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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**
	§	
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 County, Texas**
	§	
Defendant.	§	
	§	

MAALT, LP'S OBJECTIONS TO DEFENDANT'S
SUMMARY JUDGMENT EVIDENCE

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Plaintiff, Maalt, LP, files these objections to the summary judgment evidence filed by Defendant (Doc. 65-1) in response to Maalt's Amended Second Amended Motion for Partial Summary Judgment:

Evidence	**Objection**
Deposition of Braden Merrill (RAPX0001)	
35:20 – 36:9[1]	Hearsay[2]
37:14 – 24	Hearsay
204:20 – 205:1	Hearsay
Declaration of Graham Brisben (RAPX0024) and Declaration of Roger H. Nelson (RAPX0044)[3]	The declarations and attached report are not admissible summary judgment evidence under Federal Rule of Civil Procedure 56 for the following reasons: • The numerous pleadings, motions, and briefs listed by the declarants reflect that their opinions are not based on personal knowledge of facts, but are based on arguments of counsel in those papers. *Highland Capital Management L.P. v. Bank of America*, 2013 WL 4502789 *7 (N.D. Tex. 2013). • The report attached to each is full of improper commentary regarding the evidence, and the declarants'

[1] With respect to deposition references, Maalt uses the format of "page:line" utilizing the original deposition page numbers. All materials made the subject of these objections are contained in Sequitur's Appendix, Doc. 65-1.

[2] "Evidence on summary judgment may be considered to the extent not based on hearsay or other information excludable at trial." *Fowler v. Smith*, 68 F.3d 124, 126 (5th Cir. 1995). *See also, Latif v. University of Texas Southwest Medical Center*, 834 F.Supp.2d 518, 527 (N.D. Tex. 2011).

[3] Because the Declarations of Graham Brisben and Roger H. Nelson are substantially identical and have the same report attached to each, Maalt objects to both for the reasons stated.

interpretation of the actions of the parties involved. For example, the declarants speculate that "Maalt came to believe" and that "Sequitur believes" as seen on page RAPX0028. They also speculate as to whether or not other parties shipping crude by rail in the same timeframe faced or did not face obstacles without discussing their activities with those shippers; thus, they engage in rank speculation. See page RAPX0036. *Highland Capital* at *8.

- The declarants make inadmissible editorial comments throughout their report that are a comment on the veracity, accuracy, and correctness of the parties as well as statements made by various witnesses, including the parties' state of mind and propriety of their conduct. For example, the declarants make statements such as "it was reasonable for Sequitur to align with Jupiter", "Sequitur reasonably assumed that it had taken the necessary action", that "Sequitur was led to believe", that Jupiter "undertook reasonable and appropriate efforts", that Jupiter "struggled to gain traction", and that "Murex was only describing a willingness to explore the same path". Those type of comments are not admissible summary judgment evidence. See for example pages RAPX0037 and RAPX0039. *Id*. at *8.

- The declarants' report contains inadmissible legal conclusions throughout the final page of their report. See page RAPX0040. *Id*. at *8.

- As Judge Lindsay noted in the Highland Capital opinion, a case in which the declaration and report are remarkably similar to those presented by Sequitur, the expert was attempting "to fulfill the role of fact witness, judge, and jury, and, as noted, her reports are replete with statements that amount to nothing more than arguments of counsel." Id. at *8. The same is true in this case as demonstrated by the fact that the declarants' statements are copied into Sequitur's brief as the arguments of its counsel.

- Finally, the declarants' report does not meet the predicate requirements of Federal Rule of Evidence 702. Nowhere in the report is there any statement that the opinions expressed are the product of reliable principles and methods, or that they have applied the principles and methods reliably to the particular facts of this case. Nothing in the report or declarations indicates that an expert in their field would reasonably rely on the type of facts or data set forth in the report. What is clear is that they have concluded that rail transportation was not available at the Barnhart Facility without talking to or obtaining any information from any railroad, and they completely ignore the deposition testimony of Stan Meador (TXPF) and Josh Monroe (KCS). On their face, the reports are unreliable, do not comply with Rule 702, and are not admissible under Rule 56. *Id*. at *9.

See also Digital Recognition Network, Inc. v. Accurate Adjustments, Inc., 2016 WL 1023316 (N.D. Tex. 2016) ("Moreover, the report is replete with hearsay, general allegations and self-serving conclusions that do not present competent summary judgment evidence.")

Deposition of Travis R. Morris (RAPX0123)

112:22 – 113:12	Hearsay
127:16 – 128:17	Hearsay
133:23 – 135:14	Hearsay
149:2 – 150:3	Hearsay, speculation[4]
156:20 – 157:8	Hearsay, speculation, leading question
159:21 – 160:5	Hearsay, speculation
171:11 – 172:9	Hearsay

[4] "A non-movant will not avoid summary judgment by presenting 'speculation, improbable inferences, or unsubstantiated assertions.'" *Lawrence v. Federal Home Loan Mortg. Corp*., 808 F.3d 670, 673 (5th Cir. 2015); *See also Weems v. Dallas Independent School Dist*., 260 F.Supp.3d 719, 729 (N.D. Tex. 2017).

175:21 – 24	Speculation
176:13 – 17	Hearsay
182:10 – 183:10	Hearsay
183:21 – 185:15	Hearsay, speculation
233:1 – 234:22	Hearsay, speculation
237:14 – 20	Hearsay
331:14 – 16	Hearsay
335:21 – 336:16	Hearsay
352:4 – 15	Hearsay
364:6 – 19	Hearsay, speculation
383:22 – 384:15	Hearsay

All of the foregoing is inadmissible as summary judgment evidence, and Maalt requests that the Court sustain its objections to the evidence cited.

PRAYER

WHEREFORE, Plaintiff, Maalt, L.P., prays that its Second Amended Second Motion for Partial Summary Judgment be granted and that the Court award all other relief to which Maalt 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, INC.

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 November 16, 2020.

/s/ *James Lanter*
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.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in**
	§	**the 51st Judicial District Court, Irion**
Defendant.	§	**County, Texas**

ORDER ON PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S SUMMARY JUDGMENT EVIDENCE

ON THIS DAY, the Court considered the Objections to Defendant's Summary Judgment Evidence filed by Plaintiff, Maalt, LP ("Maalt"). After giving consideration to the Objections the Court sustains or overrules the objections as follows:

Evidence	**Objection**	**Ruling**
Deposition of Braden Merrill (RAPX0001)		
35:20 – 36:9	Hearsay	Sustained/Overruled
37:14 – 24	Hearsay	Sustained/Overruled
204:20 – 205:1	Hearsay	Sustained/Overruled
Declaration of Graham Brisben (RAPX0024) and Declaration of Roger H. Nelson (RAPX0044)		Sustained/Overruled
Deposition of Travis R. Morris (RAPX0123)		
112:22 – 113:12	Hearsay	Sustained/Overruled
127:16 – 128:17	Hearsay	Sustained/Overruled
133:23 – 135:14	Hearsay	Sustained/Overruled
149:2 – 150:3	Hearsay Speculation	Sustained/Overruled Sustained/Overruled
156:20 – 157:8	Hearsay Speculation Leading question	Sustained/Overruled Sustained/Overruled Sustained/Overruled
159:21 – 160:5	Hearsay Speculation	Sustained/Overruled Sustained/Overruled
171:11 – 172:9	Hearsay	Sustained/Overruled
175:21 – 24	Speculation	Sustained/Overruled
176:13 – 17	Hearsay	Sustained/Overruled
182:10 – 183:10	Hearsay	Sustained/Overruled

183:21 – 185:15	Hearsay	Sustained/Overruled
	Speculation	Sustained/Overruled
233:1 – 234:22	Hearsay	Sustained/Overruled
	Speculation	Sustained/Overruled
237:14 – 20	Hearsay	Sustained/Overruled
331:14 – 16	Hearsay	Sustained/Overruled
335:21 – 336:16	Hearsay	Sustained/Overruled
352:4 – 15	Hearsay	Sustained/Overruled
364:6 – 19	Hearsay	Sustained/Overruled
	Speculation	Sustained/Overruled
383:22 – 384:15	Hearsay	Sustained/Overruled

END OF ORDER # #

Submitted by:

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