services Agreement (also hereinafter called the "Agreement"), dated effective August 6, 2018, which was executed the following day.

20. On August 9, 2018, Morris emailed Sequitur regarding a prior meeting in which Jupiter offered to purchase the crude oil transloaded at the Terminal from Sequitur instead of Sequitur's initial plan to sell the oil to Shell. Morris noted that in "order to meet a September [2018] start date I need to begin directing trains toward Barnhart quickly."

21. In reliance on the promises, commitments, false statements, representations, and inducements made by Vista and Maalt, and their agents and representatives, regarding the availability of rail cars and trains to pick up the crude oil at the Terminal and deliver it via rail to the desired destinations, Sequitur entered into the Agreement with Maalt, with an effective date of August 6, 2018. Consistent with the entire premise and purpose of the Agreement—that Sequitur would be able to cost-effectively deliver oil to the Terminal to be transloaded onto railcars that would be delivered to Gulf Coast refineries—throughout the Agreement references are made to "railcars" as well as a reference to the "train loading area." Thus, it was expressly made clear to both parties that without viable or sufficient access to trains and railcars, the essential purpose of the Agreement was for naught.

22. Per the Agreement, Maalt (also described as "Terminal Owner") was the owner and operator of the Terminal[2] located in Barnhart, Texas on land leased or controlled by Maalt, and Sequitur (described as "Customer") was engaged in the business of transportation and marketing of crude oil and other liquid hydrocarbon products owned or controlled by Sequitur (hereinafter "oil"). Among other contractual duties, the Agreement provided that Maalt would provide the labor, supervision, and materials necessary to deliver, handle, measure, and redeliver (hereinafter "transload") the oil to Sequitur or to Sequitur's third-party customers. Sequitur would have the exclusive rights to use the Terminal for transloading oil.

23. The Agreement contemplated two methods of delivery of oil to the Terminal, by either truck or pipeline. Regardless of the method of delivery, upon receipt, Maalt would then transload the oil into railcars to Sequitur or Sequitur's third-party customers. In order to facilitate the transloading into railcars of oil that was delivered by truck, Sequitur, at its sole cost and significant expense, installed equipment and facilities at the Terminal, which was described in the Agreement as the "Phase I Project." Sequitur made this investment and incurred these costs in reliance on Vista's and Maalt's promises that there would be have sufficient trains, rail cars and other means to transport the crude oil via rail as referenced in the Agreement. Additionally, if Sequitur elected to do so, it could also install at its sole cost and expense, equipment and facilities at the Terminal for transloading oil into railcars from pipelines (versus trucks), which was described in the Agreement as the "Phase II Project."

24. Significantly, as to the equipment and facilities installed by Sequitur (collectively "Customer Terminal Modifications") in connection with the either the Phase I Project or the Phase

[2] The Terminal's address is located at 44485 W. Hwy 67, Barnhart, Irion County, Texas 76930 and is more specifically described in the Agreement .

II Project, Maalt agreed in the Agreement that "title to the equipment and facilities installed by or at the direction of [Sequitur] in connection with a Customer Terminal Modification shall remain with and be vested in [Sequitur]." *See* Agreement, § 2.7. The only exception to Sequitur's title and ownership to the Customer Terminal Modifications that it may have installed or directed, at its own cost and expense, was "any additional rail tracks that may [have been] installed," which additional tracks' ownership, if so installed, would be transferred to Maalt after the expiration of the Agreement's term, subject to certain rights of Sequitur. *See* Agreement, § 2.7.

25. In very general terms and subject to numerous terms and conditions, in exchange for Maalt's operation of the Terminal and its transloading of oil exclusively for Sequitur, further conditioned upon the occurrence of the Terminal Operations Commencement Date, Maalt would be paid at least a minimum payment (the "Shortfall Payment") depending on the amount of oil actually transloaded through the Terminal. *See* Agreement, § 3.2.

26. Any obligation for Sequitur to pay the Shortfall Payment, however, was expressly made subject to "the terms of this Agreement, including . . . Force Majeure." *See* Agreement, § 3.1. The Agreement could not have been clearer when it provided, as follows: "There shall be no Shortfall Payment due and owing for the Shortfall to the extent caused or contributed to by Force Majeure or due to such Terminal Owner [Maalt] breach." *See* Agreement, § 3.2(a).

27. Additionally, no payment would be due under the Agreement, including any Shortfall Payment, until "after the Terminal Operations Commencement Date." *See* Agreement, § 3.1. The Terminal Operations Commencement Date was defined as "the date that the Terminal is fully operational to enable the performance and receipt of the Services and any and all Regulatory Approvals for the Services have been obtained, in each case, as reasonably determined by

Customer [Sequitur] and as such date is evidenced by a written notice sent by Customer [Sequitur] to Terminal Owner [Maalt]." *See* Agreement, § 1.

28. Importantly, in the event of a Force Majeure, any obligation of Sequitur to make payments to Maalt only existed for oil "actually Throughput at the Terminal." *See* Agreement, § 14.1. The term "Throughput" was defined as "the delivery of Product [oil] from trucks or pipeline into the Terminal on behalf of Customer [Sequitur] or Customer's [Sequitur's] third-party customers." *See* Agreement, § 1. Subject to the terms of the Agreement, Sequitur was only obligated to pay Maalt a throughput fee of $1.50 per Barrel for Product Throughput through the Terminal. *See* Agreement, §4.1. "Product Throughput" was the metered quantity of oil actually delivered into the Terminal and transloaded by Maalt into railcars. *See* Agreement, Art. 5. No oil was ever actually Throughput at the Terminal.

29. The Agreement defined both "Force Majeure Event" and "Force Majeure" to mean "any cause not within the reasonable control of a Party claiming suspension, and that could not have been avoided or overcome by the exercise of due diligence by such Party," which included a lengthy list of various events and occurrences. Included in the list of events and occurrences was "the unavailability, interruption, delay or curtailment of Product transportation services" and a catch-all for "any other cause or causes beyond the reasonable control of the Party claiming suspension, whether similar or not to those listed." *See* Agreement, § 14.2. If either party determined it was necessary to declare a Force Majeure Event, notice was required first by phone or email and then by mail or overnight carrier. *See* Agreement, § 14.3.

30. At no point in time, including between August 6, 2018 and December 7, 2018, did Sequitur ever send written notice to Maalt that the Terminal Operations Commencement Date had

occurred. At no point in time, including between August 6, 2018 and December 7, 2018, was oil "actually Throughput at the" Terminal.

31. In addition, Section 11.2 of the Agreement required Maalt to procure and maintain, at its own expense, a pollution legal liability ("PPL") insurance policy reasonably acceptable to Sequitur and naming Sequitur and its Group as an additional insured. The Agreement required that this policy be procured and in place prior to commencement of operations at the Terminal. This policy was never procured by Maalt and/or provided to Sequitur as required by the Agreement.

32. Despite Vista and Maalt's promises and/or representations to Sequitur that Sequitur would be able to secure sufficient numbers of trains and rail cars and rail rates, and Vista's and Maalt's introduction to Sequitur of Vista's and Maalt's agents, who were self-professed "railcar guys," it became obvious that said promises and/or representations were false. Specifically, sufficient trains, rail cars, and other means of transporting crude oil via rail were not readily available to Sequitur. In addition, the Class I carriers were putting restrictions, regulations and/or impediments in place to prevent sufficient access to their respective tracks. These circumstances led to an unavailability, interruption, delay, or curtailment of oil transportation services that were beyond the control of Sequitur. These circumstances were not foreseeable to Sequitur and amounted to a Force Majeure event as described in the Terminal Services Agreement.

33. On December 7, 2018, in accordance with the terms of the Agreement, Sequitur sent written notice to Maalt by email and FedEx that Sequitur had declared an existing "Force Majeure" under the Agreement because of the "unavailability, interruption, delay or curtailment of rail transportation services" for the oil, "despite continued efforts to procure such services." More specifically, a Force Majeure event occurred because crude oil transportation service (e.g., rail service and capacity) to allow for Sequitur's use of the Terminal for the intended purposes of

the Agreement was not available despite diligent efforts to procure such service and capacity, and such event of Force Majeure was not within the reasonable control of Sequitur. The written notice also noted that Sequitur anticipated that the Force Majeure event would "continue for the foreseeable future."

34. On January 28, 2019, Sequitur received an invoice from Maalt dated January 25, 2019 for $531,216.00, which was presumably for an alleged Shortfall Payment.

35. On January 31, 2019, Sequitur sent written notice to Maalt responding to the January 25, 2019 invoice disputing that such amount was owed because both the Force Majeure event had occurred and remained continuing, and also because, as noted above, the Terminal Operations Commencement Date had not been reached per the terms of the Agreement. Sequitur also indicated that it would inform Maalt of "any changes or developments in the status of the Existing Force Majeure."

36. On February 8, 2019, Sequitur sent written notice to Maalt by email and FedEx that the declared Force Majeure had continued for sixty days, despite Sequitur's continued efforts to procure such services. Accordingly, Sequitur notified Maalt of Sequitur's right to terminate the Agreement. Specifically, Sequitur relied on the "Termination for Extended Force Majeure" provision in the Agreement, which provides, in pertinent part, that "[b]y written notice to the other Party, a Party shall have the right to terminate this Agreement prior to the end of the Term if the Parties are unable to fulfill the purposes of this Agreement due to Force Majeure for a period equal to or greater than (a) (60) consecutive Days." *See* Agreement, § 8.4. The February 8, 2019 notice also noted that Sequitur would be contacting Maalt to discuss and coordinate the removal of Sequitur's equipment and facilities installed at the Terminal (Customer Terminal Modifications). *See* Agreement, §§ 2.5 and 2.7 (describing, upon termination of the Agreement, Sequitur's "right

of access over, on, and across" the lands upon which the Terminal was located for "purposes of enforcing" Sequitur's "rights under this Agreement" to remove the Customer Terminal Modifications, and also acknowledging Sequitur's undisputed "title to and ownership of" such Customer Terminal Modifications).

37. Notably, as to Sequitur's notice of Termination for Extended Force Majeure, the Agreement further provided that "[f]ollowing the giving of such notice, neither Party shall have any further obligations to the other Party under this Agreement (including, but not limited to, with respect to the Minimum Volume Commitment)," which included any obligation to pay any Shortfall Payment, Throughput Fee, or any other fee or payment. *See* Agreement, §§ 8.4, 3.1, and 3.2.

38. On or about February 14, 2019, an attorney for Maalt sent a letter dated February 14, 2019 to Sequitur, which disputed that the Force Majeure event had occurred but without any reference to evidence to the contrary and only a conclusory unfounded assertion of pretext. The letter also included a copy of the Original Petition filed in this case by Maalt on February 13, 2019, at 5:00 p.m. In addition, the letter also stated that "Maalt will not allow your company access to the Barnhart property [Terminal] to remove equipment or otherwise" and that "[a]ny attempt to access the property will be considered a trespass." Notably absent from the letter was any reference to any terms in the Agreement or legal authority that permitted Maalt to refuse Sequitur access to the property to retrieve Sequitur's equipment and facilities or that suggested Sequitur's undisputed "right of access over, on, and across" the property or Terminal for "purposes of enforcing" Sequitur's "rights under this Agreement," including removing and retrieving Sequitur's equipment and facilities, had been terminated. *See* Agreement, § 2.5. On or about February 22, 2019, Sequitur learned that its equipment had wrongfully been removed, stolen, and

misappropriated from the Terminal by Maalt, without notice or warning. Sequitur learned that its equipment and facilities were removed to a location approximately 25 miles away from the Terminal and on real property that Sequitur does not have an express right of access, like it does with respect to the Terminal per the terms of the Agreement. On or about February 22, 2019, Sequitur demanded that its equipment, valued at approximately $2,576,505.21 in the aggregate, if not more, be returned to Sequitur. Through the course of the litigation and after claims were brought by Sequitur, Maalt ultimately acquiesced and released the equipment to Sequitur. However, the following claims remain for which Sequitur now brings forth:

III. FOURTH AMENDED COUNTERCLAIMS/ THIRD AMENDED THIRD-PARTY CLAIMS

39. Per Rule 37, Sequitur seeks nonmonetary relief, including declaratory, ancillary, and injunctive (including prohibitive and mandatory) relief, and additionally, or in the alternative, to such relief, monetary relief of over $1,000,000.00.

40. Sequitur incorporates herein the facts set forth above.

A. Promissory Estoppel.

41. Vista and Maalt made promises to Sequitur, expressly, either orally or in writing, and/or or impliedly through Vista's and Maalt's conduct, which included the promises that trains and railcars would be available, including at a reasonable price, at the right time, and for the right term. Sequitur reasonably relied on Vista's and Maalt's promises to Sequitur's detriment. Sequitur's reliance was foreseeable by Vista and Maalt. Injustice can be avoided only by enforcing Vista's and Maalt's promises. In addition, or in the alternative, Sequitur has incurred reliance damages due to Vista's and Maalt's promises, in an amount over $4,000,000. Sequitur seeks recovery of its damages, interest, court costs, and attorney's fees.

B. Negligent misrepresentations.

42. Vista's and Maalt's representations to Sequitur were in connection with the above-referenced transaction in which Vista and Maalt had a pecuniary interest. Vista and Maalt supplied false information to guide Sequitur into the transaction. Neither Vista nor Maalt used reasonable care in obtaining or communicating the representations and information. Sequitur justifiably relied on the representations and information. Sequitur has incurred reliance damages due to Vista's and Maalt's false representations, in an amount over $4,000,000. Sequitur seeks recovery of its damages, interest, court costs, and attorney's fees.

C. Common law fraudulent inducement.

43. Vista and Maalt made material representations to Sequitur in the above-referenced transaction that were false. When Vista and Maalt made the representations to Sequitur, Vista and Maalt knew the representations were false or made the representations recklessly, as positive assertions, and without knowledge of the truth, if any. Vista and Maalt made the representations with the intent that Sequitur act on them, including Sequitur entering into the Agreement. Sequitur relied on the representations. As a result, Sequitur has incurred reliance damages due to Vista's and Maalt's false representations, in an amount over $4,000,000. Sequitur seeks recovery of its damages, interest, court costs, and attorney's fees.

D. Breach of Contract.

44. Sequitur and Maalt entered into the Agreement. Sequitur properly terminated the Agreement, while retaining certain rights under the Agreement. Despite the foregoing, Maalt breached the Agreement. Maalt's breach has caused Sequitur injury.

E. Declaratory Judgment.

45. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, known as the Texas Uniform Declaratory Judgments Act (hereafter "UDJA"), the parties have a dispute about their rights and obligations under the Agreement. Sequitur seeks a declaratory judgment from this Court, as follows:

(1) No Terminal Operations Commencement Date ever occurred;

(2) On December 7, 2018, Sequitur properly sent notice of a Force Majeure, and such Force Majeure existed;

(3) On February 8, 2019, Sequitur properly sent notice terminating the Agreement because a Force Majeure existed for at least sixty days;

(4) Effective February 8, 2019, the Agreement was terminated by Force Majeure;

(5) Sequitur was not obligated to remedy the cause of the Force Majeure occurrence because Sequitur, as the affected party, did not deem it reasonable and economic to do so, consistent with the terms of the Agreement.

(6) Sequitur neither owes nor owed a payment of any kind to Maalt under the Agreement;

(7) That enforcement of any Shortfall Payment for any month or for the duration of the Term of the Agreement violates public policy, is unconscionable, and/or is an unlawful and unenforceable penalty, such as an improper liquidated damages provision, under Texas law; and,

(8) Sequitur's performance under the Agreement was made commercially impracticable without its fault by the occurrence of an event(s) the non-occurrence of which was a basic assumption on which the Agreement was made.

F. Vicarious Liability

46. Maalt is liable, through actual authority, for the representations made by Vista on behalf Maalt. At the time of Vista and Maalt made representations to Sequitur in the above-referenced transaction, Maalt had intentionally granted authority, allowed authority, or through lack of due care, allowed Vista to believe it had the authority to act on Maalt's behalf. At the time of Vista and Maalt made representations to Sequitur in the above-referenced transaction, Vista was acting within the scope of the authority granted by Maalt.

47. Maalt is liable, through apparent authority, for the representations made by Vista on behalf of Maalt. At the time of Vista and Maalt made representations to Sequitur in the above-referenced transaction, Maalt had affirmatively held Vista out as having authority, knowingly permitted to hold itself out as having authority, and acted with such lack of ordinary care as to clothe Vista with the indicia of authority to act on Maalt's behalf. Maalt's conduct caused Sequitur to reasonably believe that Vista had authority to act on Maalt's behalf, and Sequitur justifiable relied on Vista's authority to act on Maalt's behalf.

48. Maalt is liable, through joint enterprise liability, for the representations made by Vista on behalf of Maalt. Maalt is liable for the acts of Vista because at the time that Vista and Maalt made representations to Sequitur in the above-referenced transaction, Maalt was engaged in a joint enterprise with Vista. Maalt and Vista had an agreement, a common purpose, a community of pecuniary interest in that common purpose, and an equal right to direct and control the enterprise. At the time that Vista and Maalt made representations to Sequitur in the above-referenced transaction, Vista was acting within the scope of the enterprise.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Defendant/Counter-Plaintiff/Third-Party Plaintiffs, SEQUITUR PERMIAN, LLC, further requests that Plaintiff Maalt recover nothing by its suit; that SEQUITUR PERMIAN, LLC, recover and obtain from Maalt and Vista the declaratory relief sought above, that SEQUITUR PERMIAN, LLC recover and obtain from Maalt and Vista, jointly and severally, all damages, including actual, special, and exemplary damages, court costs, expenses, and reasonable and necessary (and equitable and just per the UDJA) attorney's fees against Maalt and Vista, as noted above, pursuant to the prevailing party clause in the subject Agreement, Chapters 37 and 38 of the Texas Civil Practice and Remedies Code; and that SEQUITUR PERMIAN, LLC have such other and further relief to which it is entitled, whether at law or in equity.

Respectfully submitted,

By: _____

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ATTORNEYS FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF SERVICE

I hereby certify that on _____, 2020 a copy of the foregoing *Fourth Amended Counterclaims and Third Amended Third-Party Claims* was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

Via Email:
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/s/ Matthew A. Kornhauser
Matthew A. Kornhauser

EXHIBIT B

[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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); 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.

ORDER

On this day, came to be heard Sequitur Permian, LLC's Motion for Leave to Amend Counterclaims and Third-Party Complaint Pursuant to Rule 15, previously filed in the above-entitled and numbered cause. The Court, having considered the Motion and this Order, and after due deliberation and sufficient cause appearing therefor, hereby is of the opinion that justice requires that leave to amend be GRANTED. It is hereby,

ORDERED, ADJUDGED AND DECREED that

1. The Motion shall be and is hereby GRANTED.

2. Sequitur Permian, LLC is hereby authorized to file its Fourth Amended Counterclaims and Third Amended Third-Party Claims as attached to its Motion.

END OF ORDER # #

Prepared and submitted by:

HOOVER SLOVACEK LLP

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