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

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DEFENDANT, SEQUITUR PERMIAN, LLC'S RESPONSE IN OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT

Defendant, Counter-Plaintiff, and Third-Party Plaintiff, SEQUITUR PERMIAN, LLC ("Sequitur"), files this Response in Opposition to Plaintiff's Third Motion for Summary Judgment, and in support thereof would show unto the Court, as follows:

1. Sequitur respectfully requests that this Court deny Plaintiff's Third Motion for Summary Judgment with respect to Sequitur's fraudulent inducement and negligent misrepresentation counterclaims and Sequitur's affirmative defenses of mutual mistake, implied condition, excuse/justification, statute of frauds, waiver and failure of consideration.

2. Sequitur's Brief in Support of Response in Opposition to Plaintiff's Third Motion for Summary Judgment setting forth Sequitur's contentions of fact and law, and arguments and authorities is also filed herein for the Court's consideration.

PRAYER

WHEREFORE, Sequitur Permian, LLC respectfully requests that the Court deny the Third Motion for Summary Judgment and for all other relief to which Sequitur shall show itself entitled.

Dated: March 22, 2021.

Respectfully Submitted,

/s/ Matthew A. Kornhauser

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021 a copy of the foregoing 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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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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

DEFENDANT, SEQUITUR PERMIAN, LLC'S BRIEF IN SUPPORT OF RESPONSE IN OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT

Defendant, Counter-Plaintiff, and Third-Party Plaintiff, SEQUITUR PERMIAN, LLC ("Sequitur"), files this Brief in Support of Response in Opposition to Plaintiff's Third Motion for Summary Judgment, and in support thereof would show unto the Court, as follows:

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INTRODUCTION

1. In its Third Motion for Summary Judgment, Maalt moves for summary judgment on Sequitur's affirmative claims of fraudulent inducement and negligent misrepresentation by solely attacking reliance element of both claims. As show herein, at a minimum, a question of fact exists as to whether Sequitur justifiably relied upon the misrepresentations of Maalt.

2. Additionally, Maalt has moved for summary judgment on six affirmative defenses of Sequitur to Maalt's breach of contract claim. Many of these affirmative defenses are ancillary or similar to affirmative defenses already briefed to the Court in previous motions and responses to summary judgment and thereby Sequitur directs the Court to its previous briefing as stated. In sum, the affirmative defenses are largely predicated on the fact that Maalt is seeking to enforce in this lawsuit an interpretation of the TSA and penalties that are not based on the actual language of the TSA and thus fail.

INCORPORATION BY REFERENCE

3. Pursuant to Local Bankruptcy Rule 7056-1(d)(2), Sequitur incorporates by reference the facts, arguments, and evidence in its currently pending *Motion for Summary Judgment on its Affirmative Defenses of Failure of Condition Precedent*, *Express Waiver of Lost Profits and Consequential Damages*, *Motion for Summary Judgment that Maalt, LP Is Not Entitled to a "Minimum Fee"* and *Response in Opposition to Plaintiff's Amended Second Motion for Partial Summary Judgment*, which address the same issues and arguments that have been raised in Plaintiff's Third Motion for Summary Judgment and thus does not necessitate additional briefing to the Court.

OBJECTIONS TO EVIDENCE OF MAALT

4. Sequitur objects herein to the references in Maalt's Motion in footnotes 21 & 22 to external weblinks. These linked websites and articles found therein contain inadmissible hearsay to the extent that Maalt seeks to rely on the statements contained therein for the truth of the matter asserted.

BACKGROUND

5. Sequitur is in the crude oil production business, with a couple hundred wells over an approximately 500 acres in and around Barnhart, Texas.[1] In May 2018, a differential existed in the price of crude oil in the Permian versus the US Gulf Coast that presented an arbitrage opportunity for Sequitur.[2] If the total cost of transportation and delivery was less than the amount for which the crude oil could be sold at the US Gulf Cost, then Sequitur could potentially earn a higher profit by shipping the crude oil by rail in order to sell it at the US Gulf Coast.[3] Therefore, Sequitur saw this as an attractive opportunity to move its crude oil by rail to sell it at the US Gulf Coast and take advantage of the price differential and temporary window for additional profits from crude oil sales.[4] Therefore, on or around May 2018, Sequitur contacted Vista Proppants and Logistics, Inc. ("Vista"), an affiliate of the Plaintiff, Maalt, LP, ("Maalt") (collectively, "Maalt"), about utilizing Maalt's existing frac sand transloading terminal in Barnhart, Texas (the "Terminal") to ship crude by rail ("CBR") to the US Gulf Coast.[5] Sequitur made it clear to Maalt that it was seeking to use the Terminal for the shipment of Sequitur's crude oil to take advantage of a steep discount to the barrels sold in the Permian as compared to those sold on the US Gulf

[1] **Exhibit A**, *Deposition of Braden Merrill (Sequitur)*, pg., 53, ln. 13 – pg. 54, ln. 16 (Appx 10-11).
[2] *Id.* at pg. 26, ln. 19 – pg. 27, ln. 21., pg. 31, lns. 2-20 (Appx 5 – 6)
[3] *Id.*
[4] *Id.*
[5] *Id.* at pg. 17, lns. 1-17; pg. 26, ln. 13 – pg. 27, ln. 6 (Appx 4 – 5) & **Exhibit B**, *Deposition of Jon Ince (Maalt)*, pg. 15, ln. 3 – 15 (Appx 20).

Coast.[6] Therefore, if Sequitur, or its oil buyers, could sell barrels of oil for more on the US Gulf Coast (less transport costs) than they could sell barrels of oil for in Permian Basin additional earnings would be achieved.[7]

6. A CBR scenario at the Terminal from May 2018 through an approximate 18 to 24 month temporary window period while pipelines were still being constructed to connect the Permian to the US Gulf Coast would have been beneficial for both Sequitur and Maalt due to market conditions for oil and the change in the frac sand market.[8] Maalt was interested in CBR from the Terminal during May 2018 because the market for transloading frac sand changed when operators began locally sourcing sand in the Permian that led to such transport by rail for sand to be no longer economical or competitive with local sources.[9] Maalt also recognized a unique opportunity to use the Terminal for CBR because the Permian pipeline capacity was constrained, and it believed that the Terminal was one of few rail facilities that could be retrofitted for CBR.[10] The Terminal would need to be modified by any customer wanting to transload crude oil, but the Terminal had been used for CBR several years prior and could be transitioned.[11]

7. Sequitur was inexperienced with CBR and would need assistance in securing rail cars to transport crude oil from the Terminal to the US Gulf Coast.[12] This fact was made clear to Maalt during the parties' initial conversations:

> Q. (Mr. Kornhauser) So did you explain – or did you explain to Sequitur the number of trains and railcars that would be needed to handle that type of volume?

---

[6] **Exhibit A**, pg. 26, ln. 13 – pg. 27, ln. 21 (Appx. 5); **Exhibit B** at pg. 18, lns. 5 – 17 (Appx. 21)
[7] **Exhibit A**, pg. 26, ln. 13 – pg. 27, ln. 6; pg. 32, ln. 19 – pg. 33, ln. 8. (Appx 5 – 6)
[8] **Exhibit A** at pg. 31, lns. 2-20 (Appx. 5); **Exhibit C**, *Deposition of Chris Favors (Maalt)*, pg. 41, ln. 21 – pg. 42, ln. 14 (Appx. 29).
[9] **Exhibit C**, pg. 41, ln. 25 – pg. 42, ln. 7 (Appx. 29).
[10] *Id.* at pg. 42, lns. 8-21. (Appx. 29)
[11] *Id.*
[12] *Id.* at pg. 68, ln. 14 – pg. 69, ln. 5. (Appx. 30 – 31)

A. (Mr. Ince) **Yeah, within those conversations definitely. They -- they seemed to struggle with understanding what did they need from a train and a railroad perspective, and -- and I would give them some -- some -- some help as far as understanding, Here's -- here's how you would need to go in the process of finding out how many railcars you need.**

Q. Okay. You said they struggled in understanding.

A. **Yeah.**

Q. What -- what -- what is it that specifically caused you to reach that conclusion?

A. **I had a phone call with – with Tony [Sequitur], and the – I had multiple phone calls with Tony where he was asking about how many railcars do we need, and that same ke - -- question came up, and I would walk him through the process of it really just depends on how – how fast are you going to be able to get it down to the destination and then how fast are they going to get it back, you know, and that really determines how many railcars you need. And they – they seemed to – Tony seemed to struggle grasping that because every time we talked, that would come up pretty often.**

Q. Would it be fair to say that Sequitur was fairly inexperienced with the concept of transporting crude by rail?

A. **I can't speak to their – their – their experience as far as what they've done in the past. But the way that they were presenting themselves, they seemed to – to lack a knowledge.**[13]

This inexperience was recognized by Maalt during their own initial assessment in an eternal email, as follows[14]:

[13] **Exhibit B**, pg. 19, ln. 12 - pg. 20, ln. 19 (Appx. 21)
[14] **Exhibit B-1** (Appx 24 – 25).

Sequitur:

- Wells are in close proximity to Barnhart terminal 0-10 miles
  - Their land touches our terminal facility (all wells below are Sequitur)
  - 
- Wants to transload from Barnhart September 1
- Will provide all capital for any equipment needed
  - Overheard conversations of $250K/day revenue and money was no object
- Volumes of 18 railcars/day ramping up to ~30 by late 1Q19
- Wants to transload from storage tanks to railcar
  - Transload times tank to railcar are twice as fast vs truck to railcar (2hr vs 4hr)
- Has no rail experience
  - Willing to entertain VProp serving as 3PL managing their fleet

8. Due to this inexperience, Maalt knew that Sequitur was looking to Maalt for help in acquiring rail transportation services.[15] To alleviate this concern, Maalt, through its representatives, Chris Favors ("Favors") and Jon Ince ("Ince"), represented to Braden Merrill ("Merrill"), VP & CFO of Sequitur, and Mike van den Bold ("van den Bold"), President of Sequitur,[16] that Maalt would connect Sequitur with business counterparties who could provide the necessary rail cars and rail service at the Terminal.[17] According to van den Bold, Maalt represented to Sequitur, as follows:

> **Maalt made representations that they were rail experts, their employees had worked for the railroads, that they could help get a deal done, that they had relationships, they had the expertise, that they could help, you know, help**

[15] **Exhibit B**, pg. 47, lns. 4 – 19 (Appx. 22)
[16] Favors (Maalt) admitted to negotiating with Merrill (Sequitur) and van den Bold (Sequitur) initially prior to the execution of any agreement or letter of intent. **Exhibit C**, at pg. 71, lns. 8 – 16. (Appx. 31)
[17] **Exhibit D**, *Deposition of Mike Van den Bold* (Sequitur), pg. 10, lns. 4 – 16 (Appx. 96)

> **coordinate and collaborate to get these contracts in place, to help get the deal done. . . .**[18]

Sequitur's President elaborated as follows:

> Q. Okay and getting a deal done, what all does that include?
>
> **A. Well, the getting the deal done, Sequitur needed an arrangement where somebody that had rail cars, that had rates and volumes and contract with the railroads to get from Barnhart to the Gulf Coast.**[19]

9. Shortly after the first contacts were made, Jon Ince reached out to Sequitur to start with the process of assisting Sequitur in acquiring all necessary services to transport CBR from the Terminal.[20] Favors confirmed that these connections were made due to Sequitur's inexperience in the rail industry as follows:

> Q. (Mr. Kornhauser) But this – then why is Mr. Ince introducing his rail guy to Braden Merrill and Tony early on?
>
> **A. (Mr. Favors) Yeah, because Sequitur, you know, *made it clear that they had no rail experience*. Right? So that was an introduction to a guy who could help them acquire those railcars.**[21]

10. After Maalt provided initial assistance to convince Sequitur that this CBR terminal deal may be possible, Sequitur and Vista, on June 1, 2018, entered into a Letter of Intent ("LOI") regarding the use of the Terminal to continue with their investigation into the feasibility of an agreement to lease the terminal to transport CBR.[22] The LOI reflected the parties' intent, but not obligation, to enter into a Terminal Services Agreement ("TSA") for a term of September 2018 to December 2019 for Sequitur to utilize the Terminal to ship crude by rail.[23] The LOI made clear

[18] *Id.* (emphasis added).
[19] *Id*. at pg. 14, ln. 22 – pg. 15, ln. 12. (Appx. 97).
[20] **Exhibit A**, pg. 107, ln. 15 – pg. 108, ln. 4 (Appx. 13).
[21] **Exhibit C**, pg. 69, lns. 17 – 22 (Appx. 31).
[22] *Id*., pg. 74, ln. 15 – pg. 75, ln. 6 (Appx. 32) & **Exhibit C-1** (Appx. 43 – 49).
[23] *Id*.

Maalt's intention that all construction at the Terminal be completed by September 2018, *i.e.*, the target date.

11. After the execution of the LOI, Favors emailed Merrill and Travis Morris, the Chief Commercial Officer of Jupiter Marketing & Trading LLC ("Jupiter"), concerning Vista working with both Sequitur and Jupiter regarding the Terminal.[24] Favors testified this "introduction was there to Jupiter to facilitate the logistics side of it" meaning "acquiring railcars, getting rates, moving railcars, making sure service was there."[25] Maalt had an existing relationship with Jupiter because Jupiter was also then attempting to enter into an agreement to transport CBR out of another of Maalt's terminal in Pecos, Texas (the "Pecos Terminal").[26] Jupiter had further shown interest in utilizing the Terminal as well, but these negotiations with Maalt stalled once Maalt and Sequitur entered into the LOI.[27]

12. From June, and during July, and during the first week of August 2018, Maalt and Sequitur continued to discuss the TSA for the exclusive use of the Terminal. During these negotiations, Merrill testified that Maalt continued to represent that it could provide the contact to get Sequitur the necessary product transportation services.[28] As of June 2018, Maalt had entered into the agreement with Jupiter to utilize the Pecos Terminal for CBR.[29] To facilitate that agreement, Jupiter was to acquire product transportation services from the Pecos Terminal to the Gulf Coast.[30] Therefore, Maalt believed Jupiter to be capable of acquiring product transportations services and promoted these purported capabilities on to Sequitur, as follows:

> Q. (Mr. Lanter) Okay. And so I take it by that that you verified that they were a company that you would be willing to do business with

[24] *Id.*
[25] **Exhibit C**, pg. 84, ln. 23 – pg. 85, ln. 12. (Appx. 34 – 35).
[26] *Id*., pg. 39, lns. 3-11 (Appx. 28).
[27] *Id.,* pg. 78, ln. 20 – pg. 79, ln. 18 (Appx. 33).
[28] **Exhibit A**, pg. 246, ln. 13 – pg. 247, ln. 1, pg. 249, ln. 23 – pg. 250, ln. 2 (Appx. 15 – 16)
[29] **Exhibit F-1.** (Appx. 114-122).
[30] **Exhibit C**, pg. 97, ln. 22 – pg. 98, ln. 3 (Appx. 36), **Exhibit C-2** (Appx. 50) & **Exhibit F-1** (Appx. 114 – 122).

independently of anything that Chris Favors or John Ince may have told you?

A. (Mr. Merrill) **Not exactly. Actually, Jon told me that – that he had called around to his railroad contacts and that Jupiter was a – the real deal in terms of being able to get it done. They had the rates. They were able to get cars and that we should go with those guys**.[31]

Mr. Wroten, Senior Finance Associate of Sequitur, confirmed that, during the Maalt-Sequitur negotiations, Maalt endorsed Jupiter's capabilities for transportation services, as follows:

Q. (Mr. Wickes) What specifically do you recall that was said by John Ince regarding Jupiter's capability?

A. (Mr. Wroten) **We had – you know, I guess this was back in July, August, time frame, it was our preference to work with Shell at the time. We had been introduced to Jupiter by, you know, the Vista guys, Jon and Chris, and you know, we had initial conversations with them. It just seems like there were promising the world and you know, we were kind of distrustful of [Jupiter]. So we, you know, in our conversations with Jon, we wanted to get their take on – on their ability and their – their – their capabilities, you know, and he was fully endorsing their ability to do it. And that – you know, we kind of relied on that and you know, that – that helped us feel, you know, get some comfort around potentially doing something with Jupiter if things with Shell didn't – didn't pan out.**[32]

During the term of the LOI, Maalt kept in contact with Jupiter and encouraged them to approach Sequitur regarding partnering with Sequitur to provide the necessary rail and other transportation logistics for the Terminal.[33] Favors recalled telling Merrill that if Sequitur needed a partner to provide the railcars that Jupiter would be capable of handling the logistics.[34] He believed that Jupiter could capably play the role of the product transportation provider for Sequitur at the Terminal, as follows:

[31] **Exhibit A**, pg. 46, lns. 9 – 18 (Appx. 9).
[32] **Exhibit E**, pg. 34, ln. 12 – pg. 35, ln. 3 (Appx. 105).
[33] **Exhibit A**, pg. 37, lns. 14 – 24 (Appx. 7).
[34] **Exhibit C**, pg. 133, ln. 7 – pg. 134, ln. 10 (Appx. 38).

Q. (Mr. Kornhauser) After the LOI, Exhibit Number 6, was executed, what role, if any, do you envision Jupiter playing relative to the Barnhart facility?

A. (Mr. Favors) The potential there was to use their logistics, crude movement, rail or otherwise, to help Sequitur in get the project to the finish line. Right? Ultimately, getting oil from Barnhart to the Gulf Coast.[35]

13. Then, on August 3, 2018, Favors emailed Merrill and van den Bold, pressuring Sequitur to execute the TSA.[36] Favors stated that he was "receiving heavy pressure to get the [TSA] fully executed" and that Maalt has "been offered slightly better terms from [an]other party that said they will execute an agreement today."[37] This representation was false and done purely to pressure Sequitur into entering into the TSA.[38] Based on the representation that there was another party willing to enter into a contract for use of the Terminal, Sequitur traveled from Houston to Maalt's offices in Fort Worth to finalize the TSA. Unbeknownst to Sequitur, Maalt had invited Jupiter to be at Maalt's offices that same day and to arrive before Sequitur.[39] This was orchestrated by Maalt to falsely claims Jupiter's willingness to enter into a terminal services agreement for CBR at the Terminal, in lieu of Sequitur.[40] Specifically, it was represented by Maalt that Jupiter was there to sign the deal if Sequitur would not sign.[41] Maalt's scheme to pressure Sequitur was crucial because, Sequitur had informed Maalt of their concern with executing the TSA before having a firm commitment from any potential partner to provide transportation services to the Terminal. [42]

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[35] *Id*. at pg. 80, lns. 18 – 25 (Appx. 33).
[36] **Exhibit C-3** (Appx. 51)
[37] *Id*. Mr. Favors admitted that this email was sent just to pressure Sequitur as there was in fact no other purchaser as represented. **Exhibit C**, pg. 127, ln. 25 – pg. 128, ln. 13 (Appx. 37).
[38] *Id*., pg. 127, lns. 8 – 14.
[39] **Exhibit F-3** (Appx. 128).
[40] **Exhibit C**, pg. 127, ln. 25 – pg. 128, ln. 13 (Appx. 37).
[41] **Exhibit D**, pg., 29, lns. 3-24 (Appx. 98)
[42] Sequitur's intent was not to sign the TSA until they had a contract in place for rail. **Exhibit D**, pg. 33, ln. 18 - pg. 34, ln. 5 (Appx. 99) But for the promises made by Maalt/Vista about railcars and train, Sequitur would not have entered in the contract. **Exhibit A**, gg. 248, lns. 3 – 7 (Appx. 14).

14. Ultimately, because of the pressuring scheme and because of the reliance on the representations that Maalt that Jupiter would provide the necessary product transportation services, Sequitur signed the TSA with Maalt with an effective date of August 6, 2018.[43] Consistent with the entire premise and purpose of the TSA—that Sequitur would be able to cost-effectively deliver oil to the Terminal to be transloaded onto railcars that would deliver the oil to the Louisiana Gulf Coast refineries—throughout the TSA references are made to "railcars" as well as a reference to the "train loading area."[44] Thus, it was expressly made clear and understood by both parties that without guaranteed access to trains and railcars, the essential purpose of the TSA would be destroyed. Without the representations of Maalt, Sequitur would not have believed that Jupiter would get the necessary transportation services and thus would not have entered into the TSA.[45]

15. In order to facilitate the transloading of crude oil delivered by truck through the Terminal into railcars for delivery of the oil to the Gulf Coast, Sequitur, ***at its sole cost and at significant expense***, installed equipment and facilities at the Terminal, which was described in the TSA as the "Phase I Project."[46] The TSA contained two defined benchmark dates. The first date was the Target Terminal Operations Commencement Date (the "Target Date"), which was defined in the TSA as September 1, 2018.[47] Per the TSA, the Phase I Project was to be completed by the Target Date (September 1, 2018). While the TSA makes clear that this was a target date for the parties to begin operations at the Terminal, and this date (September 1, 2018) was the date that the Phase I Project was expected to be completed, it was not the effective commencement date for the operations at the Terminal to be commenced for the transloading of crude oil.

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[43] *Id*.
[44] **Exhibit C-3 (**Appx. 51).
[45] **Exhibit A**, pg. 49, lns. 12 – 23 (Appx. 9)
[46] *Id.,* pg. 247, ln. 23 – pg. 248, ln. 1 (Appx. 14) & **Exhibit C-4**, § 2.7 (Appx. 58)
[47] *Id*. at pg. 4 (Appx. 55).

16. Instead, under the TSA, the operations at the Terminal were subject to a second date, the Terminal Operations Commencement Date (the "Commencement Date"). The Commencement Date was the benchmark date in the TSA on which Maalt's transloading services were to begin, Sequitur was to begin delivering crude, trains were to arrive, and the Terminal was to become fully operational for the transloading of the crude oil on to trains. Importantly, as defined in the TSA, the Commencement Date was not triggered upon completion of the Phase I Project (that would be the Target Date), rather it was subject to Sequitur's sole determination of when the Terminal was operational.

17. For multiple reasons, the Phase I Project was not completed by the Target Date (September 1, 2018).[48] Maalt did not declare Sequitur in default, but instead Maalt continued to provide Sequitur access to the Terminal and Sequitur spent millions of dollars in equipment purchases and construction-related costs to improve the Terminal to get it ready for transloading CBR.[49] Despite Maalt's representations that Sequitur would be able to secure sufficient product transportation services, it became obvious as time passed after the Target Date that these representations were false and that Jupiter would not be able to provide sufficient trains, rail cars, and other means of transporting the crude oil via rail to downstream oil purchasers in order for the Terminal to become operational to enable the performance by Maalt and receipt by Sequitur (and its customers) of the transloading services contemplated under the TSA.[50]

18. As a result, there existed a force majeure event ("Force Majeure") under the TSA due to an unavailability, interruption, delay, or curtailment of oil transportation services that were beyond the reasonable control of Sequitur. Therefore, on December 7, 2018, in accordance with

[48] **Exhibit A**, pg. 183, ln. 16 – pg. 184, ln. 8 (Appx. 14).
[49] *Id.*, pg. 247, ln. 19 – pg. 248, ln. 1 (Appx. 15).
[50] *Id.,* pg. 67, ln. 20 – pg. 68, ln. 4 (Appx. 12).

the terms of the TSA, Sequitur sent written notice to Maalt that Sequitur had declared an existing "Force Majeure" under the TSA because of the "unavailability, interruption, delay or curtailment of rail transportation services" for the oil, "despite continued efforts to procure such services."[51] On February 8, 2019, in accordance with the terms of the TSA, Sequitur sent Maalt further notice that the Force Majeure event could not overcome and the TSA was terminated in accordance with its terms without liability to Sequitur.[52]

19. Maalt initiated this lawsuit under a claim for breach of contract in which it seeks payment of a Shortfall Payment despite the Force Majeure event and even though Maalt never performed any transloading services at the Terminal. Sequitur has counterclaims for fraudulent inducement and negligent misrepresentation in which Sequitur seeks the recoupment of those monies spent on the Terminal that would not have been expended but for Maalt's false promises that train service would be available at the Terminal.

ARGUMENTS & AUTHORITIES

A. Summary judgment standard.

20. Federal Rule of Civil Procedure 56, which is made applicable to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056, provides that a court shall grant summary judgment on a claim or defense (or a part thereof) identified by the movant for such relief "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); FED. R. BANKR. P. 7056. In other words, "[a] bankruptcy court's grant of summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Amco Energy Inc. v. Tana Exploration Corp.*, 669 F.3d 274, 278 (5th Cir. 2012).

[51] **Exhibit C,** pg. 215, ln. 14-25 (Appx. 39) & **C-5 (Appx. 89 – 91)**
[52] **Exhibit C,** pg. 233, ln. 14 – pg. 234, ln. 16 (Appx. 40) & **Exhibit C-6** (Appx. 92 – 93).

21. "In evaluating whether summary judgment is appropriate, the Court 'views the evidence in the light most favorable to the nonmovant, drawing all reasonable inferences in the nonmovant's favor.'" *Ortez v. Wise County Sheriff's Dep't*, No. 4:19-cv-106-O, 2020 U.S. Dist. LEXIS 217628, at *8 (N.D. Tex. Nov. 20, 2020) (quoting *Sanders-Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir. 2010)).

B. The summary-judgment evidence shows that there are fact questions as to whether Sequitur could have justifiably relied on the representations of Maalt.

22. Sequitur brings a fraudulent inducement claim against Maalt for making false representations to Sequitur to induce it into entering into the TSA with Maalt. Specifically, Sequitur asserts that Maalt made the following actionable fraudulent representations: (1) Maalt had another party that would enter into an agreement for the exclusive use of the Terminal; and (2) Jupiter could provide the necessary product transportation services at the Terminal. Fraudulent inducement is a species of common-law fraud that shares the same basic elements: (1) a material misrepresentation, (2) made with knowledge of its falsity or asserted without knowledge of its truth, (3) made with the intention that it should be acted on by the other party, (4) which the other party relied on, and (5) which caused injury. *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). Maalt states in its motion that it is only challenging the fourth element of a claim for fraudulent inducement, i.e., that Sequitur did not justifiably rely on the representations of Maalt.[53]

23. Justifiable reliance on representations to support a claim of fraudulent inducement is generally a question of fact. *Jacked Up, LLC v. Sara Lee Corp*., 854 F.3d 540, 546 (5th Cir.

[53] Since Maalt is only challenging the reliance element of a fraudulent inducement claim, Sequitur will in turn only address that fact questions that surround this element. However, as shown herein there is sufficient evidence in support of the of other elements of a fraudulent inducement claim as the false representations were material in that Sequitur in that they were important to Sequitur in making its decisions to enter the TSA. *See Barrow-Shaver Res. v. Carrizo Oil & Gas, Inc*. 590 S.W.3d 471, 496 (Tex. 2019)(stating that a representation is material if the representations was important to the plaintiff in making a decision.)

2003); *see 1001 McKinney Ltd. v. Credit Suisse First Bod. Mortg. Capital*, 192 S.W.3d 20, 30 (Tex. App. - Houston [14th Dist.] 2005, pet. denied) (stating that courts have uniformly treated the issue of justifiable reliance as a question for the factfinder). Justifiable reliance is generally a question of fact "for good reason" as it "is a fact-intensive inquiry, asking whether, given a fraud plaintiff's individual characteristics, abilities, and appreciation of facts and circumstances at or before the time of the alleged fraud[,] it is extremely unlikely that there is actual reliance on the plaintiff's part." *IAS Servs. Grp., LLC v. Jim Buckley & Assocs*., 900 F.3d 640, 650 (5th Cir. 2018). Texas courts have recognized two limited situations whereby a justifiable reliance may be negated as a matter of law. The first is when there is reliance on an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties. *JPMorgan Chase Bank, NA v. Orca Assets, GP, LLC*, 546 S.W.3d 648, 654, 660 n. 2 (Tex. 2018). The second is that there are "red flags" that negate justifiable reliance by rendering it objectively unreasonable. *Id.* at 655, 660 n.2. To determine whether, as a matter of law, justifiable reliance has been negated, courts "must consider the contract and the nature of the parties' relationship." *Barrow-Shaver Res. v. Carrizo Oil & Gas, Inc*. 590 S.W.3d 471, 497 (Tex. 2019). When the issue of justifiable reliance is "close," the Court should leave the decision to the factfinders. *Richter v. Bank of America*, 939 F.2d 1176, 1187 (5th Cir. 1991).

24. Maalt relies on *JPMorgan Chase* to argue that Sequitur could not rely on the representations of Maalt because the representations were made during an arm's-length transaction from which the defrauded party must exercise ordinary care for the protection of his own interest. However, this statement is in reference to the first situation, whereby the contract directly contradicts that oral statement. *Id. at* 658. (stating that "a party to an arm's length transaction must exercise ordinary care and reasonable diligence for the protection of his own interests ... therefore,

reliance upon an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties is not justified as a matter of law"). That is not the situation at hand. Maalt does not argue that there is a direct contradiction in the TSA.

25. Instead, Maalt argues that through its diligence, Sequitur was presented with "red flags" that should have put them on sufficient notice that reliance on Maalt's representation as to Jupiter was unreasonable. However, Maalt fails to identify any "red flags" that should have been known by Sequitur related to Maalt's false representation. This fact distinguishes this matter from the two cases relied upon by Maalt. In *JPMorgan Chase*, the representation at issue was that the defendant stated that the acreage sought under a lease was available to be leased. *Id*. at 654. The court identified "red flags" in the negotiations between the parties including failure to identify the tract at issue as being confirmed as owned by the defendant, that questions as to ownership were still being asked during closing, and another uncommitted response by plaintiff when asked if they own the tract. *Id*. at 655 – 657. The identified "red flags" all go to the heart of the misrepresentation that plaintiff owned and could lease the tract of land at issue.

26. In *Lewis v Bank of America*, the representation at issue was whether the defendant bank misrepresented its ability to shelter plaintiff from taxes and early withdrawal penalties. 343 F.3d 540, 546 (5th. Cir. 2003). The *Lewis* Court identified "red flags" which were that documents between the parties failed to characterize the transactions at issue as tax deferrable. *Id*. at 547. Based on those red flags, the court found that the plaintiff could not have justifiably relied on the representations of the defendant bank. *Id*. Again, like in *JPMorgan Chase*, the "red flags" pertained or were related to the alleged misrepresentation.

27. In this matter however, the alleged "red flags" are that that Sequitur knew that Jupiter was a financial risk and that other parties were more cautious about entering into

agreements to ship CBR. These purported "red flags" are not related to and have no bearing on Maalt representation that Jupiter could capably provide product transportation services to Sequitur, becuase the so called "red flags" merely pertain Jupiter's financial stability or other companies' capabilities. *See Nwankpa v. Obilom*, No. 03-16-00239-cv, 2017 Tex. App. LEXIS 8070 at *9 (Tex. App.–Austin, Aug. 24, 2017, no pet.) (holding that "red flags" failed to negate justifiable reliance as a matter of law because they did not pertain to the facts surrounding the misrepresentations). Further, Sequitur has shown that Maalt knew it was lying to Sequitur when it misrepresented there was another buyer. A party cannot lie to a plaintiff and then argue that there were "red flags" that should have negated the justifiable reliance. *See McKinney Pearl Resto. Partners, LP v. Metro Life Ins*., 241 F.Supp 3d 737, 766 (N.D. Tex. 2017)(holding that "red flags" defense was negated up when defendant); *see also Ward Family Found v. Arnette (In re Arnette),* 454 B.R. 663 (N.D. Tex. 2011) (finding that justifiable reliance existed despite alleged "red flags" even with sophisticated plaintiff due to defendant's direct lies).

28. While Sequitur may have expertise in the oil and gas marketplace, Sequitur was inexperienced in rail transportation and CBR. Maalt knew this, and Maalt knew that Sequitur was relying on Maalt for Sequitur's pursuits for CBR. The diligence of Sequitur as to whether Jupiter was capable of transporting CBR would be to communicate with the other partners of Jupiter whereby Jupiter was performing CBR services. Maalt was such a partner of Jupiter. Sequitur performed its due diligence on Maalt and determined the Maalt could be relied upon.[54] Therefore, reliance on Maalt's representations were justified.[55]

[54] **Exhibit A**, pg. 39, ln. 3 – pg. 41, ln. 1 (Appx. 8)

[55] Even if the Court were to determine that Sequitur was a sophisticated party for purposes of this transaction, the result is merely an assumption that Sequitur's diligence would have discovered the purported "red flags" and cannot rely on ignorance. *See JP Morgan Chase*, 546 S.W.3d at 654 (stating that "when a party fails to exercise such diligence, it is charge with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated.") As stated supra, Maalt can still no identify sufficient "red flags" that Sequitur allegedly should have discovered that would have put Sequitur on notice that reliance could not be justified.

29. In sum, if there were any "red flags" that would have put a party on notice of Jupiter's capabilities, then surely Maalt would have known them and shared them with Sequitur instead of falsely representing that Jupiter could perform. Therefore, any reliance on Maalt as to the capabilities of Jupiter was completely justified because there were no "red flags" pertaining to Jupiter's ability to ship CBR, and Maalt was aware of Sequitur's inexperience in rail transportation.

C. A question of fact similarly exists as to the justifiable element of Sequitur's negligent misrepresentation claim.

30. Sequitur brings a claim of negligent misrepresentation based on the same representations asserted in its fraudulent inducement claim. A negligent misrepresentation claim requires plaintiff to show that it justifiably relied on the negligently made representations. *JP Morgan Chase Bank*, 546 S.W.3d at 653-54. Maalt moves for summary judgment on the sole element of justifiable reliance. As stated by Maalt, the analysis of the justifiable reliance element of a negligent misrepresentation claim has the same consideration as in the fraudulent inducement context. *Id*. at 654. Therefore, Sequitur adopts herein the arguments stated above.

D. A question of fact exists as to the following affirmative defenses with respect to Maalt's breach of contract claim which prevents the entry of summary judgment.

i. Mutual Mistake.

31. Sequitur pleads the affirmative defense of mutual mistake to Maalt's breach of contract claim. The elements of mutual mistake are: (1) a mistake of fact; (2) held mutually by the parties; and (3) which materially affects the agreed-on exchange. *City of The Colony v. N. Tex. Mun. Water Dist*., 272 S.W.3d 699, 735 (Tex. App.—Fort Worth 2008, pet. dism'd). A mutual mistake of fact occurs when the parties to an agreement have a common intention, but the written agreement does not accurately reflect that intention due to a mutual mistake. *Id*. When mutual mistake is alleged, the party seeking relief must show what the parties' true agreement was and

that the instrument incorrectly reflects that agreement because of a mutual mistake. *Atlantic Lloyds Ins. Co. v. Butler*, 137 S.W.3d 199, 213 (Tex. App.—Houston [1st Dist.] 2004 pet. denied). Under the doctrine of mutual mistake, when parties to an agreement have contracted under a misconception or ignorance of a material fact, the agreement will be voided. *Walden v. Affiliated Computer Servs., Inc*., 97 S.W.3d 303, 326 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) To prove a mutual mistake, the evidence must show that both parties were acting under the same misunderstanding of the same material fact. *Id*. Mutual mistake is determined by the objective circumstances surrounding the execution of the documents and not be self-serving, subjective statement of the parties' intent. *Myriad Props., Inc. v. LaSalle Bank Nat'l Ass'n*, 300 S.W.3d 746, 751 (Tex. 2009). Objective circumstances include the parties' knowledge at the time of signing, the amount of consideration paid, the extent of the negotiations and discussions, and the haste or lack of haste in obtaining the agreement. *Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990). A unilateral mistake by one party, combined with knowledge of that mistake by the other party, is equivalent to mutual mistake. *Davis v. Grammer*, 750 S.W.2d 766, 768 (Tex. 1988).

32. Sequitur asserts that the parties had the common intention that the TSA would not be effective or commenced until product transportation services were available at the Terminal. Maalt now argues that the commencement date was subject to the Phase I Project completion, but that is a position that Maalt has only asserted after the TSA was signed. As stated by Maalt, the intent of the Parties was for the Phase I construction to have been completed by September 2018.[56] This is reflected in the LOI and the subsequent premises access agreement and the language of the TSA.[57] The Commencement Date in the TSA was a wholly different benchmark date and was subject to the Terminal being operational with rail service so that CBR could be transloaded and

[56] **Exhibit F**, pg. 66, ln. 14 – pg. 67, ln. 2, pg. 80, lns. 15- 22 (Appx.
[57] **Exhibit C-1** (Appx 43 – 49), **C-4** (Appx. 64) **& F-2** (Appx. 122 – 126).

shipped to the oil destinations. Maalt acknowledges that the access to trains, railcars and service was an essential element of the TSA.[58] To the extent that Maalt now argues it should be interpreted differently based on the language of the TSA, then the parties' agreement is incorrectly reflected in the TSA.

33. Maalt further argues that the defense fails as a matter of law because Sequitur has allocated the risk of this mistake. However, there was no allocation of risk for failure to obtain product transportation services due to the previously stated interplay in the TSA between the Target Date and the Commencement Date. While there may have been some risk associated with not completing the Phase I Project by the Target Date, there was no similar risk in failing to acquire rail service. The potential inability to acquire rail service was a risk that both parties acknowledge because it was fundamental for the Terminal being operational and for commencement of performance and receipt of services under the TSA.

34. Because Maalt has failed to identify language in the TSA that supports their position that the Commencement Date is tied to the completion of the Phase I Project as opposed to when product transportations services were available for the Terminal to be operational, any attempt to enforce a different interpretation of the TSA fails as a matter of law under a misconception of the contract.

ii. Implied condition of the contract.

35. Sequitur raises the affirmative defense of implied condition whereby it asserts that the TSA included the implied condition that the product transportation services must be ascertained for the TSA to commence. Maalt argues that the TSA includes an "Entire Agreement" clause whereby the TSA forbids oral agreements outside of the four corners of the TSA. To determine

[58] **Exhibit C**, pg. 134, lns. 18 -25 (Appx. 38).

the breadth of the "Entire Agreement" clause, the Court should look to the actual language in the TSA to make a factual determination of what agreements survive and which are extinguished. *See Sentry Equip. v. Evans*, Civil Action No. 6:18-cv-00417-JDK; 2019 WL 2495835, 2019 US Dist LEXIS 100093 at *14-16 (E.D. Tex. May 29, 2019).

36. The Entire Agreement clause in the TSA states:

> "15.15 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties regarding the subject matters set forth herein. No variation, modification or change of the Agreement shall be binding upon either Party unless contained in a written instrument executed by a duly authorized representative of each of the Parties."

This integration clause limits the matters to be extinguished from those subject matters specifically addressed in the TSA. The TSA is silent about the acquisition of the product transportation services or the method of product transportation services. The agreements regarding whom could provide the necessary product transportation services (Jupiter) were the oral communications and agreements that lie outside the TSA. Therefore, the Entire Agreement clause would not and does not extinguish this implied condition as a matter of law.

iii. Excuse/justification.

37. Sequitur asserts the defense of excuse/justification because Sequitur was excused from providing notice of the Commencement Date under the specific language of the TSA and the Force Majeure event. But Maalt asserts that this defense fails based on its arguments about the conditions precedent and force majeure defense already briefed in the pending summary judgment motions. Sequitur incorporates its arguments and briefing regarding the conditions precedent and force majeure defense which are on file and incorporated herein. As such, Maalt has failed to show as a matter of law that the defense of excuse or justification fails.

iv. Statute of Frauds.

38. The elements of the defense of statute of frauds are that the contract sought to be enforced is subject to the statute of fraud and the contract was not in writing or was not signed by the defendant. TEX. BUS. & COM. CODE § 26.01. The "statute of frauds" exists to prevent fraud and perjury in certain kinds of transactions by requiring agreements to be set out in a writing signed by the parties. *Haase v. Glazner*, 62 S.W.3d 795, 799 (Tex. 2001). When deciding whether an agreement is capable of being performed within one year, courts compare the date of the agreement to the date when the performance under the agreement is to be completed. *Id*. If there is a year or more between those two reference points, a writing is required to render the agreement enforceable. *Kalmus v. Oliver*, 390 S.W.3d 586, 590 (Tex. App.–Dallas 2012, no pet.).

39. Sequitur asserts that Maalt is seeking to enforce an agreement that is not in writing and not fully performable within one year. Specifically, Sequitur asserts that Maalt is seeking the recovery of a purported "Minimum Fee," which is contrary to the TSA and, by Maalt's admission, that such agreement cannot be performed within one year. But Maalt argues that it is only seeking to enforce what is written in the TSA. However, as Sequitur has fully briefed in its previous motions, the so-called "Minimum Fee" is not in the TSA and is thus an extra-contractual term or agreement for which Maalt seeks enforcement. Therefore, the statute of fraud applies, and the Court is prevented from dismissing this defense as a matter of law.

v. Waiver.

40. Sequitur asserts that Maalt waived the right to demand the notice of commencement by first failing to declare that Sequitur was in breach under the TSA, and Maalt waived its right to lost profits under the express provisions of the TSA. Sequitur has previously briefed the waiver of lost profits issue to the Court and incorporates such argument, evidence, and briefing herein.

Sequitur hereby abandons its other argument that there was a waiver as it applies to demanding the notice of commencement.

41. Despite this abandonment, Sequitur does not abandon its position that Maalt's argument that Sequitur could withhold notice of commencement for any reason would theoretically hold Maalt hostage under the TSA fails because Maalt could have demanded that the notice of commencement be given by Sequitur and instead Maalt chose not to send such demand. Instead, Maalt willfully put itself in the position after the Target Date passed to wait on Sequitur to send the notice of commencement.

vi. Failure of Consideration.

42. Sequitur raised the affirmative defense of failure of consideration to Maalt's breach of contract claim. Specifically, Sequitur submits that Maalt has sought recovery of a throughput fee or shortfall payment for reimbursement of the transloading services under the TSA but without Maalt actually performing those services under the TSA. Maalt argues that the defense fails because it was prevented from performing by Sequitur's repudiation of the TSA under the premise that Sequitur's Force Majeure was improper.

43. As previously briefed to the Court, and as incorporated herein by reference, a question of fact exists as to whether a force majeure event occurred that permitted such a declaration of force majeure by Sequitur under the TSA. Additionally, under consideration is whether Sequitur owed any obligation to Maalt since there was never "***Product actually Throughput at the Terminal***" consistent with Section 4.1 and commencement notice was not sent. These questions of fact exist as to Sequitur's failure of consideration defense. If the force majeure declaration was proper or the conditions precedent were not met, then Sequitur did not repudiate the TSA and Maalt's argument fails as a matter of law.

PRAYER

WHEREFORE, Sequitur Permian, LLC respectfully requests that the Court deny the Third Motion for Summary Judgment and for all other relief to which Sequitur shall show itself entitled.

Dated: March 22, 2021.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021 a copy of the foregoing 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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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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

APPENDIX TO DEFENDANT'S BRIEF IN SUPPORT OF RESPONSE IN OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT

NOW COMES, Sequitur Permian, LLC ("Defendant") and files this Appendix to Brief in Support of Response in Opposition to Plaintiff's Third Motion for Summary Judgment and would show the following to the Court:

Exhibit	Title	Pgs.
A	Deposition Excerpts of Braden Merrill (Sequitur)	**1-17**
B	Deposition Excerpts of Jon Ince (Maalt)	**18-23**
B-1	Exhibit (Email from Jon Ince)	**24-25**
C	Deposition Excerpts of Chris Favors (Maalt)	**26-42**
C-1	Exhibit 6 (Letter of Intent)	**43-49**
C-2	Exhibit 11 (Email from Chris Favors to Jupiter)	**50**
C-3	Exhibit 15 (Email from Chris Favors to Maalt)	**51**
C-4	Exhibit 13 (Terminal Service Agreement)	**52-88**

C-5	Exhibit 27 (Notice of Force Majeure)	**89-91**
C-6	Exhibit 32 (Notice of Extended Force Majeure)	**92-93**
D	Deposition Excerpts from Mike van den Bold (Sequitur)	**94-101**
E	Deposition Excerpts of Tony Wroten (Sequitur)	**102-106**
F	Deposition of Marty Robertson (Maalt)	**107-112**
F-1	Exhibit 113 (Maalt and Jupiter contract for Pecos Terminal)	**113-121**
F-2	Exhibit 133 (Email from Chris Favors to Jupiter)	**122-126**
F-3	Exhibit 131 (Draft of Premises Access Agreement)	**127**

Dated: March 22, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021 a copy of the foregoing 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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/s/ Matthew A. Kornhauser

Matthew A. Kornhauser

CAUSE NO. 19-003

MAALT, LP,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	51st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

BRADEN MERRILL

November 19, 2019

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF BRADEN MERRILL, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 19th day of November, 2019, from 9:32 a.m. to 5:25 p.m., before Patricia Palmer, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Mr. Matthew A. Kornhauser, Hoover Slovacek LLP, 5051 Westheimer Road, Suite 1200, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

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ALSO PRESENT:
Mr. Daniel Alpizar, Videographer
Mr. Christopher Favors, Corporate Representative of Sequitur Permian, LLC

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THE VIDEOGRAPHER: Today's date is November 19th, 2019. This is the video deposition of Braden Merrill. The time is 9:32. We are on the record.

The court reporter may now swear in the witness.

THE REPORTER: Are there any stipulations?

MR. KORNHAUSER: We are -- we are proceeding by agreement and by notice.

MR. LANTER: And by notice, yeah.

MR. KORNHAUSER: Yeah. We would like to have the opportunity to read and sign, please.

MR. LANTER: Sure.

BRADEN MERRILL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. LANTER:

Q. Good morning.

A. Good morning.

Q. Would you state your name, please.

A. It's Braden Merrill.

Q. Okay. And what is your position with Sequitur Permian?

A. I am vice president and senior -- I am vice president and chief financial officer.

Q. Okay. Now, you were -- you understand why we are here, don't you?

A. I do.

Q. A deposition in a case brought by Maalt; and is that a yes?

A. I do, yes. I'm sorry.

Q. Okay. You were the person who signed the letter declaring force majeure under the terminal services agreement that your company held at Maalt; is that right?

A. I'm not sure if it was either me or Mike Van den Bold, but it would have been one of us.

Q. Okay. You don't remember that -- that you were the one who signed it?

A. I don't remember that.

MR. LANTER: I am going to hand you what was previously marked as Exhibit 32 in earlier depositions.

THE WITNESS: All right.

Q. And that is the February 8th of 2019 letter that was sent by Sequitur Permian reportedly to terminate the terminal services agreement, correct?

A. Yes, sir.

Q. And that was signed by you, right?

A. That was signed by me.

Q. Okay. Would you tell me all of the reasons why you determined that a force majeure event occurred?

MR. KORNHAUSER: I am going to object to the form of the question. You can answer.

MR. LANTER: Go ahead.

THE WITNESS: Okay.

A. We -- we invoked the force majeure or we -- we sent the letter because we were unable to get trains to the facility, we -- and I guess, it was -- the primary is the trains to the facility and also we never got our pollution liability -- or legal liability.

Q. Never got what?

A. The pollution legal liability.

Q. Okay. All right. So make sure I understand you, the first reason was you were unable to get trains to the facility and -- is that yes?

A. Yes. And -- and trains out of the facility, yes.

MR. LANTER: Okay. She can't take down shakes of the head.

THE WITNESS: No, I get you. I am sorry about that.

MR. LANTER: It looks -- uh-huh (positive response) and uh-uh (negative response) look exactly the same, okay.

Q. Okay. And how about logistic providers?
A. Well, all of those were logistic providers slash purchasers.
Q. Okay. Which ones -- I want to separate the two. Which ones were purchasers, BP, Valero, Shell, Sunoco?
A. All of them would have purchased our oil.
Q. Okay. So they would have all had purchased and then they would have provided logistics after the point of purchase I take it?
A. Yes, that's correct.
Q. All right. Did you ever reach out to any companies who were just pure logistic providers to pick your oil up at the Barnhart facility and transport it to a purchasers location somewhere else?
A. Not that I know of.
Q. Okay. So the only thing you did was reach out to purchasers?
A. That's my recollection.
Q. Okay. And what was your role in doing so?
A. I -- I facilitated most of the -- or I was the one who called on most of the companies.
Q. Okay. So you were personally involved in the day-to-day activities of that?
A. Yes, I was.

Q. Was Mr. Wroten working with you on that?
A. Yes, he was.
Q. What was his role?
A. Mr. Wroten works for me. He did a lot of the day-to-day as well.
Q. Uh-huh (affirmative response).
A. So he and I both would call these companies at the beginning.
Q. Okay. In your dealings with Maalt, who were the individuals that you primarily dealt with?
A. Primarily at the beginning it was Jon Ince and then it switched to Chris Favors pretty quickly, but Jon Ince stayed in the picture somewhat.
Q. Okay. So just those two individuals?
A. That's correct.
Q. Now, you never had any contact with any officer of director of Sequitur -- excuse me, of Vista Proppants and Logistics, Incorporated, did you?
A. I -- honestly I don't know the difference between Vista and Maalt, so I'm not -- I'm kind of...
Q. Okay. I'm you very specifically, did you have any contact with anybody who is an officer, director of Vista Proppants and Logistics, Inc.?
A. I -- I am not sure.
Q. Okay. But other than Jon Ince and Chris Favors

you never had any contact with anybody, right?
A. No, I -- Steve McCarley, I believe --
Q. Okay.
A. -- was on site. And I'm not sure which -- what the name of -- it was either the president or the CEO came to one of our meetings. I don't remember his name. I remember he has a deer -- deer breeding facility. That's what I remember.
Q. Okay. Did you ever go to that deer facility?
A. No, I did not.
Q. Anybody else that you ever talked to with Maalt?
A. I was introduced to Blake DeNoyer at the beginning.
Q. Okay. And how do you know Blake DeNoyer?
A. He tried to sell sand to our company.
Q. Okay.
A. And we had contact through that so I received his information from our operations team.
Q. All right. And that was SIM that was talking to Vista about purchasing sand, correct?
A. That's correct.
Q. Okay. Do you have any involvement in that at all?
A. No, I did not.

Q. All right. When all of this first started in early to mid 2018, you were the one who reached out to Blake DeNoyer, weren't you?
A. Yes, I was.
Q. Okay. And you made the initial contact with his company or with Maalt Service entities about running transloading services, right?
A. I did.
Q. Okay. And after your initial conversation with Blake DeNoyer -- or was it an e-mail or conversation?
A. I don't remember.
Q. Okay. After that first communication, did you have anymore discussions or communications with -- with Mr. DeNoyer?
A. No, I -- after -- after talking with him about using the facility we -- he set me in touch with Jon fairly quickly and then Chris fairly quickly after that.
Q. Okay. Now, I want to ask you this up front and we will talk about it some more potentially. But during your conversations with Jon Ince and Chris Favors?
A. Uh-huh (positive response), yes.
Q. Did they ever make any promises to you that they did not keep?
A. I am not sure.
Q. You are not aware of any as you sit here today?

Q. Just because they were trying to be a good provider of services to you.
A. I mean, I think they -- I mean, they were trying -- I think they were trying to do it to get the rail terminal up and operational so they can start making money faster.
Q. Okay. So they are trying to help you get started so you can make money faster, too, correct?
A. Yeah for both -- both of us.
Q. But they didn't have a contractual obligation to do any of that, did they?
MR. KORNHAUSER: Objection form.
A. I mean, written contract, I don't believe so.
Q. Okay. Now, when we go back a little bit in time you mentioned that your first contact with Maalt was through Blake DeNoyer?
A. Yes.
Q. What prompted you to call him?
A. The -- what prompted me to call them was differentials and the Midland Basin for the price of oil was -- was becoming a lot higher or so -- more of a discount to our -- the price that we would receive for a barrel of a well. And I knew that EOG who was the company that we bought our assets from, our oil and gas assets from, owned a rail facility. I had been out

there when they still owned it. They -- I knew that it was set up initially for -- for oil service. And so I -- I asked kind of what was the status of that facility. And so I was told by somebody in the organization, I don't remember who at this point, that it was now owned by Vista Maalt.
Q. Okay. And that prompted you to call Blake then?
A. After I got his contact information from our operations team.
Q. Okay. What was the differential between what you were receiving for your oil at Midland and the other place that you were looking at?
A. It -- it depended on the month, but it got as high as $20 a month.
Q. Okay. And?
MR. KORNHAUSER: $20 a barrel.
A. $20 a barrel, yes.
Q. Do you remember what time frame this was when was you first reached out to Blake DeNoyer?
A. I believe it was early May.
Q. Okay. So in the May time frame what was the difference between the Midland price for oil in the other locations you were looking at?
A. I -- I can't remember exactly what it was, but

I - I mean, I sent in the discovery I had, an economics folder, I had an Excel file that had from May -- I believe from May through December --
Q. Okay.
A. -- of what the differentials were.
Q. All right. Now, the December was look forward, right?
A. Yes.
Q. And so was that your projections?
A. Yes.
Q. Or was it based on futures?
A. That was based on the CME, so Chicago Mercantile Exchange futures.
Q. Okay. And what other selling point locations were you comparing to Midland at the time?
A. LLS, Louisiana Light Sweet.
Q. Okay. So that would be Gulf Coast?
A. That would be Saint James, Louisiana.
Q. Saint James, Louisiana, okay. And that is on the Gulf Coast, right?
A. It is on the Gulf Coast.
Q. All right. Were you looking at the spread between Midland and any other selling points, such as Houston, Beaumont, Port Arthur?
A. We -- we looked at -- we looked at Houston, but

Houston was becoming a -- kind of a narrower spread, so we focused on Louisiana Light Sweet.
Q. Okay. And where did you go to determine what the Saint James prices were at the time, was that CME as well?
A. Yes.
Q. And when you go to CME, tell me as if you are -- you are telling your mom or your aunt, somebody who is not in the oil industry what you would go on their website and what data you would pull up and look at?
A. Okay. So the CME has the settlements, so the market closing price, the last price that a contract settled on its website from the day before. And so those are the -- the values that I would pull up. So there is two differentials that I would pull up every night. One would be the difference between Midland and WTI and the other one would be the differential between WTI and LLS, because WTI is the standard cost of a barrel in Cushing, Oklahoma with a grade of west -- what is called a west Texas grade barrel. There may be something a little bit more scientific than that, but that's just kind of how it is vernacular of the industry.
Q. Yeah.
A. And so I would take what was in essence the

difference between the Midland to WTI differential or what was the differential and then I would -- which was a negative number. And I would then have the LLS differential, which was a positive number, which is the -- the benefit between getting it from Cushing to -- to an LLS market. So let's say, for -- for -- for example, that there was a $5 differential between WTI and LLS and then there was a negative $10 differential between WTI and Midland then I would take LLS, which was $5 and I would subtract out the $10 -- the negative $10, which would then give me a $15 benefit between the two.

Q. And then from that I guess you would reduce out your transportation cost?

A. That's correct.

Q. And then the difference is what you guys call the arbitrage?

A. Yes.

Q. Okay. Now, when you first contacted Mr. DeNoyer in May, I'm not going to hold you to an exact number right now, but it would be on your spreadsheet, right?

A. Yes, it will.

Q. The spread difference will be on there?

A. It will.

Q. Okay. What is your recollection of what that

was in the ballpark?

A. My recollection at that time -- so the hard part is it changed month by month. But at that point I would say it was probably around a $15 differential.

Q. Okay. And did that make moving crude by rail to Saint James attractive?

A. It did.

Q. Okay. And how attractive?

A. At that point it was -- it would have been a very lucrative venture. It was -- I think our initial forecast, it is in that spreadsheet. I -- I can't remember exactly how much the benefit to us would have been. But it would have been probably in the $10 million range.

Q. Okay. Over what period of time?

A. Over the period from September to -- September of 2018 through December of 2019.

Q. Okay. And that would be extra profit over and above what you would typically expect on your oil sales?

A. Yes.

Q. Okay. And was that $10 million then also after taking into consideration your -- your build-out cost on a transloading facility?

A. I am not sure if that would be after that or not. I -- I can't remember.

Q. Would that be in your spreadsheet?

A. It would be in my spreadsheet.

Q. Okay.

A. Well, actually it is not in my spreadsheet. So you would then have to deduct out the -- the -- the cost of seeking the build-out.

MR. LANTER: Okay. I am going to pull that spreadsheet out in a little bit.

THE WITNESS; okay.

MR. LANTER: And then we'll talk about it. It was too big to print.

THE WITNESS: I completely understand. It is a lot of data.

MR. LANTER: But I will get the computer out and you can walk me through it --

THE WITNESS: That'd be great.

MR. LANTER: -- in a little bit, okay?

THE WITNESS: Yeah.

Q. So then in May you are looking at, you know, hey, we've got this potential $10 million --

A. Uh-huh (positive response).

Q. -- you know, bonanza.

A. Yep.

Q. You know, minus out build-out cost on a terminal.

A. That's right.

Q. And so you contacted Mr. DeNoyer. Before that had you talked to any of your customers or your potential JV partners about doing this?

A. I -- I don't remember.

Q. Okay. When did you first start talking to Shell about it?

A. It -- it would have been in May.

Q. Okay. And who were your discussions with at Shell?

A. Ben Thompson.

Q. What were you talking to him about?

A. About the possibility of them being -- or -- or entering into a joint venture with us whereby they would pick up the -- or they would send trains to the Barnhart facility, Vista would load them. We would -- or we would provide the oil and Shell would take them to Saint James to market.

Q. Okay. When -- when you are talking to him, was Shell already a customer for your oil?

A. No.

Q. So this was a new?

A. This was a new relationship.

Q. New relationship, okay. And how long did you continue to have those discussions with him?

A. Through January of 2019.
Q. And all of those discussions in that period of May through January '18 to '19 involved rail transportation of -- of oil?
A. Not all of them, but -- be we continued the rail conversation, but they also became a purchaser of our oil.
Q. Okay.
A. Through that stretch and we thought that they were going to be the purchaser of our -- or the train. We had to switch over our -- our purchasers so that they would be able to take our oil when the train showed up.
Q. Okay. So you are talking to Shell and initially you are talking to them about buying your oil and moving it to Saint James or wherever within the Shell organization?
A. Yes.
Q. So that logistics would be out of your hands and then basically transferred over to Shell?
A. Yes.
Q. And what were -- what were you going to gain and your company going to gain from doing that?
A. We would receive half the arbitrage that you spoke of earlier.
Q. Okay. So Shell would buy your oil at, I guess

whatever the WTI, was the spot price that you were looking at the time?
A. No, the WTI was Mid-Cush differential.
Q. Okay. At that price and then they would ship it down to Saint James?
A. Uh-huh (positive response).
Q. And then whatever the difference was you would split that 50/50?
A. That's correct.
Q. And you then would be able to receive that arbitrage without having any logistics cost; is that correct?
A. That's correct.
Q. Okay. Were you going to have to build out a transload facility in order to do that deal, that type of deal with Shell?
A. Yes.
Q. And was that going to be the Barnhart one?
A. Yes.
Q. Okay. What happened to those talks?
A. So they were our primary desire partner because they had such a large rail presence initially. But those -- those talks ended in August when they were unable to get trains or get a rate from the -- the railroad.

Q. And how did you learn that they were unable to get a rate from the railroad?
A. I talked to Ben.
Q. So Ben Thompson told you that?
A. Yes.
Q. And he told you that he was unable to get a rate from what railroad?
A. I believe it was the Union Pacific, but I am not positive on that.
Q. Okay. Any others besides UP?
A. I believe he also talked to the BNSF.
Q. Okay. So maybe BNSF, but for sure based on your memory, the UP?
A. Yes.
Q. Did he ever mention talking to KCS?
A. I do not remember.
Q. Okay. Were you ever involved in any of the talks that he had with either the UP or the BNSF?
A. No, he actually didn't handle the talks himself. He -- he -- they have a rail logistic group that handled those talks to my understanding.
Q. Okay. Were you involved in any of those conversations between Shell and the railroads?
A. No.
Q. Like, a party on a phone call or?

A. No.
Q. So no involvement whatsoever?
A. Nope.
Q. You were just going to turn it over to Shell and let them figure it out and then reap the arbitrage advantage?
A. Yes.
Q. Was anybody else in your company involved in those Shell railroad conversations?
A. Not that I know of.
Q. So then Shell couldn't get it worked out, I guess, in what month?
A. August.
Q. August. And then what did you do?
A. I kept talking to them. But -- so basically, I -- when we signed our TSA with Vista, I told -- or Vista Maalt. I told Vista Maalt that I needed would Shell -- that I needed to give one -- Shell one more week in order to -- because I owed them that, before signing on with Jupiter and then I told Jupiter that and we all went to lunch that day. And then -- so when I got done with the meeting I called Shell and told them that you had one week, otherwise we told Vista Maalt and Jupiter that we are going to go with Jupiter.
Q. Okay. Now, your terminal services agreement,

which is in front of you as Exhibit 13.
A. Yes.
Q. That's dated effective August 6th, 2018, right?
A. That's correct.
Q. So by that time were your talks with Shell still alive?
A. They were still alive. We told them we would give them one week.
Q. Okay. And so you went ahead and signed this agreement without having a JV partner, right?
A. We were assured by Jupiter that they -- they would take Shell's shoes if -- if they wanted to step out.
Q. Okay. You -- you had -- your company had never done any business with Maalt, had it?
A. I don't know. I don't believe so, but I don't know.
Q. You hadn't?
A. I had not, no.
Q. Never been involved?
A. No, I had not.
Q. Okay. When -- when you were told or it was suggested to you that you call Maalt about the transload facility?
A. Uh-huh (positive response).

Q. What research did you do into the company?
A. Honestly, I don't remember.
Q. Okay. Did you look at the website?
A. I -- I'm -- I -- I'm sure I did. I -- I don't remember.
Q. What would have been -- what would be your normal practice back then?
A. My normal practice would have been to ask the operations team their understanding of Maalt's and what their representation is. And that was -- I mean, when we initially contacted Maalt the first time, we didn't know if they were going to want to sell it to us or what the structure of the agreement would have been. So I mean, there was -- the initial lob in or the initial call in or e-mail would have been just kind of a discovery.
Q. Uh-huh (positive response). When you called Blake?
A. Yes.
Q. Okay.
A. Or e-mailed them. I'm not sure which one.
Q. All right. Did you talk to any of the people over at SEM Operating; is that the right name?
A. It's one of our names, yes.
Q. Okay. About their experiences, working with

them on potential sand purchases?
A. I don't remember that.
Q. Okay. So as you sit here today, you don't recall doing any research or due diligence into Maalt and its affiliated companies before you went down this road to doing a terminal service agreement?
A. Well, not -- not at the beginning. I mean, I thought the question was about when I contacted Blake.
Q. Okay. Fair enough. It was. So my question to that then you didn't do any due diligence or research into the company at that point?
A. Oh, I did research.
Q. That you recall?
A. I did. I did follow. I didn't do research on the company at that point.
Q. Okay. And what research did you do?
A. I tried to figure out who their main purchasers were.
Q. Uh-huh (positive response).
A. Because my understanding -- my understanding was the EOG was one of their main purchaser and we had a lot of faith in EOG and trust Maalt. So we put a lot of stock in the fact that they had -- they trusted Vista as a -- Vista Maalt is a large cluster, is one of their little main service providers in the area that they must

be standup guys and follow through on what they said.
Q. How did you learn that information?
A. I learned that information, I think initially in talking with one of the Vista Maalt folks and I kind of researched it afterwards.
Q. And what research did you do afterwards?
A. I Go ogle searched.
Q. Okay. Did you talk to anybody at the EOG?
A. I don't believe that I did. Some of our operations team might have.
Q. Okay. Who would those people be?
A. That would have been Steve McVay our head of procurement and Blake Cantley our vice president of completion and production, I believe.
Q. Okay. Did you obtain any information from them about their research or their due diligence into Maalt or the Vista entities?
A. I had -- I heard positive things about -- about Vista Maalt.
Q. Okay. And so that whatever you learned gave you enough confidence that you could move forward with negotiating and talking about this type of deal?
A. It did.
Q. When you did it you wanted exclusivity on this facility, didn't you?

MR. KORNHAUSER: Objection form.
A. I -- I would agree with that.
Q. Okay. And after that meeting or before that meeting, did y'all do due diligence into that company to see what they were all about?
A. We did. We -- we -- went on and searched the internet and -- to see what they were and looked at their financials.
Q. Okay. And so I take it by that that you verified that they were a company that you would be willing to do business with independently of anything that Chris Favors or Jon Ince may have told you?
A. Not exactly. Actually, Jon told me that -- that he had called around to his railroad contacts and that Jupiter was a -- the real deal in terms of being able to get it done. They had the rates. They were able to get the cars and that we should go with those guys.
Q. Okay. Did you confirm that on your own?
A. I don't have railroad contacts, so I don't know who to --
Q. Did you confirm it through your discussions with Jupiter?
A. Yeah I asked Jupiter about it.
Q. Uh-huh (positive response).

A. And Jupiter also confirmed it, but --
Q. Okay.
A. -- I was relying a lot on Jon as, you know, we were -- Jon gave them the -- kind of the bill of good health.
Q. Are you telling us that you relied on Jon Ince, who you never met until this deal, more so than your own internal due diligence and research into Jupiter?
A. Well, Jon -- Jon is an expert in logistics and I am -- I am not an expert in rail logistics.
MR. LANTER: Objection nonresponsive.
Q. Let's answer my question. Are you telling is that you are relying more on what Jon Ince told you, somebody who had never done business with before verus your own due diligence and research into Jupiter?
MR. KORNHAUSER: I am going to object. The question has been asked and answered.
MR. LANTER: Go ahead answer that question.
A. I say that it was a mix between the two.
Q. Okay. If you were relying on Jon Ince so much why did you do your own research and due diligence?
A. That's a good question. I -- I would say that it is just a standard form to -- to -- to do my own due diligence. A lot of mine due diligence was kind of more on the financial side and their -- and their sizing.

Q. Yeah.
A. Like, if we could trust them from a credit perspective.
Q. And Jon Ince didn't provide you with any Jupiter financials, did he?
A. No, he did not.
Q. Didn't provide you any internal information about that company, did he?
A. No.
Q. The only thing he gave you was in the e-mail that you were referring to when you said they are the real deal, right?
A. No, it was phone call.
Q. A phone call?
A. Yes.
Q. Okay. So other than that phone call and perhaps that e-mail, that's al that you got from Jon Ince, right?
A. I mean, I think I talked with Jon twice about Jupiter.
Q. Okay. But other that that's all you got about Jupiter from Jon Ince, right?
A. I believe so.
Q. Okay. And all the rest of your information that you obtained in order to decide whether or not to

do business with it came from your own work and your own due diligence?
A. I would say that Chris also was very encouraging to do business with Jupiter.
Q. Putting aside encouraging, I am talking about specific information.
A. Oh, okay. Then -- then yes.
Q. Okay.
A. I -- well, what was your answer again -- or your question again? I'm sorry. I want to make sure I'm answering.
Q. Sure. The -- the thrust of your decision to go ahead and move forward with Jupiter was based on your own due diligence and research into that company, wasn't it?
MR. KORNHAUSER: Objection form.
A. Well, it was that and what Jon had said about his due diligence.
Q. Okay. Now, if Jon hadn't told you that would you have done business with Jupiter based on what you found out about them doing your own research and diligence?
A. Probably not.
Q. Probably not. Why not?
A. Because they didn't have a strong balance sheet

and so --
Q. Uh-huh (positive response).
A. I mean, it really -- at the end of the we knew that it was going to take a lot more hurdles of getting through, of finding some way to do credit and -- and we hadn't heard of Jupiter before. So it was not kind of an optimal situation for us having a Shell or somebody else or a BP, or a Sunoco or somebody that has a lot of railcars and -- and kind of their own logistic group would have been a preferred.
Q. Uh-huh (positive response). Before all of this came up how were you moving your oil?
A. Via truck.
Q. Truck. And where were you taking it to sell?
A. That was based on whoever was purchasing our -- our oil at the time. They -- they took it to their own spot, it was point of sale. That bought it at our tank battery.
Q. Okay. So you truck from the well site to wherever your customers point of sale was?
A. No. They would pick it up at our -- our well site. So we -- they had no visibility beyond our -- our well site.
Q. Okay. So you didn't have any trucking either --

A. No.
Q. -- that you did?
A. No.
Q. It was your customer who would bring their trucks in --
A. That's correct.
Q. -- to pick up the oil? Okay.
Once you had -- I'm sorry, do you need a drink?
Once you had the meeting with the people at Jupiter at your offices?
A. Yes.
Q. I understand you had a series of additional meetings and phone calls and things of that nature --
A. Uh-huh (positive response).
Q. -- going into time, correct?
A. That's correct.
Q. Was anybody from Maalt ever involved in any of those meetings or conversations that you had with Jupiter?
A. I don't remember them being involved.
Q. Okay. If they were there you would probably remember that wouldn't you?
A. I am not sure.
Q. Okay. Who do you recall being involved in

those meetings and conversations?
MR. KORNHAUSER: Objection form.
A. Mainly it's Travis Morris, Albert, I can't remember his last name at -- at Jupiter, who I met a fewer times than Travis, but -- and then Tony Wroten would have also been in those discussions as well.
Q. Okay. Did you ever end up entering into any kind of contract with Jupiter?
A. We did for the purchase of our oil by truck.
Q. Okay. Was that it?
A. That I remember, yes.
Q. All right. And which oil did you end up selling them under that contract?
A. We sold them -- I don't know how many barrels. We sold all of our barrels through on Barnhart. And most of our barrels on Texon through -- through, I believe January.
Q. What did you say last after January?
A. I believe -- I believe through January.
Q. Through January, okay. So when did you start selling it to them?
A. I am not sure. My recollection -- it was after -- I am not sure.
Q. Okay. So at some point in 2018 you entered into a contract to sell Jupiter oil?

A. Yes.
Q. And that contract ran or the activities under that contract ran so sometime in January of 2019?
A. That's correct.
Q. All right. And you sold them all of your production at Barnhart?
A. Yes.
Q. And some of your production at Texon?
A. Yes.
Q. Okay. And when you talk about all of your production at Barnhart, how many wells do you have there and how wide is the geographic area?
A. It's -- the geographic area, it is a -- pretty expansive. It's -- it's -- I would estimate it's probably 25 to 30 miles across. And it is probably 25 miles across, 25 to 30 miles across.
Q. Okay.
A. And it's probably 20 miles north south.
Q. So about what, 400, 500 square miles?
A. Well, it is not all our acreage, so it's --
Q. Sure.
A. Some of it's -- but yeah, I mean, in terms of kind of the geographical area that it covers.
Q. And it probably goes up just a little bit doesn't it with your wells?

A. It is -- it is very -- it is like an oval basically.
Q. Yeah.
A. But then with some gaps in the middle.
Q. Okay.
A. So it looks like an -- an oblong donut.
Q. All right. So if you are looking at the picture you are probably at 4 or 500 acres?
A. I would -- I would imagine.
Q. Or square miles rather?
A. Yeah, I would imagine so, yeah.
Q. Yeah. And then with the wells dotted throughout?
A. Yes.
Q. Okay. How many wells are in that area?
A. A couple of hundred.
Q. Okay. So Jupiter is buying all of the oil from a couple hundred wells in the Barnhart region that you had there?
A. Yes.
Q. Did they pay you for all that?
A. We actually didn't have an agreement with Jupiter -- so we had a credit sleeve with Jupiter, so actually our contract was with Macquarie who then had a contract with -- with Jupiter.

Q. Explain to us how that worked.
A. It's a back-to-back to contract is what they call it. So basically we would sign a contract with Macquarie who has a investment grade balance sheet. So we know -- we felt very comfortable that they would pay us. So put a back-to-back with Jupiter and they -- or with -- excuse me, with Macquarie. So we did a contract with Macquarie who immediately then signed the same contract in essence with -- with Jupiter. So we sold to Macquarie and instantaneously it would flip to -- to Jupiter.
Q. Jupiter. Under that scenario, how is Macquarie making money?
A. They made $0.25 in credit, I believe. I -- I am not privy to that, but that's my understanding, is probably about that. That's kind of the market rate, I believe.
Q. All right. So there is a little bit of a markup from Macquarie to Jupiter?
A. That's right.
Q. All right. And how did you end up entering into that arrangement?
A. Through Macquarie or through Jupiter?
Q. With Macquarie then the Jupiter.
A. So the deal was with Jupiter. So in order to

sell our oil via train we had to for -- let go our commitments with -- with Plains, who was then -- well, Plains then Shell. Excuse me. So Shell who is purchasing our oil at that time and Barnhart. And then in order to do that, we had to have a purchaser. So we had to go with -- we didn't know when the trains was going to -- the trains would eventually show up.
Q. Uh-huh (positive response).
A. So we had to have a contract in place with Jupiter because if it came in the middle of the month you can't -- you can't cease service with somebody else.
Q. Right.
A. So we -- we talked to Jupiter and initially Shell was going to be that credit sleeve. And so keeping them in the contract somewhat, Shell decided not to do that. And so Jupiter found Macquarie who then came in as the -- the intermediate in that contract.
Q. Okay. So then you would sell to Macquarie, Macquarie would sell to Jupiter and if the train came in the oil would go on the railcars and then Jupiter would transport it to where?
A. They would transport it to the Nustar -- the Nustar facility in Saint James.
Q. Nustar, okay. And was there a -- a part of that agreement that provided for your company to share

in the arbitrage with Jupiter?
A. Yes.
Q. Okay. So you would sell --
A. If we signed that agreement, you are talking about the rail -- I'm sorry, the rail facility agreement that we did?
Q. Yes.
A. We never executed.
Q. Okay you never got to that.
A. Okay.
Q. On the credit sleeve?
A. The credit sleeve?
Q. Yeah. Was there any --
A. So that -- that was -- that was a similar trucking situation where they pick up at the wellhead. And it was -- there was -- there was items built into the contract whereby we could -- we could switch to a rail contract. But it was -- at that point it was just a pickup at our wellhead and -- and purchase at that point.
Q. Okay. So Macquarie bought at the wellhead?
A. Yes.
Q. I take it Jupiter bought at the wellhead from Macquarie?
A. Yes.

why it was whatever it was. I don't remember exactly what it was and the financials that brought that question up. But that was kind of what spurred the thought was that hey, you know, EOG when they did this crisis -- or when entered -- when they had this issue several years ago this is how they handled it and that facility is still there, so I wonder if we could do the same thing.

Q. Okay. So basically EOG had been shipping it out to take advantage of the arbitrage?

A. That's right.

Q. Did you have any conversations with anybody at EOG about that?

A. Yes, when we were doing our financial due diligence.

Q. Yeah. And who was that person?

A. I honestly -- I don't remember.

Q. Okay. When you -- when you got to 2018, did you recognize -- just recognize the difference in the markets and decide to do what EOG had previously done or did somebody come to you and say hey, you know, the market spread is pretty favorable right now, you need to be looking at this?

MR. KORNHAUSER: Objection form.

A. I -- I -- I -- I honestly -- I am not positive,

but I'm pretty sure it was just a hey, EOG did this, why can't with do it sort of feeling. It wasn't somebody coming to us. It was an internally --

Q. Okay.

A. -- thrown idea.

Q. Who would have been in the internal discussions about that?

A. It would have been myself, Mike Van den Bold, Scott Josey, who is the CEO, and other folks on the operation team. So Steve McVay and Blake Cantley.

Q. Okay.

A. And Tony Wroten.

Q. Tony Wroten?

A. Yes. Sorry.

Q. When you got to December of 2018.

A. Uh-huh (positive response).

Q. What happened that caused you to decide to send a letter to Maalt saying that there was a force majeure event?

A. We were trying to get rail. And I mean, we tried every avenue we knew as a kind of the teams had kind of these robust logistics teams, these rail teams because we figured those were the ones who could it get it done. And basically everybody told us that, you know, the railroads really aren't open for business and

they don't want to be shipping crude out of that facility unless -- or out of that facility except for the KCS. But they couldn't get us to our downstream markets.

Q. Okay. Well, you had those conversations earlier in the year as well hadn't you?

A. Yes.

Q. So what was the precipitating event that occurred in late November, early December of 2018 that led you to send out the letter claiming force majeure?

A. We wanted to know or we felt that the -- the facility was going to be through construction fairly soon or it was nearing the end of construction and felt like it was only fair to notify Vista Maalt at that time that hey, we are trying. I mean, Chris and I had several conversations about our unavailability to -- or our inability to find trains and he had tried vetting at least one, if not more, on our behalf.

Q. Okay. So you get to December facilities nearing or at completion, right?

A. Yes, nearing. I -- I -- I don't remember exactly when it was, but it was nearing completion.

Q. And so then you decided to declare force majeure?

A. Yes.

Q. Because you knew if you didn't you were going to start paying the monthly minimums, right?

A. That -- that was part of it, yes.

Q. Was that most all of it?

A. I mean, we thought --

MR. KORNHAUSER: Objection form.

A. We thought that it was partly. I mean, we -- we -- we felt like it was -- I mean, we felt like Vista would probably count on the revenue, we wanted them to be aware that this was not -- that -- that we were having these issues.

Q. Right. And you knew you were going to have to go online with the minimum monthlies and so you sent the force majeure letter, right?

A. We -- we thought that that was a possibility.

Q. But you knew it was a possibility, not just a thought didn't you?

A. Yes.

Q. Okay.

MR. KORNHAUSER: Can we take a break when you get a chance.

MR. LANTER: Sure.

MR. KORNHAUSER: Thanks.

MR. LANTER: Let's go now.

MR. KORNHAUSER: Okay. Thanks.

Q. Do you know who was in charge of doing that?
A. I don't.
Q. Do you know if Tony ever did it?
A. I am not sure.
Q. And then Mr. Falls asked if the terminal owner was Vista San, you -- Tony said yes, sir. Did you ever have discussion with Spencer Falls about Vista San or Maalt or any of those companies that were involved?
A. I don't remember.
Q. So in this context, what were you trying to get from Enmark?
MR. KORNHAUSER: Objection, form.
A. We were trying to receive help on finding a market and logistics for our oil.
Q. Okay. And was it in your mind something that they had to go hand in hand, the market and logistics had to be from the same provider?
A. Not necessarily.
Q. So at that point you were willing to entertain a third-party logistics company?
A. I -- I can't speak to my -- what I was thinking at the time on that.
Q. But I take it after that you never pursued the third-party logistics --
A. Not that I can recall.

Struthers?
MR. KORNHAUSER: Objection form.
A. I understood that he said that Jonas could get us cars if we needed it.
Q. Uh-huh (positive response). And there is nothing in this e-mail that promises you that Jon would be able to get Jonas to do that, is there?
A. It says, "I am sure he will be able to get you cars that you need for your fleet."
Q. But it doesn't say that he promises that he will be able to do so, does it?
MR. KORNHAUSER: Objection form.
A. He never articulates the word promise.
Q. Uh-huh (positive response). And then once you had the introduction then you had your direct communications with Mr. Struthers, correct?
A. Yes.
Q. Now, it says that you are going to have -- or that you offered to have a phone call that same day on May 10th or after 10:30 a.m. on the 11th, did you have such a call?
A. I'm not sure if it was that time frame, but I -- we did speak with Jonas.
Q. Okay. And when you talked to Jonas, tell us what your discussion was.

Q. -- avenues did you?
MR. LANTER: Here is Exhibit 36.
(Exhibit 36 marked.)
THE WITNESS: All right. Thank you.
Q. It looks like this is your first introduction to Jonas Struthers; does that look right?
A. It looks like it.
Q. Okay. And if you look at Page 2.
A. Okay.
Q. On May 9th we have what appears to be the introductory e-mail by Jon Ince where he is telling you about Jonas Struthers, right?
A. That's correct.
MR. LANTER: Excuse me.
Q. Now, on the second paragraph he says, "Let me introduce Jonas Struthers, the railcar guy I mentioned to you on our call." He said, "He has been a great partner for me in the past with our sand cars."
MR. LANTER: I'm sorry.
Q. "And I am sure he will be able to get you the cars that you need for your fleet. I'm sure he can get you cars that you need at a really good rate. He has done amazing work for me in the past."
Did you understand that Mr. Ince was just simply telling you about his experiences with Jonas

A. Basically we tried to articulate the need as we understood at that time, it was very early.
Q. Uh-huh (positive response).
A. For railcars, timing and volume and he -- he said that it would be -- he had some more questions for us about what railcars we would need for it, which we didn't really have that information at the time. And he had -- and -- but he said well -- I don't know. I am trying to think exactly. But basically for this conversation it was let's keep the conversation going.
Q. Okay. Did he ever tell you that he would not be able to get railcars for you?
MR. KORNHAUSER: Objection form. At this point in time?
MR. LANTER: No, I said did he ever.
MR. KORNHAUSER: Okay.
A. I -- I do not remember him saying that, no.
MR. LANTER: Okay. Since I am having a little bit of a coughing fit, why don't we go ahead and take our lunch break.
MR. KORNHAUSER: Sounds good to me.
THE VIDEOGRAPHER: The time is 12:00 o'clock. Off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 1:11. Back

make cold calls to sell and to buy stuff from vendors and things of that nature don't you?
A. I don't personally.
Q. People in your organization do don't they?
A. I would imagine they do. I am not sure.
Q. Did you ever follow-up with Mr. Meador after this e-mail?
A. I believe so. I mean, I was in somewhat regular contact with him.
Q. So what did you do to follow-up and kind of make sure things continued along toward getting put in place?
A. We talked with each other fairly regularly and he was always -- he was on the weekly calls we had.
Q. Okay. But you can't tell me anymore specifically than that what you did do follow-up with him and kind of spur this thing along?
A. I mean, I always asked what the progress was, but that's --
Q. That would be about it?
A. That's about it.
Q. Okay. And after you got this information from Travis Morris, did you get with him and say hey, let's get this in place and get it going, I want to see what the rates are and let's see how this is all working out?

A. Yeah.
MR. KORNHAUSER: Objection, form.
A. Yes, I did.
Q. And did you get the information?
A. It was always another day.
Q. So the answer is you never got the information?
A. Never got the information.
Q. But you still planned on going forward with Jupiter?
A. I -- I -- I don't remember the timing of it, but we also looked at other options somewhere around this time frame.
Q. The other option was continuing to be Shell?
A. Shell and then later on we moved onto other options as well.
Q. Why wasn't this terminal done by September 1st?
MR. KORNHAUSER: Objection form.
A. My recollection is that there were a lot of factors that -- that contributed to it so -- or you mean constructed?
Q. Yes.
A. Constructed, finish construction.
Q. Yes.
A. So one of those factors was the fact that Vista Maalt still had sand on the -- at the facility, but

there was other factors that slowed us down. And I don't remember the exact timing of it, but we had a lot of rain delays.
Q. Uh-huh (positive response).
A. There is flooding out in the area perpetually, which is anomalous for west Texas.
Q. Okay. So mainly weather?
A. That's what I recall.
MR. LANTER: Let's take a look at Exhibit 60.
(Exhibit 60 marked.)
THE WITNESS: All right.
Q. It looks like you sent Mr. Morris an e-mail on September 13th at 3:54 that you correct a few minutes later, corrected some things on it. But in the original e-mail you've got some bullet points. In the fourth bullet point it says, "I believe the only controversial item could be the deficit volumes concept."
A. Uh-huh (positive response).
Q. What is the deficit volumes concept?
A. I -- I am not positive.
Q. What do you think it might mean?
A. I really don't know. I -- I'd be assuming or just guessing.
Q. Well, since you wrote it, I am going to ask you

to guess and tell me what you believe you meant by that?
MR. KORNHAUSER: I am going to object and I'm going to instruct you not to guess and not answer the question.
THE WITNESS: Okay.
MR. KORNHAUSER: So if you rephrase it, we will answer it.
Q. What were you meaning when you wrote the sentence, "I believe the only controversial item would be the deficit volumes concept?"
A. I am not sure. I would have to go back and look at a lot of -- or kind of the previous conversations that we had.
Q. And you said, "The rationale for is we have made a large capital commitment to the facility and want to make sure it is getting used as we will have no volumes of our own to commit."
The facility being the Barnhart transloading facility?
A. I would imagine so, yes.
Q. And then when you say, "As we will have no volumes of our own to commit," what are you saying there?
A. I don't know what that would have been referenced to.

needed to do, they had the experience and they access to cars, and so we were relying upon that when we made our final decision to sign the TSA.
Q. Okay.
A. And to actually spend the remainder of the cap X at that point.
Q. Did Mr. Ince or did Mr. Favors promise or represent to Sequitur that trains and railcars would be available?
MR. LANTER: Objection, form.
Q. To your knowledge?
A. Yes.
Q. Okay. What do you recall specifically, as best you can, being told by Mr. Favors and Mr. Ince in that regards?
A. I remember with railcars -- this is just in regards to railcars?
Q. Yes, sir.
A. That he represented that he could help us find railcars or put us in contact with people who could find railcars.
Q. And did he tell you that trains and railcars were available?
MR. LANTER: Objection, form.
A. He said it would be a difficult thing to do,

transloaders that are no longer in market.
MR. LANTER: Objection nonresponsive.
Q. But for the representations and promises that were made by Mr. Ince and Mr. Favors to Sequitur about the availability trains and railcars, would Sequitur have signed the TSA?
A. No.
MR. KORNHAUSER: We pass the witness.
EXAMINATION
BY MR. LANTER:
Q. Did your company purchase the transloaders before you signed the TSA?
A. We signed purchase orders for the, I believe, but I can't verify that.
Q. Before the TSA?
A. Yes.
Q. And your company has in-house lawyers, right?
A. That's correct.
Q. And what's your -- what's your education?
A. I've got a finance degree and an MBA.
Q. Okay. So you have people who are highly educated people, right?
A. Yes.
Q. You are used to doing due diligence?
A. Yes.

but that we could -- but that we could do it.
Q. Okay. Did he tell you from whom that trains or railcars would be available?
A. I don't know that he specifically specified whom, but he did tell us in an e-mail, I believe, that -- that Jonas Struthers would be able to help us.
Q. Okay. And did you rely upon these promises and representations?
MR. LANTER: Objection, form.
A. Yes we did.
Q. Okay. Did these promises and representations prove to be true?
A. For the railcars?
Q. Yes and trains?
A. And what do you mean by trains?
Q. Well, the power?
A. The power? Oh, no they did not turn out to be true.
Q. Okay. Has Sequitur suffered damages as a result of the promises and representations that you just stated not being true?
MR. LANTER: Objection, form.
A. Yes, we have spent a lot of money. We have spent millions and millions of dollars in cap X on these -- upgrading the faculties, which is the sub-cost and

Q. You are used to making your decisions based on your own due diligence and research, aren't you?
A. We are.
Q. Okay. And you had every capability of determining whether or not there were railcars available on your own, didn't you?
MR. KORNHAUSER: Objection, form.
A. We would have had to relied on somebody at some point.
MR. LANTER: Objection nonresponsive.
Q. You had the capability of making phone calls and asking people if railcars were available, didn't you?
MR. KORNHAUSER: Objection, form.
A. Asking people on the -- yes.
Q. Yes. Earlier in your deposition I asked you about roughly about 10 to 15 railcar manufacturers and leasing companies and you said you didn't recall a single one of them; that's true isn't it?
A. That is true.
Q. But you certainly could have couldn't you?
A. I could have called them, yes.
Q. Okay. And you said the -- when did those representations that your lawyers asked you about take place, was that May and June?

A. That was May and June through -- through the signing of the TSA.
Q. Okay. And do you have the letter of intent in that stack?
A. I sure do. I'm sorry, let me --
MR. LANTER: Pull it out and let me see that.
THE WITNESS: Oh, wait no letter of intent.
MR. KORNHAUSER: Did you remark it, I've got it.
MR. LANTER: Yeah I believe it is. And I can find it in my --
THE WITNESS: You gave me too many papers.
MR. LANTER: -- briefcase, but it might take longer.
THE WITNESS: Do you think what exhibit it is by chance?
MR. LANTER: Yeah not offhand I don't. There it is. Exhibit 6.
THE WITNESS: Okay. Well, you gave it to me later though, right?
MR. LANTER: Here, let's do this, why don't we remark it. I will just pull it out of this. Let's go back. We will talk about it as being Exhibit 6 today.

THE WITNESS: Okay. Perfect. Thank you.
Q. And your letter of intent, I mean, let's kind of shuffle that, it is dated June 1?
A. Yes.
Q. 2018, right?
A. That's -- I am -- I am not sure, yes.
Q. And when you signed this letter of intent, you agreed with Paragraph 8, did you not?
A. We -- we signed it.
Q. In fact, you wrote it, didn't you? Your -- your company wrote it, didn't it?
A. I don't remember.
Q. Okay. It's not on Maalt or Vista letterhead is it?
A. I -- I can I see the --
MR. LANTER: Sure.
A. No, it is not.
Q. Okay. And you signed it first asking Maalt or Vista to execute it as well, didn't you?
A. I did.
Q. Once you had the introduction made to Jupiter, you guys took it from there and had all of your negotiations just between Sequitur and Jupiter, correct?
A. On terms of commercial terms, yes.
Q. And you conducted your own due diligence of --

of Jupiter didn't you?
A. We did some, yes.
Q. But then less despite your own due diligence and the research you did in that company you decided to make the business decision to move forward with whoever dealings you had with it, right?
A. Say that again, I am sorry.
Q. Yes. Despite your own due diligence and the research you did into Jupiter, your company made the decision to move forward and do business with it?
A. We -- we did make the decision to move forward with the agreement.
MR. LANTER: Okay. Pass the witness.
MR. KORNHAUSER: We will pass the witness.
THE VIDEOGRAPHER: The time is 5:25. We are off the record.
[Proceedings concluded at 5:25 p.m.]

CORRECTION SHEET
WITNESS NAME: BRADEN MERRILL DATE: 11/19/2019
PAGE/LINE CHANGE REASON

Job No. TX3569876

SIGNATURE PAGE

I, BRADEN MERRILL, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the correction sheet.

_____

BRADEN MERRILL

THE STATE OF TEXAS)

COUNTY OF _____)

Before me, _____ on this day personally appeared BRADEN MERRILL, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR THE STATE OF

_____

Commission Expires:

_____

CAUSE NO. 19-003

MAALT, LP, § IN THE DISTRICT COURT OF

§

Plaintiff, §

§

VS. § IRION COUNTY, TEXAS

§

SEQUITUR PERMIAN, LLC, §

§

Defendant. § 51st JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

DEPOSITION OF BRADEN MERRILL

NOVEMBER 19, 2019

I, Patricia Palmer, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, BRADEN MERRILL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, to the witness or to the attorney for the witness for examination, signature and return to me by _____;

That the amount of time used by each party at the deposition is as follows:

Mr. James Lanter - 05 HRS:31 MINS
Mr. Paul O. Wickes - 00 HRS:00 MINS
Mr. Matthew A. Kornhauser - 00 HRS:04 MINS
Mr. Christopher J. Kronzer - 00 HRS:00 MINS

That pursuant to information given to the

deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. James Lanter and Mr. Paul O. Wickes, Attorneys for Plaintiff
Maalt, LP

Mr. Matthew A. Kornhauser and Mr. Christopher J. Kronzer, Attorneys for Defendant
Sequitur Permian, LLC

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th day of December, 2019.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. James Lanter, Custodial Attorney;

That $ _____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____, and filed with the Clerk.

Certified to by me this _____ day of _____, _____.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

CAUSE NO. CV19-003

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

VIDEOTAPED
ORAL DEPOSITION OF
JON INCE
TAKEN ON
NOVEMBER 15, 2019
VOLUME 1

VIDEOTAPED ORAL DEPOSITION OF JON INCE, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and -numbered cause on November 15, 2019, from 9:32 a.m. to 1:06 p.m., before Sonya Britt-Davis, CSR, in and for the State of Texas, reported by machine shorthand, at the law office of James Lanter, PC, located at 560 North Walnut Creek, Suite 120, Mansfield, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record.

A P P E A R A N C E S

FOR THE PLAINTIFF:
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FOR THE DEFENDANT:
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Also Present:
Mr. Luis Acevedo - Videographer

I N D E X

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Appearances..... 2

Witness: JON INCE

Examination by Mr. Kornhauser..... 4

Signature and Changes..... 142
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Reporter's Note: No exhibits marked. All exhibits were previously marked in Mr. Chris Favors' deposition.

P R O C E E D I N G S:

THE VIDEOGRAPHER: We're on the record for the deposition of Jon Ince. The time is 9:32 a.m. on November 15th, 2019.

If the court reporter can administer the oath.

(Witness sworn.)

JON INCE,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. KORNHAUSER:

Q. Can you please state your name for the record, sir?

A. Jon Ince.

Q. Mr. Ince, my name is Matthew Kornhauser, and I'm a lawyer for Sequitur, the Defendant in this case. You're aware of that?

A. Yes.

Q. Okay. Are you here represented by counsel?

A. Yes.

Q. Okay. And who's your counsel?

A. I've got Jim Lanter --

MR. WICKES: Paul Wickes.

A. -- and Paul Wickes.

Q. (BY MR. KORNHAUSER) Okay. Great.

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A. Yeah.
Q. You've just taken a sworn oath in this case. You're aware of that?
A. Yes.
Q. And you're aware that the answers that you give to the questions that I'm going to pose are under the pains and penalties of perjury? You understand that, sir?
A. Yes.
Q. Okay. Have you ever had your deposition taken before?
A. No.
Q. All right. A few ground rules. If you don't understand my question, please tell me. I'll be more than glad to rephrase it. Is that agreeable?
A. Yes.
Q. Okay. Otherwise, I'm going to assume that you've given me your best answer to a question you understood. You understand that?
A. Yes.
Q. Okay. Please wait for me to finish my question before you give me your answer, and I'll wait for you to finish your answer before I make my next question. This way the court reporter can have a clean record. Is that agreeable?

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A. Yes, it is.
Q. Okay. And you understand the court reporter is taking down my question and your answer verbatim?
A. Yes.
Q. Okay. And that the testimony will be potentially used in the proceeding which is presently pending. You're aware of that?
A. Yes.
Q. All right. You said you never gave your deposition before. But have you ever given sworn testim- -- testimony in a courtroom before?
A. No.
Q. Okay.
A. I don't believe so.
Q. All right. So is this the first time that you've been a part of a legal proceeding?
A. Yes.
Q. All right. What did you do to prepare for the deposition today?
A. I reviewed documents that -- that were gathered, reviewed e-mails, stuff like that.
Q. Okay. Did you search for any records on your own?
A. At the beginning of -- of all of this, you know, I just went through e-mails that -- that may be relevant, and that's the extent of searching on it, on -- for documents on my own.
Q. Okay. So you searched documents that would be maybe responsive to a request for production, documents in this case?
A. Yes.
Q. Okay. And you gathered the documents and turned them over to whom?
A. To Jim Lanter and his associates.
Q. Okay. But you did no further research independently to prepare for this deposition?
A. No.
Q. Did you visit with anybody or speak with anybody over the phone or interact by way of e-mail or other electronic communications to prepare for this deposition?
A. Other than counsel.
Q. Okay. Did you consult with or meet with any other employees or representatives of Maalt/Vista in the preparation of the deposition?
A. No.
Q. Okay. Did you meet with Mr. Favors?
A. No.
Q. Okay. Did you meet with Mr. Humphreys or with Mr. Robertson?

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A. No.
Q. Okay. Did you speak with Mr. Travis Morris at Jupiter?
A. No.
Q. Okay. When was the last time you spoke with Mr. Morris at Jupiter?
A. It was quite a while back. I don't know how many months. Late -- late 2018, early this year. I know that he's no longer with -- with Jupiter, and it was probably weeks or -- you know, it was in a time frame before he left that I had last spoken with him.
Q. I see.
Okay. How are you employed, sir?
A. I'm employed by a group of companies that does business as Vista Proppants and Logistics.
Q. Okay. You're an employee at Vista?
A. Yeah, that company, the -- the group of company -- I -- I -- I work -- I -- let's see. My -- my labor and my skills are for the Maalt, Maalt, LP, and the Vista, the mining company, so I -- I -- I kind of serve at all three companies that together form the company doing business as Vista Proppants and Logistics.
Q. I didn't understand much of that.
A. Right.

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A. No, I did not.
Q. Okay. They did that on their own?
A. Yes.
Q. Okay. Did -- did they use Jonas Struthers to secure their crude by rail?
A. They talked with Jonas Struthers about obtaining railcars, but they ultimately did not use him.
Q. Okay. Do you know who provided the rates and who provided the cars as it relates to the transloading activities to the Pecos facility of crude by rail?
A. I believe they used cars provided by Equinor.
Q. Okay.
A. Outside of who provided the rates, I -- I do not know that. I know that we did not provide any rates. And then to move trains, you have to submit billing for the -- for the origin and destination to the railroads. We did not do that.
Q. Okay.
A. That's -- that's usually the stuff that a logistics or a third-party logistics would handle.
Q. Okay. Are there any other instances where you were involved in the logistics of moving crude by rail?
A. I -- not that I can recall. The -- the -- I handle the normal stuff of, you know, what you

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consider --
Q. Right.
A. -- logistics or the supply chain.
Q. Right. So most --
A. Yeah.
Q. -- of your efforts relate to logistics as it relates to transloading frac sand?
A. By most, if you talk about a percentage, yes, but it's definitely -- we'll -- we'll transload anything. I mean, one of the key core competencies of Maalt, LP, is -- is transloading. So internally, you know, whatever business opportunity presents itself, we'll definitely take a look at it because that's what that business is expert at.
Q. All right. But mostly frac sand?
A. Right now, yeah, mostly frac sand.
Q. Right.
And the instance that you described for us relating to the Pecos facility with Jupiter, that was the only instance that you were involved in the logistics of in transloading crude by rail?
A. Yes, sir.
Q. Okay. When did you first hear about Sequitur?
A. I believe that was in the May -- April, May, June time frame --

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Q. Okay.
A. -- of 2018.
Q. Okay. How did you come to learn of Sequitur?
A. Blake DeNoyer had an e-mail that -- that he forwarded to Chris Favors and myself, and that was the first introduction of Sequitur.
Q. Okay. What was Sequitur's purpose for interacting with Maalt/Vista back in May 2018 that you understood?
A. With that introduction it was that they were looking for an opportunity to remove crude by rail out of West Texas. I do -- I do know that prior to that there were some opportunities we were pursuing as a company to provide them with frac sand, but I don't think that ever came to fruition.
Q. Okay. Were you involved in those efforts?
A. No.
Q. Okay. So Blake DeNoyer got the first contact from Sequitur? Is that what you understand?
A. I believe so based off of the documents that were produced.
Q. Okay. And -- and Blake passed on that information to you and Chris Favors?
A. Yes, I believe so.
Q. Okay. And what did you do with that

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information?
A. I reached out -- I can't remember if it was Braden Merrill or Tony Wroten, but I reached out to one of those two individuals, maybe both, just to set up a initial contact to find out what they were interested there and see if there was any possibility for us to provide services.
Q. Okay. Let's take a look at Exhibit Number 2. You've seen that e-mail before; is that correct, sir?
A. Yes.
Q. All right. This is an e-mail that you sent to Bra- -- Braden Merrill and -- and Tony over at Sequitur on May 9th, 2018; is that correct?
A. Yes.
Q. You sent this e-mail?
A. Oh, yes. I'm sorry. Yes.
Q. All right. And it reflects a conversation that you had with the both of them. What do you recall about that conversation?
A. Nothing really stands out. It -- it -- you know, it was an initial conversation.
Q. Okay. Do you recall anything in particular about the conversation?
A. Nothing -- no, I mean -- nothing really in particular. Like I said, it's -- it's just an

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introductory conversation and...
Q. Okay. It says: Great -- it was great talking with you, and I look forward to our talks progressing on shipping crude at the basin. Feel free to reach out to me if you need any help on fleet sizing or routing, and I'll do what I can step you through the process. (As read.)
And then in the -- it says: VProp works on the belief that we succeed when our partners succeed. I will get you the info I promised you in the coming days. (As read.)
What information did you promise to provide Tony and Braden on May 9th, 2018?
A. What information I promised from that conversation, I -- I don't recall. But within many of these initial conversations that we have, it's -- it usually revolves around, you know, how -- how many, in this case, barrels can you transload in a day? Do you have the facility? What's the timing if the facility is available? How many railcars could it hold? A -- a -- again, a lot of basic fact-finding information just that usually comes from an initial phone call like that.
Q. Okay. In this phone call did Sequitur explain the term that they desired?

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A. I don't recall if it was in that phone call or not. There was -- there was quite a few phone calls about this time, so I -- I don't know if it was in that initial one or not.
Q. Okay. Did Sequitur ever share with you, during any of these phone calls, the term they were looking for?
A. Oh, yeah. Yeah.
Q. Well, what do you understand that term to be?
A. That term -- while I can't remember the -- you know, the specific if it was eighteen to twenty-four months, it really revolved around a time frame of about eighteen to twenty-four months that -- that coincided with the pipeline coming on, and -- and they were just trying to take advantage of the price differential which was going to be reduced once the pipeline came on and allowed inventory to move out of West Texas.
Q. Okay. And so that was shared with you in these phone calls. Now, did they talk with you about the volume of -- of -- of crude oil that they were looking to transload in these conversations?
A. Yes. Throughout the -- the conversations that we had, that definitely did come up.
Q. Okay. And what did you understand that volume to be?

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A. It -- it -- it fluctuated to where maybe it was going to start off 10-, 11-, 12,000 barrels a day or -- yeah, I believe a day and ramping up at the end of twenty nine- -- 2018 and into the early part of 2019 and be pretty steady. But those -- those numbers definitely fluctuated. Sequitur's -- Sequitur's ability to produce -- they had so many different variables just like every --
Q. Okay.
A. -- every business does. So I know that number did fluctuate.
Q. So did you explain -- or did you explain to Sequitur the number of trains and railcars that would be needed to handle that type of volume?
A. Yeah, within those conversations definitely. They -- they seemed to struggle with understanding what did they need from a train and a railroad perspective, and -- and I would give them some -- some -- some help as far as understanding, Here's -- here's how you would need to go in the process of finding out how many railcars you need.
Q. Okay. You said they struggled in understanding.
A. Yeah.
Q. What -- what -- what is it that specifically

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causes you to reach that conclusion?
A. I had a phone call with -- with Tony, and the -- I had multiple phone calls with Tony where he was asking about how many railcars do we need, and that same ke- -- question came up, and I would walk him through the process of it really just depends on how -- how fast are you going to be able to get it down to the destination and then how fast are they going to get it back, you know, and that really determines how many railcars you need. And they -- they seemed to -- Tony seemed to struggle grasping that because every time we talked, that would come up pretty often.
Q. Would it be fair to say that Sequitur was fairly inexperienced with the concept of transporting crude by rail?
A. I can't speak to their -- their -- their experience as far as what they've done in the past. But the way that they were presenting themselves, they seemed to -- to lack a knowledge.
Q. Okay. So did you tell him how many trains and railcars you thought they would need given the term that they were looking at, given the volume they were looking at, things such as that?
A. I produced a spreadsheet in Excel, and -- and I walked Tony through it, and I -- just how some --

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A. I don't know if I used those exact words, but me telling me them they -- they will provide one class of service but not another, that in itself is a barrier.

Q. But did you share that with Sequitur?

A. Yes, I did.

Q. When? To whom?

A. To both Tony and -- and Braden. I can't recall when. We -- we talked on the phone quite a bit. But I -- I definitely am sure that I shared that information with both of them.

Q. Okay. But you don't know when?

A. No.

Q. And there's no e-mails to reflect that that you're aware of?

A. Not that I'm aware of.

Q. Okay. What about the fact that these 117s would not be available until Q3/Q4 of '18, did you share that with Sequitur?

A. For the new builds, yes, I did.

Q. And to whom did you share that with?

A. The same people, Braden Merrill and Tony Wroten.

Q. Do you know when?

A. No. I would -- I would expect it to be at the

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exact same time.

Q. Okay. So you're comparing and contrasting these two proposals, one from Jupiter, one from Sequitur. And you reference that Sequitur wants to transload from Barnhart September 1, correct?

A. Correct.

Q. How do you reconcile that with your statement that there were barriers with the UP at -- to ship crude out of the Permian and that these 117s wouldn't be available till Q3/Q4?

A. So out of the Permian, that could be taken as West Texas from Pecos, which is only served by the UP. But Barnhart is served by a short-line carrier, the Texas Pacifico, and they have access to the BNSF, the KCS and the UP. So --

Q. Okay.

A. So that is a -- if they wanted to go by September 1, while the UP could -- could offer that barrier or offer that designation of only that specific railcar, two other companies, they could do something completely different.

Q. Okay. So there were other options other than the UP out of -- out of the Permian other than these -- well, these companies that you just mentioned BNSF? and -- which was the other one?

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A. Texas Pacifico. Oh, I'm sorry. KCS is --

Q. KCS.

A. -- the other Class 1 railroad.

Q. All right. You say that Sequitur has no rail experience. Why did you deem that to be significant enough to put that in this e-mail?

A. With the continual conversations that we had, it was -- it was still relevant -- or it was still very easy to see that they were struggling with putting the supply chain together and understanding components that needed to go into that.

Q. Would it be fair to say that they were relying upon you and other people at Maalt/Vista for that information or that help?

MR. WICKES: Objection, form.

A. I don't think that they were relying on us, but they were -- they were asking us for help, and we were willing to -- to answer their questions that they had.

Q. (BY MR. KORNHAUSER) You can see they needed help on this; is that true?

A. They did need help, yes.

Q. And you were willing to provide it?

A. Yeah, whenever -- definitely. If they asked, we would provide that.

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Q. And your intent was to get them to the right people to facilitate this transaction, correct?

A. My intent was to allow them to have the resources for them to do whatever was best for their business to -- to hit the -- the goals that they were wanting to transload crude.

Q. Well, they didn't know where to get these trains and railcars. I mean, isn't that true?

A. They -- I don't know if they didn't know.

Q. Well, they asked you where to source these trains and railcars, correct?

A. They did.

Q. And as a result of that, can you conclude that they didn't know themselves?

A. No.

Q. Why else would they ask you?

A. I ask -- I ask four railcar manufacturers when are these cars ready -- can be -- be ready. I mean, you can -- they could have Google-searched.

Q. So they could have got on Google to find the trains and railcars? Is that what you're saying?

A. Oh, yeah.

Q. What kind of reaction or feedback did you get from the folks that you sent Exhibit 4 to?

A. I don't recall the reaction that -- that I

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(Break taken from 12:55 to 1:02.)
THE VIDEOGRAPHER: We're on the record. The time is 1:02.
Q. (BY MR. KORNHAUSER) Mr. Ince, Maalt/Vista has taken the position that they're aware of other shippers that were moving crude by rail from other facilities in the general area that includes the Barnhart facility utilizing the short-line railroads and the Class 1 railroads. What other shippers are you aware of that were moving crude?
A. And by shippers, you mean the railroads?
Q. Yeah.
A. And -- and out of -- out of the Permian West Texas basin that we're -- we're discussing?
Q. Uh-huh. Yeah.
A. You've got the -- the UP that's moving crude by rail, the BNSF, the KCS, and then the two short lines that we're discussing here, the Fort Worth and Western and TXPF.
Q. And what are the other facilities that you're aware of?
A. I'm -- I'm aware of the -- the Barnhart facility, the CIG --
Q. Okay.
A. -- facility just because I've -- I've gone by

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that facility in my travels.
Q. Okay.
A. But outside of that, the other competition, I guess you could call it, I'm not too familiar where -- too familiar with that.
Q. Okay.
A. That's --
Q. Do you -- do you know the volume of -- of oil that's being moved by these shippers at these other facilities?
A. I'm not, the specific volumes. But multiple trains a week it was at one point.
Q. When?
A. In the same time frame that we're discussing the -- this Sequitur deal out of our Barnhart facility.
Q. And what is that information based upon? In other words, how do you know that?
A. The -- the -- the railroads that I'm -- that I serve -- or, excuse me, that serves our facility in Cresson, Texas, they would -- they would alert me to crude trains coming and going because that has a direct effect on the sand traffic.
Q. Okay.
A. And then also just reports from -- from what we're hearing in the field.

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Q. So it's not personal knowledge that you're basing this -- comments on; these are things that you've been told or things that you learned through other sources?
A. I -- I -- yeah, this is not directly information from the shipper -- from the oil purchaser that's taking advantage of the arbitrage. This is from the -- the -- the railroads that I'm hearing a lot of that.
Q. Scuttlebutt?
A. Not scuttlebutt. It's: Your -- your -- your train is waiting while this crude train passes.
Q. Uh-huh. Maalt/Vista has never transloaded any crude by rail at the Barnhart facility; is that true?
A. That is true.
Q. Even as we speak?
A. Correct.
Q. Since the notice of termination of the terminal service agreement which was Exhibit 13, which was in February of '19, has Maalt/Vista attempted, in any way, shape or form, to secure another business partner to transload crude by rail out of the Barnhart facility?
A. And by partner, you mean another customer?
Q. Uh-huh. Someone other than Sequitur.

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A. I'm not aware, but that could -- but that means that -- that is to be taken that that could have -- could have happened, but I'm -- I'm not aware of it.
Q. Was there any attempt to find another partner?
A. Not one that I'm aware of.
Q. Okay.
A. But it could have happened.
Q. All right. Well, anything could have happened, but you just don't know if it did or didn't; is that true?
A. For searching for another partner, yes.
Q. All right.
MR. KORNHAUSER: I'll go ahead and pass the witness.
MR. WICKES: We'll reserve our questions until trial.
THE VIDEOGRAPHER: Off the record at 1:06.
(End of proceedings at 1:06.)

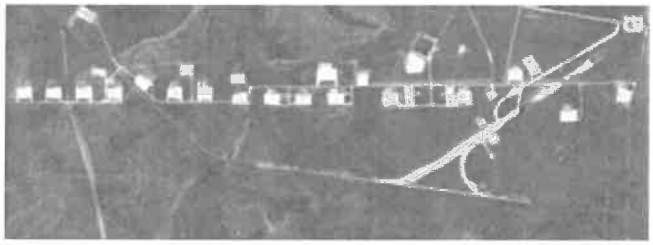
From: Jon Ince
To: Steven McCarley; Chris Favors
Subject: Crude Opportunity Update
Date: Wednesday, May 16, 2018 8:56:57 AM
Attachments: image001.png

The UPRR is proving to be a barrier for crude shipments out of the Permian. Ashley McCall did verify that the UPRR is requiring DOT 117 crude cars on all new freight quotes. I reached out to multiple car manufactures/brokers and these car are not available until Q3-Q4 of this year.

Jupiter:

- Looking to move crude July 1 from both Pecos West and Barnhart
- Will provide all capital for any equipment needed
- UPRR has limited their guaranteed slots out of Pecos West
- Wants to transload truck to railcar at Pecos West and Barnhart
    - Still securing mobile transloaders for both locations
- Jupiter proposed access to only 1 track at Pecos West for 3-4 unit trains per month
    - Transload fees of $1.50 per barrel
- Wants to utilize Barnhart for approx 30-40 railcars per day
    - Transload fees of $1.50 per barrel
    - Claims to have rate with BNSF who wants the volume
- Jupiter's fee of $1.50 per barrel was their offer giving us upside room to negotiate
- Est monthly transload revenue @ $1.50/bl = $1.38MM
    - Pecos West - $250K at 3 80 car unit trains/month
    - Barnhart - $1.13M at 35 cars per day

Sequitur:

- Wells are in close proximity to Barnhart terminal 0-10 miles
    - Their land touches our terminal facility (all wells below are Sequitur)
    - 
- Wants to transload from Barnhart September 1
- Will provide all capital for any equipment needed
    - Overheard conversations of $250K/day revenue and money was no object
- Volumes of 18 railcars/day ramping up to ~30 by late 1Q19
- Wants to transload from storage tanks to railcar
    - Transload times tank to railcar are twice as fast vs truck to railcar (2hr vs 4hr)
- Has no rail experience
    - Willing to entertain VProp serving as 3PL managing their fleet

  - Going 3PL rate varies $15-$20 per railcar/month
  - 450-500 car fleet = $6750-$10000/month revenue
- Est monthly transload revenue at $1.50/bl = $735K

Jon Ince
Logistics
682 252-1716
jince@vprop.com
4413 Carey Street, Fort Worth, TX 76119
www.vprop.com

CAUSE NO. CV19-003

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

VIDEOTAPED
ORAL DEPOSITION OF
CHRIS FAVORS
TAKEN ON
NOVEMBER 14, 2019
VOLUME 1

VIDEOTAPED ORAL DEPOSITION OF CHRIS FAVORS, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and -numbered cause on November 14, 2019, from 9:33 a.m. to 5:00 p.m., before Sonya Britt-Davis, CSR, in and for the State of Texas, reported by machine shorthand, at the law office of James Lanter, PC, located at 560 North Walnut Creek, Suite 120, Mansfield, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record.

A P P E A R A N C E S

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Mr. Luis Acevedo - Videographer
Mr. Jon Ince

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P R O C E E D I N G S:

THE VIDEOGRAPHER: We're on the record for the deposition of Chris Favors. The time is 9:33 a.m. on November 14, 2019.

If the court reporter can administer the oath.

(Witness sworn.)

THE REPORTER: Any agreements?

MR. KORNHAUSER: This is by notice.

MR. WICKES: Correct.

CHRIS FAVORS,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. KORNHAUSER:

Q. Mr. Favors, good morning.

A. Good morning.

Q. My name is Matthew Kornhauser, and I represent Sequitur in this lawsuit. You're aware of that, sir?

A. Yes.

Q. Okay. We're going to be asking you some questions with respect to some of the issues in this lawsuit that's pending.

But before we do that, I just wanted to get some ground rules established on the record. Is that okay with you?

A. Yes.

Q. All right. You've taken a sworn oath to tell the truth. You understand that, correct?

A. Yes, sir.

Q. And you understand that the pains and penalties of perjury apply with respect to your testimony today? You're aware of that?

A. Yes.

Q. Okay. You're represented by counsel today?

A. Yes.

Q. Okay. And you've agreed to be here. You've been noticed for this deposition; is that correct?

A. Yes.

Q. All right. In regard to my questioning today, please let me know if you don't understand a question, and I'll be more than glad to rephrase the question so that you understand it. Is that agreeable?

A. Yes.

Q. Otherwise, I'm going to assume that you gave me your best answer to a question that you understood. Is that agreeable?

A. Yes.

Q. All right. And I'll wait for you to finish your answer before I ask my next question, and if you can wait for me to finish my question before you give

me your answer. Is that okay?

A. Yes.

Q. This way we'll have a clean record.

MR. KORNHAUSER: You're going to want to read and sign?

MR. WICKES: Yes.

MR. KORNHAUSER: Okay. We'll make that opportunity available for you. We'll direct the deposition, Paul, to you or --

MR. WICKES: Send to Mr. Lanter's office, please.

MR. KORNHAUSER: Okay. We'll send it to Mr. Lanter's office. Okay. That's agreeable.

Q. (BY MR. KORNHAUSER) So what did you do to prepare for deposition today? Can you tell us?

A. I went through previous e-mail communication between myself and the folks over at Sequitur that I dealt with.

Q. Okay. Anything else?

A. As far as studying those e-mails and -- or what do you mean?

Q. Well, anything other than studying e-mails that you mentioned that exist between yourself and Sequitur. Anything else you did to prepare for today?

MR. WICKES: He did meet with counsel.

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A. No.
Q. Okay. We know that EOG did, but that was before Maalt/Vista acquired the ownership?
A. Correct.
Q. But Maalt/Vista never transloaded crude by rail at the Barnhart facility before it got involved with Sequitur?
A. No.
Q. Now, when Maalt/Vista acquired the Barnhart terminal in 2017, was there equipment in place to be able to transload crude by rail?
A. There was. The venting stations had to be removed in order for us to convert it to transload frac sand.
Q. Okay. So there were facilities in place to actually transload crude by rail when Maalt/Vista acquired it in '17?
A. Correct.
Q. Okay. Did you ever take that equipment out?
A. I can't recall if we took it out or if EOG did prior to us moving in.
Q. Okay. But it was taken out?
A. Yes.
Q. Okay. But you don't know by whom or when?
A. Correct. It would have been -- what I'm

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referring to is the -- right next to the rail, I believe they're called venting stations, that you transload from truck to rail.
Q. Okay.
A. Those faulted the line of our transloader in order to use all the track for sand.
Q. Did you transition the Barnhart terminal when you bought it such that it would be used 100 percent for transloading frac sand?
A. Yes.
Q. Okay. So all the pipes were taken out. Whatever equipment was in place to transload crude by rail, that was taken out by Maalt/Vista?
A. At least above the ground.
Q. Okay. Were you involved in that process?
A. No.
Q. So at the time that Maalt -- Maalt/Vista purchased the Barnhart terminal, was there any contemplation that the terminal would be used for transloading crude by rail?
A. No.
Q. Principally bought for the purpose of transloading frac sand?
A. Correct.
Q. And so that equipment didn't serve any purpose

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for Maalt/Vista, and it was taken out?
A. Correct.
Q. Prior to interacting with Sequitur, did Maalt/Vista have a business relationship with Jupiter as it related to the Barnhart terminal?
A. Yes.
Q. Okay. And what was the nature of that business?
A. Jupiter was attempting to enter into an agreement with Maalt for our Pecos facility as well as our Barnhart --
Q. Got it.
A. -- facility.
Q. To transload frac sand?
A. To transload crude oil.
Q. Crude oil.
Prior to acquiring the Barnhart terminal, did Maalt/Vista have a business relationship with Jupiter?
A. No.
Q. So its first interaction with Jupiter as it related to transloading anything was relative to the Barnhart terminal?
A. Either Barnhart or Pecos, yes.
Q. Or Pecos?

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A. Yeah.
Q. When would your first -- when were your first inquiries with Jupiter relative to the Barnhart facility?
A. If I -- May of 2018, I believe. It could have been late April.
Q. Okay. Was Jupiter brought to Maalt/Vista by you?
A. Not that I recall, no.
Q. Okay. Who brought Jupiter --
A. I --
Q. -- to Maalt/Vista?
A. I'm trying to think. It -- I'm trying to think if it was the -- the railroad or if it was an internal, but I -- I can't recall.
MR. KORNHAUSER: Let's go ahead and have this marked.
(Exhibit 1 marked.)
Q. (BY MR. KORNHAUSER) I placed in front of you what we've marked as Exhibit Number 1. This is a e-mail from you to Travis Morris on April 27, 2018 regarding Vista crude oil transporting draft for Pecos and Barnhart; is that correct?
A. Yes.
Q. Does this refresh your recollection any on

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when you first interacted with Jupiter as it relates to the Barnhart facility?

A. This would have been my first interaction with them, and I believe this was a lunch in Houston.

Q. Okay.

A. I don't know if this was the first interaction between Maalt/Vista and Jupiter.

Q. Okay. You think it may have been sooner?

A. Potentially. I -- I believe it -- it was. This -- if I recall correctly, this was a lunch that I had with them down in Houston.

Q. Okay. Now, Maalt/Vista acquired the Barnhart facility in 2017, and it did so with the idea of transloading frac sand and that's it, correct?

A. Correct.

Q. And then at some point, you're working or speaking with Jupiter regarding the prospect of transloading crude by rail at the Barnhart facility; is that correct?

A. Correct.

Q. And what were the reasons why a decision was made to move from just transloading frac sand to also potentially transloading crude by rail at the Barnhart facility?

A. Yeah. So between -- or from the beginning of

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2017 going forward into April, May time frame of '18, the frac sand market completely changed as well. Right? So whereas historically, that sand was railed into the Permian Basin, there were a number of local sand mines that were built directly in West Texas, which drove the price down. It made sand by rail not economical or -- or not competitive to local sources. At the same time, the -- from what we were hearing in the marketplace, the pipeline capacity was constrained, there was an opportunity for crude by rail, and there were not a whole lot of facilities that could do it, or could be, you know, retrofitted into a crude-by-rail facility, whereas Barnhart specifically had been used for it in the past.

Q. Okay. So it had been used in the past, but the equipment wasn't presently in place?

A. Correct.

Q. There was going to have to be a transition at the facility at the Barnhart terminal to allow crude by rail to be transloaded, correct?

A. Correct.

Q. And what capital improvements or equipment, if you will, was installed at the Barnhart facility to accommodate these discussions with customers like Jupiter to transload crude by rail to market?

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A. By Maalt, zero. Right?

Q. Okay.

A. The -- what -- what we were going to serve as is simply offering the -- the labor in order to transload crude from trucks to rail. From a capital improvement standpoint and equipment, that was all on the prospective customer.

Q. On the customer?

A. Correct.

Q. So what other facilities were competing with Barnhart's terminal, if you will, for this opportunity to transload crude by rail at the -- at particular -- at the particular point in time of April 2018?

A. Yeah. So there was another terminal in Barnhart, I believe owned by CIG Logistics. There is one down the road that was owned by -- it's escaping me. I can't remember the name of the other company. And then McCamey, if I remember, correctly. All of those -- all of those terminals served by the same railroad.

Q. Which is?

A. The Texas Pacifico.

Q. So was -- was -- was Jupiter the first inquiry that Maalt/Vista received regarding transloading crude by rail back in April 2018, or was there any other?

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A. Yes, they were first.

Q. Okay. They were first.

A. Yeah.

Q. And Maalt/Vista already had a relationship with Jupiter. Is that fair to say?

A. We did not.

Q. Oh, you didn't. This was new?

A. Correct.

Q. Okay. So Jupiter's first inquiry regarding the Barnhart facility was crude by rail?

A. Yes.

Q. Did they also have interest in transloading frac sand, or no?

A. No.

Q. Did you interact personally with the Jupiter representatives regarding this business prospect of having the terminal at Barnhart available to Jupiter to transload crude by rail?

A. Yes.

Q. You were involved personally on that level?

A. Yes.

Q. Who did you deal with at Jupiter?

A. The -- the first interaction was Travis Morris. John -- I can't remember John's last name, but I believe he was the founder of Jupiter. At one point

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concerns. They were requiring the DOT 117 new cars and went back and -- and were -- if I remember correctly, cancelled their tariff rates and were issuing new rates opportunity by opportunity.

Q. Okay. He -- then Mr. Ince says: I reached out to multiple car manufacturers, brokers, and these car -- these cars are not available until Q3-Q4 of this year. (As read.)

That was information that Mr. Ince secured?

A. It would appear so.

Q. Do you know where he got that information from?

A. I do not.

Q. What specific car manufacturers and brokers?

A. I do not.

Q. Okay. Did that concern you regarding --

A. No.

Q. -- or relative to this opportunity of transloading crude by rail at the Barnhart or other facilities?

A. No.

Q. Why not?

A. The -- the opportunity at hand was going to fall in the third quarter of 2018 for a start date.

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And the cars, according to this e-mail, would have been available at that time.

Q. Well, actually it says until Q3 or Q4.

A. Uh-huh.

Q. Right?

A. Correct. Correct.

Q. Okay. So did it concern you that these -- that according to these car manufacturers and brokers, the cars would not be available until Q3-Q4 of '18?

A. It did not.

Q. Okay. Did you share that information or, to your knowledge, did Maalt/Vista ever share that information with the prospective cus-- prospective customer, which would be Jupiter and/or Sequitur?

A. I don't know that we did.

Q. Okay. Do you think that would be something that Sequitur would want to know?

A. Yes.

Q. Okay. But you don't know if it was shared?

A. Correct.

Q. You didn't personally?

A. No.

Q. And then this e-mail kind of lays out, I guess, the comparison of Jupiter and that opportunity versus Sequitur and that opportunity, correct?

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A. Yes.

Q. And would it be fair to say that in May of 2018, you were considering a couple of different horses, if you will, one being Jupiter, one being Sequitur, as far as the Barnhart facility is concerned; is that correct?

A. Correct.

Q. On this transloading of crude by rail?

A. Yes.

Q. Again, the Jupiter opportunity is represented from -- as being the Pecos and Barnhart, transloading truck to railcar with a certain amount -- certain number of barrels, certain number of railcars required.

And then the Sequitur opportunity is laid out as well. So it's kind of comparing and contrasting, correct?

A. Correct.

Q. Now, in the Sequitur portion, it says: Sequitur wants to transload from Barnhart September 1. (As read.)

Do you see that?

A. I do.

Q. How does that reconcile with Mr. Ince's statement earlier where he says that, according to the multiple car manufacturers and brokers, the cars won't

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be available until Q3 or Q4 of the year?

A. I think it -- it falls in line with September 1st if it's Q3, and Q4 would be a little after that.

Q. Okay. And I guess one meaningful difference is that Sequitur is thinking about transloading from storage tanks to railcar, I guess, by way of pipeline --

A. Correct.

Q. -- at some point in the future?

A. Yes.

Q. And that was deemed to be more desirable from Maalt/Vista's point of view?

A. It was.

Q. All right. So in there Mr. Ince acknowledges that Sequitur has no rail experience; is that true?

A. That is true.

Q. Whereas Jupiter had some rail experience; is that true?

A. They represented that they did, yes.

Q. Okay. To your knowledge, did the people at Sequitur, when you were courting them in May of 2018, make clear that they had no rail experience relative to this transloading of crude by rail and that they would be looking to Maalt/Vista for assistance in acquiring the necessary trains and cars to make any opportunity

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happen?
A. The -- the first part of that, that they had no rail experience, yes. The second part, that they would lean on Maalt/Vista to acquire railcars, rail rates, et cetera, no.
Q. And what is that understanding based on? Why do you say that?
A. What do you mean?
Q. Why do you think that Sequitur wasn't going to try to lean on Maalt/Vista and their resources in order to source trains and railcars to transload crude by rail to market?
A. Any -- any initial conversations that I would have had with them wouldn't have said, We'll get you railcars, we'll get you rates, we'll get you this and that and the other. We were offering the labor only.
Q. But this -- then why is Mr. Ince introducing his rail guy to Braden Merrill and Tony early on?
A. Yeah, because Sequitur, you know, made it clear that they had no rail experience. Right? So that was an introduction to a guy who could help them acquire those railcars.
Q. Would it be fair to say that at this particular point in time, May of -- May 16, 2018, that Maalt/Vista viewed the opportunity with Sequitur to be

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more desirable than the Jupiter proposal?
A. That's correct.
Q. I think at some point in time there was a meeting in Fort Worth after this e-mail, Exhibit Number 4, was created, which was May 16, 2018. Do you recall a meeting in Fort Worth with the representatives of Sequitur?
A. I -- I believe there was one. I can't recall that -- the specifics of that meeting whatsoever.
Q. Okay. Where I think Braden and Tony flew up to Fort Worth to meet --
A. I don't know.
Q. -- with Maalt/Vista. Do you recall that?
A. I don't remember meeting Tony ever.
Q. Okay. All right. You're aware that an LOI was created?
A. Yes.
Q. And that was on or about June of 2016; you're aware of that?
A. Correct.
Q. So prior to the LOI being signed, do you recall having a meeting with any representative of -- of Sequitur?
A. I don't.
Q. Okay. You wouldn't have any recollection of

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that?
A. I don't.
Q. Okay. What do you recall regarding the negotiations that led to the formation of the LOI? Are those phone calls that you may have had, or what is your recollection? Because you don't recall meeting.
A. Correct.
Q. So what -- what do you recall taking place prior to the execution of the LOI?
A. Yeah. So I had multiple phone calls with Braden and Mike van den Bold at Sequitur, and I do -- I can't remember the exact month or day, but -- but I was also, you know, in meetings down in Houston at their office. The -- the -- the meeting that I recall in Fort Worth would have been later on, when we were finalizing the actual agreement.
Q. Okay. And so I'm talking about a specific point in time, though, before the LOI was signed.
A. Right.
Q. Do you recall any specific meetings or phone calls regarding the negotiations that led to the formation of the LOI?
A. Specifics of those, no.
Q. Okay. Now, at the time that you were negotiating the LOI with Sequitur, you were also

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negotiating and having discussions with Jupiter; fair to say?
A. Yes.
Q. Did you ever advise Sequitur that you were negotiating with Jupiter prior to the execution of the LOI?
A. Yes.
Q. Okay. So you were advising them that there was another horse in the race, so to speak?
A. Correct.
Q. All right.
(Exhibit 5 marked.)
Q. (BY MR. KORNHAUSER) Okay. Have you seen Exhibit Number 5 before, sir?
A. I have.
Q. This was an e-mail that Mr. Merrill sent to you on June 1st, 2018, correct?
A. Correct.
Q. And this is prior to the signature or the signing of the LOI; is that correct?
A. Correct.
Q. Okay. It says: Chris, I apologize that it took the entirety of the day to respond. I completely understand the desire to keep communication open with other parties in case Sequitur is unable to perform.

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As Jon and I discussed, Sequitur would prefer that such dialogue be limited to companies that Sequitur is not in dialogue with. (As read.)
Do you recall that request?
A. Yes.
Q. What is your understanding of it?
A. They -- they were in -- Sequitur was in conversations with like Shell, for example, and BP, maybe a couple of others. So Braden's request was that we don't court those companies directly for the use of Barnhart.
Q. Okay. Did you have any trouble with that --
A. No.
Q. -- request?
A. No.
Q. Did you -- did you honor -- did Maalt/Vista honor that request?
A. Yes.
Q. And then in the bottom of this e-mail, Exhibit 5, it says: So you know, we're going full steam ahead on our side. (As read.)
And he says: We have, for example, purchase orders in for eight new transloaders, had two drafting rounds of our Definitive Agreement, which we hope to have to you by Wednesday of next week. Made

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good progress regarding the transportation and sale of -- of oil via rail. Ordered 20,000 barrels of oil tankage, been working through regulatory issues concerning transport of oil, met with the University Lands regarding our surface use plans. (As read.)
Correct?
A. Correct.
Q. So would it be fair to say that from Sequitur's point of view, he was letting Maalt/Vista know that they were moving hard on their end, spending some money, spending some time?
A. Yes.
(Exhibit 6 marked.)
Q. (BY MR. KORNHAUSER) Have you had a chance to review Exhibit 6?
A. Not recently.
Q. Okay. Do you recall having seen it before?
A. Yes.
Q. When do you recall first seeing it?
A. June of 2018.
Q. Okay. Were you involved in the efforts to negotiate this Letter of Intent?
A. I was.
Q. And what function did you serve?

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A. Commercial representative for Maalt.
Q. Okay. Did you have lawyers involved in help crafting this document, Exhibit 6?
A. Yes.
Q. Who was that?
A. James Lanter.
Q. Okay. In -- on Page 2 of the LOI on the top it says: Additionally, neither Vista nor any of its controlled affiliates shall directly or indirectly enter into any negotiations, discussion, or agreements with BP, Valero, Sunoco, NuStar, or Shell, or any of their respective affiliates for provision of the service to them or any other transactions similar to the service within 75 miles of Vista's rail facility in Barnhart, Texas, except as approved in writing by the Sequitur. (As read.)
Did I read that correct?
A. You did.
Q. And -- and that goes back to the -- the request that Mr. Merrill made of you in Exhibit Number 5 where he said, quote: As Jon and I discussed, Sequitur would prefer that such dialogue be limited to companies that Sequitur is not in dialogue with. (As read.)
A. Correct.

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Q. Was that carved out for that purpose?
A. Yes.
Q. Okay. Now, the initial term of this LOI was -- well, let me ask you. It -- it was signed on June 1, 2018? Do you know that?
A. It looks like it was signed on the 5th of June.
Q. Okay. By Vista?
A. Yes.
Q. By Kristin Smith?
A. Correct.
Q. She's the CFO?
A. Yes.
Q. Okay. The initial term was through June 26th, 2018; is that correct?
A. (Reviews document.) For the LOI, yes.
Q. Right. And then I believe it was extended to July 6; is that correct?
A. It sounds right.
Q. By way of an amendment?
A. Correct.
Q. All right. Prior to signing this LOI, did Maalt/Vista ever discuss internally what would happen if the trains didn't run or the railcars were not available? Was this ever discussed internally?

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A. No. Like I said earlier, it was more of an optimistic view on it.
Q. Prior to signing the LOI, was this potential happenstance ever discussed with Sequitur, specifically, what would happen if the trains didn't run or railcars were not available? Was that ever contemplated --
A. I would --
Q. -- prior to the signing of the LOI?
A. I would say yes just from the standpoint of, you know, if minimums weren't met. But I don't know that it was directly related to if railcars aren't available or whatever else. Right?
Q. Okay. Was force majeure discussed prior to executing this June 1st LOI, which is Exhibit Number 6?
A. I don't know that it -- that it was.
Q. All right. Did you review the final draft before it was signed?
A. I did.
Q. Were you involved in the creation of the Attachment A, which kind of set out the services?
A. Yes.
Q. Were you the wordsmith, if you will, on this, or were the lawyers?
A. The wordsmith, legal, basic commercial terms

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would have came from me.
Q. Okay. So the basic terms meaning the term that would have been your work product, correct?
A. Yes. Term, rate, and volume, capital investment.
Q. Got it.
A. Yeah.
Q. Okay. In the Other Terms provision on Page 5 of this document, Exhibit Number 6, it said: The Definitive Agreement will contain customary provisions for transactions similar to the service or the transaction, such as mutual representations, warranties and covenants, conditions precedent, termination, remedies, force majeure, indemnification, and risk of loss. (As read.)
Did I read that correct?
A. You did.
Q. Who put that language in there; do you know?
A. That would have been our attorney.
Q. Okay. Now, as a result of the execution of Exhibit Number 6, which is the LOI, what happened to Maalt/Vista's negotiations with Jupiter at this point in time?
A. We -- we were still talking with -- with Pecos -- or, sorry, Jupiter on the Pecos terminal.

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Right?
Q. Okay. But what about the Barnhart terminal? Maybe I didn't ask the question properly.
A. So -- I mean, the -- the Barnhart terminal, Jupiter was still pressing hard on us to get into that deal, whether it was as an intermediary helping Sequitur with the transportation, and marketing of the oil. Right? And I believe about five days after this LOI, or maybe -- if it was June 5th, it would have been that day or the next day that the introduction was made by me to -- sorry -- between Sequitur and Jupiter.
Q. Okay. But would -- would it be fair to say that as a result of signing the LOI with Sequitur, Maalt/Vista discontinued their negotiations with Jupiter as it related to them being a principal on a transloading agreement for crude by rail at the Barnhart facility?
A. Yes.
Q. All right. But, obviously, Maalt/Vista was still considering them as a candidate to transload crude by rail on the Pecos facility?
A. Correct.
Q. And where was the deal at that point in time with Jupiter? Did they sign an agreement with Maalt/Vista? Did Jupiter sign an agreement with

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Maalt/Vista to transload crude by rail at the Pecos facility at the time the LOI was signed, Exhibit Number 6?
A. I don't believe it was prior to June 5th.
Q. Okay.
A. I'd have to go back and look at those documents.
Q. Okay.
MR. KORNHAUSER: Let's take a short break.
THE VIDEOGRAPHER: Off the record at 11:10.
(Break taken from 11:10 to 11:25.)
THE VIDEOGRAPHER: We're on the record. The time is 11:25.
Q. (BY MR. KORNHAUSER) We're back on the record, sir.
After the LOI, Exhibit Number 6, was executed, what role, if any, do you envision Jupiter playing relative to the Barnhart facility?
A. The potential there was to use their logistics, crude movement, rail or otherwise, to help Sequitur in getting the project to the finish line. Right? Ultimately, getting oil from Barnhart to the Gulf Coast.

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Q. Okay. And you personally had relationships with the people at Jupiter?
A. Correct.
Q. And what was -- what were those -- what was that relationship based on, in other words, historically?
A. It was a very -- the relationship was in its infancy. Right? Because they had come out of the same kind of time, April, May time frame, that they wanted to find rail facilities in the Permian Basin to move crude oil.
Q. Okay. Had Jupiter -- prior to, say, June 6th, 2018, had Jupiter ever assisted Maalt/Vista moving their frac sand by rail?
A. No.
Q. Prior to June 6th, 2018, who did Vista/Maalt -- or Maalt/Vista use to help them move their frac sand by rail?
A. We have our own logistics department.
Q. Okay. Did you rely on brokers to get cars --
A. I wasn't --
Q. -- and trains?
A. I wasn't involved in getting railcars --
Q. That would be --
A. -- or anything like that.

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Q. -- Mr. Ince's responsibility?
A. Correct.
Q. Jonas Struthers certainly was involved with Maalt/Vista in helping them procure trains and railcars to move frac sand; is that true?
A. It appears so, yeah.
Q. Anybody else that you're aware of?
A. No.
Q. Okay. So would it be fair to say that as of June -- June 6th, 2018, you had no real experience regarding what specifically Jupiter could do to facilitate Sequitur in regard to acquiring trains and railcars to move crude by rail, because you had no personal experience with them?
A. The only --
Q. Is that true?
A. Yeah. The only thing that we had from them was communication that they had railcars available to them, that they could get rail rates, that they could move the crude oil. Right?
Q. And who told you that?
A. Travis Morris at --
Q. Okay. When did he first tell you that?
A. That would have been in initial conversations.
Q. Back in April?

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A. Correct.
Q. Of 2018?
A. Yeah, approximately.
Q. Do you recall what he told you?
A. Specifically, no.
Q. Generally?
A. Generally, that, yeah, Jupiter is in the business of marketing and -- and moving crude oil from the Permian to the Gulf Coast, whether it be long-haul trucking or rail or otherwise. Right? So it was represented to Vista/Maalt that that is -- that was Jupiter's core competency as a company.
Q. Okay. And you -- and you viewed those comments to be helpful from the standpoint of what Sequitur was going to be doing at the Barnhart facility?
A. Correct.
Q. Okay. And did you share that information with Sequitur?
A. I did.
Q. When did you first do that?
A. I -- I think that would have been during the introduction phase, but exact date, I don't --
Q. Okay.
A. -- I don't remember.

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Q. All right. Let's go ahead and show you Exhibit Number 7.
A. Okay.
(Exhibit 7 marked.)
Q. (BY MR. KORNHAUSER) Okay. You've seen Exhibit Number 7 before, sir, haven't you?
A. I have.
Q. All right. This an e-mail that you authored to Mr. Merrill and Mr. Morris back on June 5th, 2018?
A. Correct.
Q. And in this e-mail you were putting together Sequitur and Jupiter as it relates to the Barnhart facility, correct?
A. Correct.
Q. And what was your purpose in doing that?
A. The -- the introduction was made based on what I've previously stated, that Jupiter had represented themselves as a company that could get the logistics side of it done. Right? And so simply an introduction from me to Sequitur on a -- a company that had represented that they could help in the -- in the agreement.
Q. Okay. What specifically did you think Jupiter could bring to the table that would help Sequitur?
A. Yeah. I mean, the representation from Jupiter

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to Maalt/Vista was that they could essentially get all the logistics side of moving crude oil done. Right? So whether it be rail, trucking, or otherwise. And as we've previously stated, that Sequitur had no rail experience or, really, in my mind, logistics experience other than pipeline. So the -- the introduction there to Jupiter was to facilitate the logistics side of it.

Q. And logistics meaning what?

A. Whether it be acquiring railcars, getting rates, moving railcars, making sure service was there. Jupiter had represented that they could get all of those things done.

Q. Right.

Did you try to vet the information that Jupiter was giving before you told Sequitur those things, or did you just tell Sequitur what you understood Jupiter's capacity to be?

A. That was just my understanding based on conversations that I had had with Travis.

Q. Right. And so Travis was telling you all this. But did you vet any of that before you told Sequitur?

A. To the extent of -- of going to the -- the website that they had and -- and whatever else, nothing beyond that.

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Q. Okay. Do you recall telling Sequitur that Jupiter was the real deal in a partner who could get it done?

A. I do not.

Q. You don't recall using words to that effect?

A. No.

Q. Do you recall making any representations regarding Jupiter's capabilities to see through this logistical requirement, if you will, that Sequitur was going to need in order to move forward on the transloading of crude by rail out of Barnhart?

A. Not definitive comments. I think at the time that it was represented to us that Jupiter could get it done. Through the introduction, you know, I think those were probably the comments that were made, is, you know, it seems like these guys are somebody you should talk to.

Q. Right.

A. Right?

Q. So -- so prior to making this introduction, had Jupiter, to your knowledge, ever handled logistics for crude by rail out of the Permian Basin?

A. Yes.

Q. Okay. And -- and what was your understanding of that experience that Jupiter had?

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A. I don't know that it was specific to rail. I know that they had a truck fleet. I know that they had moved it on pipe. Right?

Q. But I'm talking about crude by rail --

A. Okay.

Q. -- at Permian.

A. No, I -- I don't know that they did or didn't prior to this.

Q. Okay. Because, after all, that's what Sequitur was looking for, correct --

A. Correct.

Q. -- in this transaction? True?

A. In the agreement between Vista and Sequitur?

Q. Yes, sir.

A. Yes.

Q. So it looks as though you were on a phone call in the morning of -- of June 5th, or maybe the day before, I'm not sure.

Well, let me back up and ask the question.

You say here in this Exhibit Number 7: I spoke to each of you this morning -- (As read.)

Which would be June 5th, 2018.

-- and wanted to share contact information. (As read.)

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What do you recall about that phone call?

A. I don't recall specific details to those phone calls.

Q. Okay.

A. The -- the intent was just to connect the two parties.

Q. What do you recall Mr. Merrill or -- Merrill's reaction to be from this introduction?

A. I -- I recall him being appreciative of the introduction.

Q. Uh-huh.

A. Beyond that, I can't answer that.

Q. All right. Would it be fair to say that Sequitur had no prior experience with Jupiter prior in time?

A. Not to my knowledge.

Q. And would it be also be fair to say they were relying upon your introduction to have access to a logistical opportunity such as this?

MR. WICKES: Objection, form.

A. I -- I don't know that that's the case, I guess.

Q. (BY MR. KORNHAUSER) Well, you had said that Sequitur had no other prior experience with logistics on crude by rail, correct?

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document, Exhibit Number 10?
A. I do.
Q. This is an exchange of the first draft of the Definitive Agreement?
A. Yes.
Q. And the redlined comments that were attached by you?
A. Correct.
Q. And so you're interacting with your lawyer to work towards this final agreement?
A. Yes.
Q. Okay.
(Exhibit 11 marked.)
Q. (BY MR. KORNHAUSER) Let me go ahead and show you Exhibit 11.
MR. KORNHAUSER: Do you have more stickers?
THE REPORTER: (Complies.)
Q. (BY MR. KORNHAUSER) Exhibit Number 11, have you seen that, sir?
A. I have.
Q. This is communications between you and Travis Morris about the Barnhart facility? Is that true, sir?
A. The -- the e-mail at the bottom is Travis telling me that he's getting on the phone with Sequitur

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today so that Jupiter and Sequitur can try to close the Barnhart deal. The top portion is all in relation to Pecos.
Q. Okay. Do you know whether or not, on June 20th, 2018, that Sequitur was still in discussions with Shell regarding them serving as an offtaker on the Barnhart facility?
A. I don't know the answer to that.
Q. Okay. What was your response to Mr. Morris' comment about the fact that he was getting on the phone with Sequitur so that they can try to close the Barnhart deal?
A. My response to Mr. Morris' e-mail was in regards to an executed agreement for the Pecos, Texas site.
Q. Okay. You didn't respond in any way, shape, or form to the Barnhart deal referenced below?
A. No.
Q. He says: I do not have firm railcars yet, but we're working several steps with Jonas. (As read.)
Do you see that?
A. I do.
Q. Did it concern you in any way that as of June 20th, 2018, there were no firm railcars yet?
A. Not necessarily, no.

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Q. Did you have any concern at that point, June 20th, 2018, that Travis Morris couldn't get railcars yet?
A. No.
Q. The target terminal operation commencement date was September 1; is that correct?
A. I believe so, yeah.
Q. Okay. So here we are in September 20th, 2018, and no railcars yet. Did that worry you?
A. June 20th, 2018, right?
Q. Yeah.
A. No.
(Exhibit 12 marked.)
Q. (BY MR. KORNHAUSER) Have you seen this e-mail before?
A. I have.
Q. Okay. The second page of Exhibit Number 12, Mr. Merrill sends an e-mail to you on June 28, 2018 enclosing the redlined agreement, correct?
A. Correct.
Q. And he says: Please find our redlined to the agreement. I've tried to relay to the lawyer what we discussed. I believe he did a good job of incorporating, but I'm not a lawyer. I think the only remaining discussion points are -- and then the

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termination for extended force majeure. (As read.)
Do you see that?
A. I do.
Q. What is your recollection regarding the genesis of the force majeure requirements in the contract, specifically, the termination for extended force majeure?
A. That is standard -- force majeure is in every agreement that we have. Right? So I don't -- what's the -- what's the question?
Q. It's very clear.
What is your understanding of the genesis of the termination for force majeure provision in the TSA? In other words, where did it come from, and -- and who was --
A. Yeah.
Q. -- responsible for generating verbiage?
A. Okay. No, the -- the first agreement that we got came from Sequitur. Right?
Q. Okay.
A. So they would have put that together.
Q. All right. Was there any objection from Maalt/Vista on that requirement?
A. Not that I recall, no.
Q. Okay. Did you personally have any objection?

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Jupiter, but that wouldn't have made sense.
Q. Why?
A. At the time we -- our -- our preference was to work with Sequitur. So I read what -- what is here. Right? I just can't recall exactly who it was.
Q. Well, why would it have been made sense for it to be Jupiter?
A. Why would it not have made sense?
Q. Right.
A. The -- the only -- the only thing there is, right, we had the two companies interconnected. Right? We already had them introduced to one another.
Now, where it would have made sense to do it with Jupiter is if they, you know, were going to offer prepayment, better terms, stuff like that. Right?
At the same time, our preference was to work with Sequitur.
Q. Well, I get that. But I'm just trying to figure out why would it haven't made sense for that other party to be Jupiter?
A. Okay. Let me back up. Maybe it's not that it wouldn't have made sense. It would have made more sense to do the deal with Sequitur.
Q. Okay. Well, I understand that. But you

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didn't seem to recall if it was Jupiter or not that was the other party, and then you said it would haven't sense for it to be Jupiter. And I want to know why.
A. And I explained that. And now I'm saying it would make sense, not as much sense. Right?
Q. Okay. You don't know who the other party was?
A. No. It's not listed on here.
Q. But you don't know who else was in the running other than Jupiter?
A. Correct.
Q. So it had to have been Jupiter --
A. I don't know.
Q. -- by default?
MR. WICKES: Objection, form.
Q. (BY MR. KORNHAUSER) Wouldn't it?
A. I don't know.
Q. Okay. They said that they would execute an agreement today.
Did you have another agreement in your hand around this time from another party?
A. We did, yeah.
Q. From whom?
A. Jupiter. Right?
Q. As it related to Barnhart?
A. No.

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Q. Okay. Well, I'm trying to figure out who said that they would execute an agreement today if you don't. Who was it?
A. The -- I can't remember exactly who it was, and so I don't know --
Q. The truth is --
A. -- like, I don't -- I don't know how.
Q. So, I mean, were you -- were you just trying to use salesmanship here? I mean, what's going on? I mean, do you have another party? And, if so, who -- who was it? And did you have another agreement in your hand? That's what I need to know.
A. I didn't have another agreement in my hand for Barnhart.
Q. Okay.
A. Right? What I had was an agreement with Jupiter, though, that could have been easily amended to include Barnhart. Right?
Q. Okay. So the truth is you had no other agreement. We know that, right?
A. Correct.
Q. And you don't even know who the other party was?
A. Correct.
Q. But yet you're pressuring Sequitur to believe

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that you have another party that's going to execute an agreement today, but you didn't have any of that?
A. It's not my job.
Q. To what?
A. To sell and to get deals done. Right?
Q. Well, I understand that. I don't mean any disrespect. But you were using salesmanship here, weren't you?
A. Yeah.
Q. Let's cut through the --
A. Yeah.
Q. -- the nonsense.
A. Absolutely.
Q. All right. You didn't have an agreement, and you didn't really have another party. You had Jupiter that may have converted from just doing Pecos to doing Barnhart as well, right?
A. Correct.
Q. Okay. Do you recall telling Braden Merrill that someone was -- or this other party was going to pay $8 million up front on execution?
A. I recall 5 million.
Q. Is that what you told Mr. Merrill?
A. I believe so.
Q. And so who offered you $5 million right on the

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though, if they ever tell told you that they were having trouble with Shell, and that if things didn't improve, that they were going to pivot to go to Jupiter to handle their oil purchase rail and logistics partnership?

A. No, not that I recall.

Q. Okay. And prior to signing the agreement, do you recall recommending to Sequitur a joint venture with Jupiter because they had access to the trains and the railcars?

A. Not a joint venture.

Q. A relationship, logistics relationship?

A. Sure.

Q. And would that have been discussed during your visit at or around the time the contract was signed, the TSA was signed?

A. It could have been.

Q. Okay.

A. Yeah.

Q. In other words, they came up to sign --

A. Uh-huh.

Q. -- I think you said it was about an hour.

A. Correct.

Q. And during that conversation, do you recall discussions about Jupiter and what role they were going

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to play, things such as that?

A. Hypothetically, yes.

Q. Okay. What do you recall specifically about that discussion? Do you recall anything?

A. I don't. I know the -- like I said, at the time they were still focused on -- on Shell. Right? So if anything, it would have been the -- the prospect of Jupiter helping with logistics, and nothing in regards to a joint venture or a partnership or anything like that.

Q. Okay. Did you take any notes regarding that meeting that occurred at the time the contract was signed, the TSA?

A. I haven't dug through notebooks, but I could -- I could.

Q. Okay.

A. I mean, not that I know of.

Q. Did Maalt/Vista understand that acquiring access to railcars and trains were essential for the performance of the TSA?

A. Yes.

Q. Okay. And without access to trains and railcars, I mean, the TSA was really for naught; would you agree with that?

A. Yes.

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Q. And did you understand that Sequitur's intent and purpose as it related to the facility, the Barnhart facility, was to transport crude by rail to markets in the Louisiana Gulf Coast and take advantage of an arbitrage?

A. Yes.

Q. Okay. What did you understand about that, and who told you?

A. As far as their intent?

Q. Yes.

A. That was at the time there was a spread, which is not our core business. Right? We're in frac sand. So to the extent my understanding was only what they had told me. Right? We can sell it for a spread that's higher in Louisiana, or the LLS spread versus WTI. It right now makes sense because the spread is high enough that you can make more money selling it in the Gulf Coast than you can in the Permian.

Q. Okay. And that what's you understood their intended business purpose to be, to take advantage of that?

A. Correct.

Q. And as a result, the -- the cost involved for the rates, if you will, associated with transportation by rail was an important factor in that analysis; would

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you agree?

A. Yes.

Q. All right. And so getting the right rate was important from Sequitur's point of view; would you agree?

A. Yes.

Q. Okay. And you under- -- and Maalt/Vista understood that?

A. Yes.

Q. Okay. Would the same be true with Jupiter and their proposals to you as it related to the Barnhart facility?

A. The Pecos facility?

Q. Both.

A. Yeah. The same --

Q. Because they were transloading --

A. The same business.

Q. The same deal, right?

A. Correct.

Q. And they were transloading crude by rail --

A. Right.

Q. -- hypothetically both?

A. Right.

Q. And so they were doing that, I assume, for the same purpose as Sequitur was going to do it, which is

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right, and I don't know the exact date, whether that was August or December, up until probably about three months ago, two to three months ago.

Q. So this is information you got from whom?

A. Stan at the Texas Pacifico.

Q. Okay. Stan gave you that information?

A. Correct.

Q. So to summarize, you don't know who the shippers are, but the facilities are the CIG in Barnhart, Texas; and there's a facility out of McCamey, Texas that you're not familiar of?

A. To clarify, the -- the -- the Barnhart facility was being utillzed by Biourja, right, so they would have been the shipper.

Q. When was Biourja using the facility --

A. I don't know the exact date.

Q. -- the terminal?

A. Yeah, I don't know the exact dates of that.

Q. Would it have been after Sequitur terminated the contract?

MR. WICKES: They didn't use their facility.

Q. (BY MR. KORNHAUSER) Who -- what -- I mean, I'm confused, then.

A. I'm sorry.

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Q. Whose facility are they using?

A. They were using CIG's terminal in Barnhart.

Q. That's what I thought.

A. Yeah.

Q. Right. So the CIG facility in the City of Barnhart, Texas?

A. Correct.

Q. That's what I was saying.

A. Okay.

Q. Okay.

A. Yeah.

Q. So -- so we're clear on that. The facilities are the C- -- that -- the CIG located in Barnhart, Texas?

A. Yes.

Q. And there's another facility out of McKinney, [sic], Texas?

A. McCamey.

Q. Right?

A. Yeah.

Q. You just don't know the name?

A. Correct.

Q. All right. And you don't know who the shippers are?

A. Correct.

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Q. And as far as the time frame, you're saying --

A. I'm saying I don't know when the first shipment happened.

Q. Okay. And, again, this is not based upon your personal knowledge. This is based upon information that was told to you by Stan Meador over at TXPF?

A. Correct.

Q. So you don't have any personal knowledge of that, what I just mentioned?

A. No, I was -- no, I was not first -- firsthand involved in any of this.

Q. All right.

(Exhibit 27 marked.)

Q. (BY MR. KORNHAUSER) Have you seen Exhibit 27 before, sir?

A. I have.

Q. Okay. This is the Notice of Force Majeure; is that correct?

A. Correct.

Q. Prior to receiving this -- well, I assume you received this correspondence on February -- December the 7th, 2018?

A. Friday, December 7th, yeah.

Q. Friday, December 7th, right?

A. Yes.

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Q. Prior to receiving this e-mail, did you speak to the people at Sequitur about their intent to assert a force majeure as a grounds for terminating the agreement?

A. I did. I spoke with Mike van den Bold and Braden Merrill.

Q. Okay. And what do you recall about that phone call?

A. I recall them notifying me that they intended to send the force majeure letter and that they would continue to do everything within their, you know, power to rectify the situation and get rail service to Barnhart within the 60-day time frame.

Q. Okay. And what was your response to that?

A. That, you know, we needed to make sure that we -- we got to a resolution on the facility and that I would help in any way that I could.

Q. Do you ever in this phone call tell people at Sequitur that you disagreed that there was a force majeure event?

A. Not that I recall, no.

Q. Okay. Do you know if Brandon -- Braden Merrill, after sending this letter, Exhibit 27, followed through on his promise to try to continue to locate trains and railcars to avoid this force majeure

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invoice dispute and the continuation of the force majeure events; is that correct?

A. Correct.

Q. So it'd be safe to say that Sequitur is contesting the invoice that was sent previously, correct?

A. Correct.

Q. The force majeure and other reasons?

A. Correct.

Q. And Sequi- -- and Maalt/Vista received that, correct?

A. Yes.

(Exhibit 32 marked.)

Q. (BY MR. KORNHAUSER) You've seen Exhibit 32; is that correct, sir?

A. Correct.

Q. All right. This is a letter written from Sequitur to Maalt/Vista February 8, 2019, notifying them of the termination of the TSA due to force majeure events?

A. Yes.

Q. Also, it's referencing that under 2.7 of the agreement: Upon termination, customer at its sole cost and expense is permitted to remove any equipment at facilities constituting the customer terminal

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modifications, and that under the agreement, the terminal owner shall provide customer access to the terminal to commence and complete the removal of the customer termination modifications, and that the customer will be contacting terminal owner at the date hereof to discuss the potential acquisition of the terminal owner's rights to the surface area and any other appurtenances or coordinate the removal process. (As read.)

Is that correct?

A. Correct.

Q. Basically they're saying we're terminating the agreement due to the force majeure events, and we also are letting you know that our equipment is out there, and we want it back.

A. Right.

(Exhibit 33 marked.)

Q. (BY MR. KORNHAUSER) Let me show you that. Have you seen Exhibit Number 33, sir?

A. I don't know that I have.

Q. Okay. It's a letter written by lawyer, Mr. Lanter, February 14, 2009, referencing receipt of the February 8th letter we just talked about, which is Exhibit Number 32; saying that: Maalt disputes that there was a force majeure event. Rather, that they say

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the claim of force majeure is simply a pretext asserted in an attempt to avoid contractual obligations. (As read.)

It says: In light of your February 8th, 2019 letter, Maalt considers your actions a repudiation of the contract and, therefore, a material breach. Accordingly, Maalt will not allow your company access to the Barnhart property to remove equipment or otherwise. Any attempt to access the property will be considered a trespass. (As read.)

Do you know why -- well, let me ask it a better way.

Do you know upon what grounds Maalt was asserting that it had the right to refuse Sequitur's attempts to access the Barnhart property to remove their equipment?

MR. WICKES: I'll caution you to answer that question only if you can without relying on anything you heard from your attorneys.

A. No, I have -- I wasn't involved in that. I don't -- can't answer that. I don't know.

Q. (BY MR. KORNHAUSER) Okay. But it's fair to say that Maalt was denying Sequitur access to the Barnhart property to remove their own equipment; is that true?

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A. That -- that's what this says.

Q. Right.

And they said that any attempt to do so will be considered a trespass?

A. That's what it says, yes.

Q. Okay. Did you have any conversations with Mr. Humphrey or Mr. Robertson about Sequitur's request to retrieve their property after they purported to terminate the TSA?

A. I was not involved in this. As far as equipment goes and whatever else, I wasn't involved.

Q. Okay. Are you aware that Sequitur's property was removed from the Barnhart terminal property?

A. Yeah. I found out after the fact, yeah.

Q. And how did you find that out?

A. I think through one of the -- one of my coworkers.

Q. What did you learn?

A. The --

Q. What did they tell you?

A. If I recall the conversation right, it was over at -- down the road at Big Lake.

Q. Why was it removed to Big Lake?

A. I think it has to do with this letter. But like I said, I wasn't involved directly with it.

MR. KORNHAUSER: All right. Very well.
THE VIDEOGRAPHER: Off the record at 5:00 p.m.

(End of proceedings at 5:00.)

CHANGES AND SIGNATURE

WITNESS: CHRIS FAVORS DATE: 11/14/2019

PAGE/LINE	CHANGE	REASON

I, CHRIS FAVORS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

CHRIS FAVORS

STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared CHRIS FAVORS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
MY COMMISSION EXPIRES:

CAUSE NO. CV19-003

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

REPORTER'S CERTIFICATION
VIDEOTAPED ORAL DEPOSITION
OF CHRIS FAVORS
TAKEN ON
NOVEMBER 14, 2019
VOLUME 1

I, SONYA BRITT-DAVIS, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CHRIS FAVORS, was duly sworn by the officer, and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____ ___, _____, to the witness or to the attorney for the witness for examination, signature and return to me by _____ _____, _____;

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concerns. They were requiring the DOT 117 new cars and went back and -- and were -- if I remember correctly, cancelled their tariff rates and were issuing new rates opportunity by opportunity.

Q. Okay. He -- then Mr. Ince says: I reached out to multiple car manufacturers, brokers, and these car -- these cars are not available until Q3-Q4 of this year. (As read.)

That was information that Mr. Ince secured?

A. It would appear so.

Q. Do you know where he got that information from?

A. I do not.

Q. What specific car manufacturers and brokers?

A. I do not.

Q. Okay. Did that concern you regarding --

A. No.

Q. -- or relative to this opportunity of transloading crude by rail at the Barnhart or other facilities?

A. No.

Q. Why not?

A. The -- the opportunity at hand was going to fall in the third quarter of 2018 for a start date.

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And the cars, according to this e-mail, would have been available at that time.

Q. Well, actually it says until Q3 or Q4.

A. Uh-huh.

Q. Right?

A. Correct. Correct.

Q. Okay. So did it concern you that these -- that according to these car manufacturers and brokers, the cars would not be available until Q3-Q4 of '18?

A. It did not.

Q. Okay. Did you share that information or, to your knowledge, did Maalt/Vista ever share that information with the prospective cus-- prospective customer, which would be Jupiter and/or Sequitur?

A. I don't know that we did.

Q. Okay. Do you think that would be something that Sequitur would want to know?

A. Yes.

Q. Okay. But you don't know if it was shared?

A. Correct.

Q. You didn't personally?

A. No.

Q. And then this e-mail kind of lays out, I guess, the comparison of Jupiter and that opportunity versus Sequitur and that opportunity, correct?

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A. Yes.

Q. And would it be fair to say that in May of 2018, you were considering a couple of different horses, if you will, one being Jupiter, one being Sequitur, as far as the Barnhart facility is concerned; is that correct?

A. Correct.

Q. On this transloading of crude by rail?

A. Yes.

Q. Again, the Jupiter opportunity is represented from -- as being the Pecos and Barnhart, transloading truck to railcar with a certain amount -- certain number of barrels, certain number of railcars required.

And then the Sequitur opportunity is laid out as well. So it's kind of comparing and contrasting, correct?

A. Correct.

Q. Now, in the Sequitur portion, it says: Sequitur wants to transload from Barnhart September 1. (As read.)

Do you see that?

A. I do.

Q. How does that reconcile with Mr. Ince's statement earlier where he says that, according to the multiple car manufacturers and brokers, the cars won't be available until Q3 or Q4 of the year?

A. I think it -- it falls in line with September 1st if it's Q3, and Q4 would be a little after that.

Q. Okay. And I guess one meaningful difference is that Sequitur is thinking about transloading from storage tanks to railcar, I guess, by way of pipeline --

A. Correct.

Q. -- at some point in the future?

A. Yes.

Q. And that was deemed to be more desirable from Maalt/Vista's point of view?

A. It was.

Q. All right. So in there Mr. Ince acknowledges that Sequitur has no rail experience; is that true?

A. That is true.

Q. Whereas Jupiter had some rail experience; is that true?

A. They represented that they did, yes.

Q. Okay. To your knowledge, did the people at Sequitur, when you were courting them in May of 2018, make clear that they had no rail experience relative to this transloading of crude by rail and that they would be looking to Maalt/Vista for assistance in acquiring the necessary trains and cars to make any opportunity

June 1, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119

Attn.: Jon Ince

Re: Letter of Intent

Ladies and Gentlemen:

Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista") intend to enter into a transaction pursuant to a service agreement covering Vista's (or an affiliate's) provision of the Service (as defined in Attachment "A" hereto) to Sequitur. Pending the preparation and execution of a Definitive Agreement (as hereinafter defined), this letter will confirm the intent of such parties ("Parties") to enter into the contemplated transaction ("Transaction") to be governed by the Definitive Agreement in accordance with the terms and conditions set forth in this letter. The Parties agree as follows:

1. Term Sheet. The Parties intend to negotiate in good faith a mutually acceptable agreement governing the Service. To the extent there is any conflict between the Term Sheet and this letter, this letter shall control.

2. Definitive Agreement. The Parties shall endeavor to incorporate the terms and conditions expressed herein in a mutually acceptable definitive agreement (the "Definitive Agreement," whether one or more) no later than June 26, 2018 ("LOI Term"), unless extended by the Parties in writing, which the Parties would expect to do if the negotiations toward a Definitive Agreement and other relevant agreements and activities have sufficiently progressed. In the event the Parties do not agree upon and execute the Definitive Agreement by the end of the LOI Term, this letter (and the understandings set forth herein) shall be deemed terminated, and neither Party shall have any further obligation to the other Party, provided, however, that the provisions of Section 3 shall survive the termination of this letter for a period of one (1) year.

3. Confidentiality. The existence of this letter (and its contents) are intended to be confidential and are not to be discussed with or disclosed to any third party, except (i) with the express prior written consent of the other Party hereto, (ii) as may be required or appropriate in response to any summons, subpoena or discovery order or to comply with any applicable law, order, regulation or ruling or (iii) as the Parties or their representatives (who shall also be bound by the confidentiality hereof) reasonably deem appropriate in order to conduct due diligence and other investigations relating to the contemplated Transaction.

4. Exclusive Dealing Period. The Parties agree that from the date of this letter through the end of the LOI Term, neither Party nor any of its controlled affiliates shall, directly or indirectly, enter into any agreements with any other person or entity regarding any transaction similar to the Service or the Transaction or any other transaction related, in whole or in part, to the Service, except as

approved in writing by the other Party. Additionally, neither Vista nor any of its controlled affiliates shall, directly or indirectly, enter into any negotiations, discussions or agreements with BP, Valero, Sunoco, NuStar or Shell, or any of their respective affiliates, for provision of the Service to them, or any other transaction similar to the Service, within 75 miles of Vista's rail facility in Barnhart, Texas, except as approved in writing by the Sequitur. Nothing in this section shall prohibit Vista from selling any service or product more than 75 miles from its rail facility in Barnhart, Texas.

5. Expenses. Each Party shall bear its own costs associated with negotiating and performing under this letter.

6. Due Diligence. Following the execution of this letter until the end of the LOI Term, the Parties and their designated representatives will conduct due diligence reviews to analyze the feasibility of the contemplated Transaction, which reviews have not yet been conducted and completed.

7. Approval. No Party shall be bound by any Definitive Agreement relating to the Transaction until (a) each Party has completed its due diligence to its satisfaction, (b) such Party's senior management, or other governing body or authorized person, shall have approved the Definitive Agreement, (c) such Party shall have executed the Definitive Agreement, and (d) all conditions precedent to the effectiveness of any such Definitive Agreement shall have been satisfied, including obtaining any and all requisite government or third party approvals, licenses and permits (which are satisfactory in form and substance to each Party in its sole discretion), if such approvals, licenses and permits are required.

8. No Oral Agreements. Subject to the foregoing, this letter (and the Term Sheet) sets out the Parties' understanding as of this date, there are no other written or oral agreements or understandings among the Parties.

9. Governing Law. THIS LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

10. Assignment. Neither Party shall assign its rights or obligations under this letter without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. Any attempted assignment in contravention of this paragraph shall be null and void.

11. Binding Status. Except as to Sections 3 through 10 (which are intended to be binding upon execution and delivery of this letter by both Parties), the Parties understand and agree that this letter (a) is not binding and sets forth the Parties' current understanding of agreements that may be set out in a binding fashion in the Definitive Agreement to be executed at a later date and (b) may not be relied upon by either Party as the basis for a contract by estoppel or otherwise, but rather evidences a non-binding expression of good faith understanding to endeavor, subject to completion of due diligence to the Parties' satisfaction, to negotiate a mutually agreeable Definitive Agreement.

If the terms and conditions of this letter are in accord with your understandings, please sign, and return the enclosed counterpart of this letter to the undersigned, by no later than close of business on June 4, 2018, after which date, if not signed and returned, this letter shall be null and void.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Name: Braden Merrill
Title: VP & CFO

AGREED
this 5 day of June 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: _____
Name: Kristin W. Smith
Title: CFO

ATTACHMENT "A"
to
Letter of Intent
(Term Sheet)

Party A:	Vista Proppants and Logistics, LLC (and any designated affiliates)
Party B:	Sequitur Permian, LLC (and any designated affiliates)
Facility:	Barnhart Railyard
Location:	Barnhart Loading Facility 44485 W. Hwy 67 Barnhart, TX 76930
Term:	September 2018 through December 2019.
Renewal:	Subject to the Survival clause below, the Term may be renewed and extended by Party B for successive 12-month periods by written notice to Party A at least 60 days prior to the end of the then Term, as it may have been previously renewed and extended.
Products:	Crude oil or other hydrocarbons products owned or controlled by Party B or which Party B is obligated to market or deliver.
Commitment:	For the Term, as it may be extended, Party A will limit use of its Barnhart Railyard property and Facility to the sole purpose of loading Party B's Products. Party A will load Products provided by Party B at the Facility, whether from pipeline or trucks.
Service:	Party A's loading of Party B's Products at Location/Facility and related services, including maintenance.
Rate:	$1.50/barrel of Products loaded into railcars at the Location/Facility.
Volume:	Party B agrees to provide Products sufficient to fill an average of no fewer than sixteen railcars per day (11,424 barrels) during each calendar month. If Party B does not meet its minimum volume obligation for a calendar month, Party A will be compensated in such month, as that month's total settlement, in an amount equal to at least the Rate times 11,424 barrels, or $17,136, times the number of days in that month so that Party A will be paid as if the minimum volume had been provided by Party B. Should Party B provide more Products than its minimum volume obligation, Party A shall be compensated at the Rate times the excess volume.
Capital Investment:	In no event shall Party A be obligated to provide any capital investment necessary to perform Service. To the extent more capital investment is needed to satisfy incremental Volume, the financial burden required to equip the facility shall be borne by Party B.

	Phase I: Party B will install (or pay to install) equipment (to be owned by Party B) sufficient to load rail cars from trucks such that loading will commence September 1, 2018. Phase II: Party B will install (or pay to install) equipment (to be owned by Party B) sufficient to load rail cars from pipeline.
Assignability:	The Definitive Agreement would be assignable on sale or disposition, and as otherwise negotiated. Any sale of the Facility property would be subject to the Definitive Agreement.
Survival:	If the Term is not extended, then when Party A is not utilizing the Barnhart Railyard for the general course of its sand business and desires to use for loading of oil, the terms of the Definitive Agreement may be reinstated by Party B at its option.
Other Terms:	The Definitive Agreement will contain customary provisions for transactions similar to the Service or the Transaction, such as mutual representations, warranties, and covenants, conditions precedent, termination, remedies, force majeure, indemnification, and risk of loss.

THIS SUMMARY OF TERMS AND CONDITIONS IS ATTACHMENT "A" TO A LETTER OF INTENT DATED JUNE 1, 2018, AND IS NOT TO BE CONSIDERED SEPARATELY FROM THE LETTER OF INTENT. EXCEPT AS MAY BE SET OUT IN THE LETTER OF INTENT, THE LETTER OF INTENT AND THIS ATTACHMENT "A" ARE NOT INTENDED TO BE COMPLETE AND ALL-INCLUSIVE OF THE TERMS OF THE PROPOSED TRANSACTION, NOR DOES THE LETTER OF INTENT OR THIS ATTACHMENT "A" CREATE A BINDING AND ENFORCEABLE CONTRACT BETWEEN OR COMMITMENT OR OFFER TO ANY PARTY OR PARTIES, EXCEPT TO THE EXTENT PROVIDED IN SECTION 11 OF THE LETTER OF INTENT.

June 22, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119

Attn.: Jon Ince

Re: Letter of Intent Amendment

Ladies and Gentlemen:

Reference is made to that certain letter of intent ("LOI") dated June 1, 2018 between Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista"). All capitalized terms used herein are as defined in the LOI.

The Parties agree to amend Section 2 of the LOI to change "June 26, 2018" to "July 6, 2018".

Except as amended hereby, all other terms of the LOI shall remain in full force and effect.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Braden Merrill
Vice President and Chief Financial Officer

AGREED
this 21 day of June 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: Kristin W Smith
Name: Kristin W. Smith
Title: CFO

July 9, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119

Attn.: Jon Ince

Re: Letter of Intent Amendment No. 2

Ladies and Gentlemen:

Reference is made to that certain letter of intent (as previously amended, "LOI") dated June 1, 2018 between Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista"). All capitalized terms used herein are as defined in the LOI.

The Parties agree to amend Section 2 of the LOI to change "July 6, 2018" to "July 23, 2018".

Except as amended hereby, all other terms of the LOI shall remain in full force and effect.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Name: Braden Merrill
Title: VP & CFO

AGREED
this 12 day of July 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: _____
Name: Kristin Smith
Title: CFO

From: Chris Favors
To: Travis Morris; Jon Ince
Subject: RE: Executed Agreement
Date: Wednesday, June 20, 2018 10:25:29 AM
Attachments: image005.png
image001.png
image006.png
image007.png

Fantastic! We're looking forward to it. We met with UP on Monday and confirmed that August 1st is still the target date for all parties. The track project that is in their system to add crude oil into our agreement and create a joint use agreement is currently in rail access review. I will get on the horn with them today and advise that our agreement is fully executed and push for an expedited review process. Let me know if you need anything from me.

VISTA PROPPANTS AND LOGISTICS

Chris Favors
Business Development
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com

From: Travis Morris <tmorris@jupitermlp.com>
Sent: Wednesday, June 20, 2018 9:40 AM
To: Chris Favors <cfavors@vprop.com>; Jon Ince <jince@vprop.com>
Subject: Executed Agreement

Please see attached. I am getting on the phone with Sequitur today so we can try to close the Barnhart deal. I do not have firm railcars yet, but we are working several sets with Jonas.

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

From: Braden Merrill
To: Chris Favors; Mike van den Bold
Subject: RE: Barnhart Agreement Discussion
Date: Friday, August 3, 2018 11:12:38 AM
Attachments: image001.png
image002.png
image003.png

Good Morning Chris,

Sorry for the slow response. Mike and I were in a long meeting this morning. I appreciate where you are and coming to us. We will discuss and get back with you shortly.

Best,
Braden

From: Chris Favors <cfavors@vprop.com>
Sent: Friday, August 03, 2018 9:09 AM
To: Mike van den Bold <mcvdb@sequiturenergy.com>; Braden Merrill <bmerrill@sequiturenergy.com>
Subject: Barnhart Agreement Discussion
Importance: High

Happy Friday, Gentlemen! Do y'all have time for a discussion regarding the Barnhart agreement this morning?

Here is what I would like to discuss:

- I am receiving heavy pressure to get the agreement fully executed.
- We have been offered slightly better terms from other party that said they will execute an agreement today. My preference is to work with Sequitur and I am politicking internally for that.
- How can I assure our CEO and President that we will get the agreement signed in the next couple of business days? If there is not a high level of confidence that it will be signed in the next couple of business days, is there a monetary "reservation fee" that Sequitur is willing to put up that would either be applied to the first "x" number of barrels transloaded or forfeited in the event an agreement is not executed?

I am in the office all day today. Please let me know what time works best to talk and I will make myself available.

Regards,

VISTA PROPPANTS AND LOGISTICS

Chris Favors
Business Development
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com

TERMINAL SERVICES AGREEMENT

This TERMINAL SERVICES AGREEMENT (this "Agreement") is made, entered into and effective as of August 6, 2018 (the "Effective Date"), by and between Maalt, LP, a Texas limited partnership ("Terminal Owner"), and Sequitur Permian, LLC, a Delaware limited liability company ("Customer"). Terminal Owner and Customer shall be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Terminal Owner owns and operates a rail terminal facility located in Barnhart, Texas as more specifically described on Exhibit A-1 hereto on the land more specifically described on Exhibit A-2 hereto (collectively, the "Terminal"), and Customer is engaged in the transportation and marketing of Product; and

WHEREAS, Terminal Owner desires to make available the Terminal to Customer and perform the services set forth in this Agreement, and, on an exclusive basis, Customer desires to utilize the Terminal for the throughput of Product and related services.

AGREEMENT

NOW, THEREFORE, in and for consideration of the premises and mutual covenants contained in this Agreement, Terminal Owner and Customer hereby agree as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement, capitalized terms used herein will have the meaning assigned to such terms below:

"Actual Quarterly Aggregate Volume" means the sum of the volumes of Product tendered by Customer (or by Customer's third-party customers) for Throughput at the Terminal during the applicable Calendar Quarter.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" has the meaning given to such term in the Preamble hereto.

"Alternate Service" has the meaning given to such term in Section 8.8. "Alternative Service Notice" has the meaning given to such term in Section 8.8.

"Applicable Law" means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, agreement, requirement, or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any determination by, any Governmental Authority having or asserting

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jurisdiction over the matter or matters in question, whether now or hereafter in effect and in each case as amended (including without limitation, all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question.

"Barrel" means 42 United States gallons of 231 cubic inches per gallon at sixty degrees Fahrenheit (60° F) and normal atmospheric pressure.

"Business Day" means a Day (other than a Saturday or Sunday) on which banks are open for business in Houston, Texas.

"Calendar Quarter" means a period of 3 consecutive Months beginning on the first day of each January, April, July and October (except for 2018 of the Initial Term, September will be included with October-December 2018). "Calendar Quarterly" shall be construed accordingly.

"Control" means (a) with respect to any Person, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting shares, by contract, or otherwise and (b) with respect to any Product, such Product produced by Customer and owned by it or produced and owned by a Third Party or an Affiliate and with respect to which (i) Customer has the contractual right or obligation (pursuant to a marketing, agency, operating, unit, or similar agreement) to dispose of such Product and (ii) Customer elects or is obligated to dispose of such Product on behalf of the applicable Third Party or Affiliate. "Controlled" shall be construed accordingly.

"Cure Period" has the meaning given to such term in Section 8.3.

"Customer" has the meaning given to such term in the Preamble to this Agreement.

"Customer Parties" means, collectively, Customer, its Affiliates and its and their equity holders, officers, directors, employees, representatives, agents, contractors, customers, and their respective successors and permitted assigns (excluding any Terminal Owner Parties), and individually, a "Customer Party".

"Customer Terminal Modifications" has the meaning given to such term in Section 2.7.

"Day" means a period commencing at 7:00 a.m. Central Standard Time and extending until 7:00 a.m. Central Standard Time on the following calendar day. "Daily" shall be construed accordingly.

"Default Notice" has the meaning given to such term in Section 8.3.

"Defaulting Party" has the meaning given to such term in Section 8.3.

"Delivery Point" means the inlet flange of the applicable railcar.

"Effective Date" has the meaning given to such term in the Preamble to this Agreement.

"Extended Term" has the meaning given to such term in Section 8.1.

"Forecast" has the meaning given to such term in Section 2.6.

"Force Majeure" or "Force Majeure Event" has the meaning given to such term in Section 14.2.

"Governmental Authority" means any federal, state, or local government or any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative, legislative, regulatory, taxing or other governmental functions, and any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

"Group" means either Terminal Owner Parties or Customer Parties, as applicable.

"HSE" has the meaning given to such term in Section 15.4(a).

"HSE Program" has the meaning given to such term in Section 15.4(a).

"Income Taxes" means any income, franchise and similar Taxes.

"Initial Term" has the meaning given to such term in Section 8.1.

"Interest Rate" means an annual rate (based on a three-hundred-sixty (360) Day year) equal to the lesser of (a) two percent (2%) over the prime rate as published under "Money Rates" in the *Wall Street Journal* in effect at the close of the Business Day on which payment was due and (b) the maximum rate permitted by Applicable Law.

"Liabilities" means actions, claims, causes of action, costs, demands, damages, expenses, fines, lawsuits, liabilities, losses, obligations and penalties (including court costs and reasonable attorneys' fees).

"Loss Credit" has the meaning given to such term in Section 7.2(b).

"Loss Allowance" has the meaning given to such term in Section 7.2(a).

"Meter" has the meaning given to such term in Section 5.1.

"Minimum Volume Commitment" has the meaning given to such term in Section 3.1.

"Month" means the period beginning on the first Day of a calendar Month and ending immediately prior to the start of the first Day of the following calendar Month. "Monthly" shall be construed accordingly.

"Non-Defaulting Party" has the meaning given to such term in Section 8.3.

"Party" and "Parties" have the meanings given to such terms in the Preamble to this Agreement.

"Permits" means permits, licenses, consents, clearances, certificates, approvals, authorizations or similar documents or authorities required by any Governmental Authority or pursuant to any Applicable Law and that apply to the Terminal, the Services or a Party.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.

"Phase I Project" has the meaning given to such term in Section 2.7.

"Phase II Project" has the meaning given to such term in Section 2.7.

"PLL" has the meaning given to such term in Section 11.2.

"Product" means crude oil and other liquid hydrocarbon products owned or Controlled by Customer.

"Receipt Point" has the meaning given to such term in Section 7.1.

"Receiving Party" has the meaning given to such term in Section 15.20.

"Regulatory Approval" means any Permit from a Governmental Authority necessary for performance of the Services or the installation of equipment at or operations of the Terminal in connection with the Services, including the following Permits: Spill Prevention, Control, and Countermeasure (SPCC) plan is in place, Storm Water Permit (as it may be required to be amended or updated) issued by the Texas Commission on Environmental Quality (TCEQ) and Permit by Rule (PBR) Air Permit (as it may be required to be amended or updated) issued by TCEQ.

"Representatives" has the meaning given to such term in Section 15.20.

"ROFR Notice" has the meaning given to such term in Section 9.2(b).

"ROFR Offer" has the meaning given to such term in Section 9.2(b).

"ROFR Period" has the meaning given to such term in Section 9.2(a).

"Services" has the meaning given to such term in Section 2.12.

"Shortfall" has the meaning given to such term in Section 3.2(a).

"Shortfall Payment" has the meaning given to such term in Section 3.2(a).

"SPCC" has the meaning given to such term in Section 15.4(a).

"Subsequent Transfer" has the meaning given to such term in Section 9.2(a).

"Subsequently Transferred Interest" has the meaning given to such term in Section 9.2(b).

"Target Terminal Operations Commencement Date" means September 1, 2018, as such date may be extended as mutually agreed in writing by the Parties and subject to Article 14.

"Taxes" means any taxes, assessments, fees, duties or other similar charges imposed by any Governmental Authority, including income, franchise, ad valorem, property, sales, use, excise,

employment, transfer or other charge in the nature of a tax, and any interest, fine, penalty or addition thereto.

"Term" has the meaning given to such term in Section 8.1.

"Terminal" has the meaning given to such term in the Recitals to this Agreement.

"Terminal Operations Commencement Date" means 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 and as such date is evidenced by a written notice sent by Customer to Terminal Owner.

"Terminal Owner" has the meaning given to such term in the Preamble to this Agreement.

"Terminal Owner Parties" means, collectively, Terminal Owner, its Affiliates and its and their equity holders, officers, directors, employees, representatives, agents, contractors, subcontractors, invitees, successors and permitted assigns (excluding any Customer Parties), and individually, a "Terminal Owner Party".

"Third Party" means any Person other than a Terminal Owner Party and Customer Party.

"Throughput" means the delivery of Product from trucks or pipeline into the Terminal on behalf of Customer or Customer's third-party customers. The quantity of Product Throughput at the Terminal shall be measured in accordance with Article 5.

"Throughput Fee" has the meaning given to such term in Section 4.1.

"Week" means the period beginning on Sunday at midnight and ending on Saturday at 11:59 p.m. "Weekly" shall be construed accordingly.

ARTICLE 2
SERVICES; FACILITIES AND OPERATIONS

2.1 Regulatory Approval Filings. After the Effective Date, the Parties shall work (at their own cost and expense) together in good faith to obtain prior to the Target Terminal Operations Commencement Date the Regulatory Approvals as provided in this Agreement. Each Party shall promptly, but in no event later than ten (10) Days of receipt of all information from the other Party necessary to be included as part of such Regulatory Approval applications, file or cause to be filed applications for all Regulatory Approvals required to be obtained by it in connection with the transactions contemplated hereby. Such applying Party shall use its commercially reasonable efforts to obtain such Regulatory Approvals at the earliest practicable time. The Parties shall cooperate with each other and communicate regularly regarding their efforts to obtain such Regulatory Approvals. Each Party will provide the other Party with copies of all non-confidential portions of any application, statements or correspondence submitted to or received from any Governmental Authorities in connection with the transactions contemplated by this Agreement.

2.2 Services. Terminal Owner shall receive, load, unload, handle, measure, and

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redeliver Product at the Terminal in accordance with Customer's Forecasts and reasonable requirements and will tender such Product to Customer or its or its third-party customers' carriers as directed by Customer, in each case, in accordance with the terms and conditions of this Agreement. Terminal Owner shall furnish and be responsible for all labor, supervision, and materials necessary for its timely and efficient performance of the receipt, loading, unloading, transloading, handling, measuring, redelivery, and related operations and services pursuant to this Agreement and contemplated under this Agreement in order to provide the Services, which in all cases shall be conducted in accordance with generally accepted oil terminalling practices, in a good and workmanlike manner and in compliance with all Applicable Law and the obligations of Terminal Owner to its surface lessors. Terminal Owner shall operate and maintain the Terminal and any other related equipment and property in good and safe condition at all times (all of the foregoing in this Section 2.2, is herein collectively, the "Services").

2.3 Exclusivity. During the Term, (a) Customer shall have exclusive rights to use the Terminal for Product transloading; (b) Customer shall be entitled to utilize 100% of the capacity of the Terminal if required for the transloading of Product, (c) without Customer's prior written consent, Terminal Owner shall not contract with any other Person (including any Affiliates of Terminal Owner) for capacity at the Terminal, provide services at the Terminal to any other Person or develop any additional terminal facilities on the Terminal's land for the transloading of Product, (d) Terminal Owner shall limit the use of the areas of the Terminal designated for the transloading of Product to the sole and exclusive purpose of loading and unloading of Product, and (e) Terminal Owner shall not enter into any agreement with any Third Party for the transloading of oil or other hydrocarbon products at the Terminal. Notwithstanding anything herein to the contrary, after the Effective Date, Terminal Owner may use those areas of the land on which the Terminal is located that are not used for the performance of the Services, including but not limited to the staging and transloading of Product, for another business purpose so long as such purpose does not interfere with or adversely impacts the operations and use of the Terminal for performance of the Services.

2.4 Delivery; Redelivery. Customer may deliver Product to the Terminal by truck or pipeline delivery for receipt by Terminal Owner during the Terminal's operating hours which shall be no less than twenty-four (24) hours per Day, seven (7) Days per week, holidays included. Customer will retain responsibility for all dispatch services associated with the staging and logistics of trucks and railcars, and delivery of Product to and from the Terminal. Customer and Terminal Owner will cooperate with each other in scheduling deliveries, receipts and redeliveries. Receipts shall be issued by Terminal Owner to Customer or Customer's third-party customers for all Product delivered to the Terminal by truck or pipeline by Customer or Customer's third-party customers for unloading, handling, and loading into railcars. Terminal Owner shall redeliver Product to Customer or Customer's third-party customers from the Terminal into railcars. The Terminal will be made available for redelivery twenty-four (24) hours per Day, seven (7) Days per week, holidays included.

2.5 Access. In connection with Terminal Owner's and Customer's obligations under this Agreement, including Customer's exclusive use of the Terminal, Customer's rights with respect to Customer's Terminal Modifications, and the Services provided hereunder with respect to the Product, Terminal Owner does hereby GRANT and CONVEY to Customer and the other Customer Parties, its and their successors and assigns, for the purposes of enforcing and otherwise

realizing the benefits of Customer's rights under this Agreement a non-exclusive right of access over, on, and across the surface of the lands on which the Terminal is located for the duration of the Term and any extensions thereof. Further, from and after the Effective Date, Customer will seek from the owner of the land, and Terminal Owner shall cooperate with Customer in seeking, a non-exclusive easement providing a right of access over, on, across and under the surface of the land on which the Terminal is located. Any access by Customer with respect to Customer Terminal Modifications shall be coordinated in advance with Terminal Owner, and Terminal Owner agrees to permit routine access to a pre-approved list of Customer personnel and representatives. Terminal Owner represents and warrants that it has obtained all the necessary and required consents, if any, of any applicable lessor(s) or other holders of property rights with respect to such grant of easement and right of access. Terminal Owner shall have a duty to maintain in force and effect any underlying agreements that the grant of such non-exclusive easement and right of access by Terminal Owner is based upon. Without limiting the foregoing, Terminal Owner grants Customer's third-party customers access to the Terminal, including the loading racks and railcar areas, at all reasonable times for the purpose of the staging and logistics of trucks and railcars, and delivering and receiving Product, as applicable.

2.6 Monthly Forecasts. Customer will provide Terminal Owner, by email or facsimile, or by other means mutually agreed by Terminal Owner and Customer from time to time, no later than the fifteenth (15th) Day of each Month throughout the Term, a good faith Monthly forecast (a "Forecast") of the volume of each Product that Customer projects it (and its third-party customers, as applicable) will deliver to the Terminal during the following Month. Terminal Owner and Customer will work together cooperatively to schedule deliveries of the Products to the Terminal based on Customer's Forecasts. Customer's Forecasts may exceed the Minimum Volume Commitment, but shall not exceed the maximum design transloading capacity of the Terminal.

2.7 Terminal Modifications. In order to facilitate the Services, Customer will perform (with the full cooperation of Terminal Owner) certain expansions or alterations to the Terminal at Customer's sole cost and expense (collectively, the "Customer Terminal Modifications") as follows: (a) Customer will install equipment and facilities at the Terminal necessary for loading railcars with Product from trucks, such that the loading will commence on the Target Terminal Operations Commencement Date, and as may be described in further detail on Exhibit B hereto ("Phase I Project"), and (b) Customer may, at its sole option, install equipment and facilities necessary for loading railcars from pipelines, and as may be described in further detail on Exhibit C hereto ("Phase II Project"). If Customer elects to perform the Customer Terminal Modification described in (b), it shall provide Terminal Owner with notice of such election. Terminal Owner shall allow Customer (and the Customer Parties) to perform all Customer Terminal Modifications, and shall provide Customer and Customer Parties with such access (including any necessary easements and rights-of-way into, over, under and across the Terminal and associated land to locate equipment and facilities) and full assistance as reasonably required; provided that Terminal Owner shall be permitted to have a representative present at the Terminal for observation when work on a Customer Terminal Modification is being performed. Terminal Owner acknowledges and agrees that title to the equipment and facilities installed by or at the direction of Customer in connection with a Customer Terminal Modification shall remain with and be vested in the Customer; *provided* that ownership of any additional rail tracks that may be installed will be transferred to Terminal Owner upon the expiration of the Term, subject to

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Customer's rights under Section 8.8 and Section 9.2. Other than the rail tracks described in the preceding sentence, upon the expiration of the Term, Customer shall be permitted, at its sole cost and expense, to remove any equipment or facilities constituting Customer Terminal Modifications. During the Term, Terminal Owner (i) shall not be required to make any capital investment to facilitate the Services (other than in connection with any maintenance or repair necessary for the Terminal Owner to comply with its obligations under this Agreement), and (ii) shall not be permitted to make any expansion, modification or other alteration (other than routine maintenance and repairs) to the Terminal that interferes with or adversely impacts the operations and use of the Terminal without the prior written consent of Customer.

ARTICLE 3
MINIMUM THROUGHPUT OBLIGATION

3.1 Minimum Volume Obligation. Subject to the terms of this Agreement, including Section 3.3 and Force Majeure, for each Calendar Quarter from and after the Terminal Operations Commencement Date, Customer agrees to Throughput (either directly or via volumes delivered to the Terminal by Customer's third-party customers) an amount of Product through the Terminal on a Monthly basis equal to a minimum of Eleven Thousand Four Hundred and Twenty Four (11,424) Barrels per Day (the "Minimum Volume Commitment") during each Calendar Quarter during the Term after the Termination Operations Commencement Date, or otherwise pay the Shortfall Payment applicable to such Calendar Quarter.

3.2 Shortfall Payment.

(a) Quarterly Shortfall. If, for any Calendar Quarter after the Terminal Operations Commencement Date, the volume of Product actually Throughput during such Calendar Quarter (for the avoidance of doubt, calculated on a Calendar Quarterly, not a Monthly or Daily, basis) is less than the Minimum Volume Commitment (such deficiency, if any, the "Shortfall"), Customer shall pay Terminal Owner an amount equal to the volume of the Shortfall (expressed in Barrels) to the extent not caused or contributed to by Force Majeure, maintenance outages at the Terminal, or Terminal Owner's breach of its obligations under this Agreement, *multiplied by* the Throughput Fee in effect for such Calendar Quarter (collectively, the "Shortfall Payment"). 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 breach.

(b) Quarterly True-Up. Promptly following each Calendar Quarter, Terminal Owner will provide to Customer a written statement showing the Minimum Volume Commitment versus the Actual Quarterly Aggregate Volume. If the Actual Quarterly Aggregate Volume exceeds the Minimum Volume Commitment for such Calendar Quarter, Customer shall not owe and shall be relieved from payment to Terminal Owner of any Shortfall Payment determined pursuant to Section 3.2(a) for the applicable Calendar Quarter. However, if the Actual Quarterly Aggregate Volume is less than the Minimum Volume Commitment for such Calendar Quarter, Customer shall owe to Terminal Owner a Shortfall Payment determined pursuant to Section 3.2(a) for the applicable Calendar Quarter.

3.3 Adjusted Minimum Volume Commitment. For any partial Calendar Quarter within the Term, the Minimum Volume Commitment shall be prorated accordingly. The

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Minimum Volume Commitment for the applicable Calendar Quarter shall also be adjusted downward on a per Barrel basis for any volumes of Product that Customer was not able to Throughput through the Terminal due to Terminal Owner's failure to receive Product within the capacity of the Terminal, Terminal Owner breach of this Agreement, or any other act or an omission of a Terminal Owner Party that prevents or curtails Throughput.

ARTICLE 4
FEES; INVOICES

4.1 Throughput Fee. Subject to the terms of this Agreement, Customer shall pay Terminal Owner a throughput fee equal to One Dollar and Fifty Cents ($1.50) per Barrel of Product Throughput through the Terminal (the "Throughput Fee").

4.2 Invoices; Payment of Fees. Within twenty-four (24) hours following the end of each Month, Terminal Owner shall issue to Customer an estimate of any amounts owed by Customer pursuant to this Article 4 and the quarterly Shortfall Payment (if any); *provided* that the Parties agree and acknowledge that Customer shall have no obligation to pay the amounts set forth in such estimate until Terminal Owner delivers to Customer an invoice as described in the remaining portion of this Section 4.2. Terminal Owner shall invoice Customer Weekly for any amounts owed by Customer pursuant to this Article 4 and the quarterly Shortfall Payment (if any) within ten (10) Business Days after the end of each Week for Services that occurred during the preceding Week, including a detailed statement setting forth the amounts included in such invoice. Customer agrees to pay Terminal Owner all undisputed amounts set forth in such invoice within thirty (30) Days of receipt of Terminal Owner's invoice, which shall be the due date for such invoice. If Customer disputes one or more items in an invoice, Customer must notify Terminal Owner promptly (and in any event by the due date therefor) in writing of the item or items under dispute and the reasons therefor. Customer may withhold payment of the disputed portion of such invoice, without the payment of the Interest Rate as described below, until the dispute is resolved. Any portion of a disputed invoice which is later paid will be paid with accrued interest thereon calculated using the Interest Rate from the due date of such invoice until paid. All invoices issued by Terminal Owner under this Agreement shall be issued in United States dollars, and all such invoices and any other amounts due hereunder shall be paid in United States dollars.

4.3 Past Due Interest. Any amount payable by Customer under this Agreement shall, if not paid when due, bear interest from the payment due date until, but excluding the date payment is received by Terminal Owner, at the Interest Rate.

ARTICLE 5
MEASUREMENT

5.1 Measurement Procedures. Measurement shall be in accordance with Terminal Owner's standard measurement procedures, which shall be in accordance with applicable API standards. Terminal Owner shall transload the Product from trucks or pipeline into railcars using, as applicable, a rack, pump and custody transfer meter at the Receipt Point to be provided by Customer and a rack, pump and custody transfer meter at the Delivery Point to be provided by Customer (each meter at the Receipt Point and Delivery Point, a "Meter"). Each Meter shall be provided in accordance with industry standards and in accordance with all Applicable Law. The

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quantities of the Products transloaded by Terminal Owner at the Terminal will be determined by the Meters. In the event of a failure of a Meter, the Parties will use railcar waybills and truck bills of lading, as applicable, until the applicable Meter is repaired. Terminal Owner shall be responsible for the maintenance of the Meters, and repair any malfunctioning Meter as soon as commercially practicable. All tests, calibrations, and adjustments of a Meter, to be performed by Terminal Owner at least once per Calendar Quarter, may be witnessed by Customer (or its designated representative) and shall be preceded by reasonable notice to Customer. Upon request of either Party for a special test of any meter or auxiliary equipment, Terminal Owner shall promptly verify the accuracy of same; provided, however, that the cost of such special test shall be borne by the requesting Party, unless the percentage of inaccuracy found is more than one percent (1) % of a recording corresponding to the average hourly rate of Product flow, in which case the cost of such test shall be borne by Terminal Owner.

5.2 Measurement Records. Terminal Owner shall keep accurate records of the receipt and delivery of Product under this Agreement and, subject to the Loss Allowance, shall account for Product receipts and redeliveries at such time and in such manner as shall be reasonably requested by Customer. Terminal Owner will provide Daily updates to Customer as to the metered volumes of the Product Throughput into the Terminal, trucks delivered to the Terminal, and volumes of Product transloaded into railcars at the Terminal.

ARTICLE 6

TERMINAL OWNER OBLIGATIONS

6.1 Warranty. Terminal Owner warrants to Customer that: (a) all Services shall be in accordance with Section 2.2 hereof; (b) all Services will be performed and completed in a safe and environmentally conscientious manner, with Terminal Owner taking all reasonable and necessary actions, including, but not limited to, those in accordance with all Applicable Law, regulations, ordinances and codes, any applicable policies of Customer and prudent industry practices to protect persons, property and the environment; (c) all Services shall be performed professionally, and in accordance with sound engineering practices; (d) all Services will be free from defects in design, workmanship, and materials, and that all Terminal Owner personnel and employees have been trained to work in a safe and competent manner to assure the safety of other persons; and (e) all equipment or property provided or supplied by Terminal Owner in performing the Services has been thoroughly tested and inspected and is safe, sufficient and free of any defects, latent or otherwise, is in good operating condition and is appropriate for the carrying out of the Services.

6.2 Non-Conforming Services. Any Services found defective, unsuitable, or in any way nonconforming with the terms of this Agreement shall be promptly replaced or corrected by Terminal Owner without additional charge to Customer, whether or not the Services have been accepted. Customer may, at its sole discretion and with full reservation of its other rights and remedies, direct Terminal Owner to replace or correct, as applicable, the non-compliant Services. The warranty obligations of Terminal Owner under this Agreement shall not be limited, restricted, or otherwise modified by the indemnity obligations contained elsewhere in this Agreement.

6.3 Observation and Testing of Services. All Services will be subject to Customer's observation and testing. Terminal Owner shall be responsible for inspecting and testing the

components of the Services. Customer Parties shall (subject to Section 15.2) have the right at any time to review and test the Services at all places and stages of performance, without such action being treated as either discharging Terminal Owner's responsibility or constituting Customer's acceptance of the Services. Notwithstanding any prior test and observation at the Terminal, all Services will be subject to final acceptance at the Terminal. Neither payment for, nor the inspection at the Terminal of any Services shall in any way impair Customer's right to observation, imply acceptance or rejection of non-conforming Services, or reduce or waive any other remedies or warranties to which Customer is entitled.

6.4 Warranty Default. If, after written request by Customer, Terminal Owner fails to replace or correct any non-conforming Services within the shortest time reasonably practicable, but in any event not later than three (3) Days after being notified of the defect, without prejudice to Customer's other rights and remedies under this Agreement or by Applicable Law, Customer (a) may replace or correct such Services itself or through another contractor in any manner that Customer determines in its sole discretion, and charge to Terminal Owner the cost incurred by Customer thereby, which Terminal Owner will pay promptly upon invoice therefor, (b) deduct or withhold the costs and expenses incurred from amounts otherwise due and owing by Customer to Terminal Owner and/or (c) may, without further notice, exercise its remedies under this Agreement for default, in accordance with Article 8 hereof.

6.5 Permits. Terminal Owner shall obtain and maintain in force, and ensure that each Terminal Owner Party obtains and maintains in force (as necessary), all Permits including the Regulatory Approvals. If Customer is required to obtain any Permit that Applicable Law requires to be issued in the name of Terminal Owner or another Terminal Owner Party, Terminal Owner shall provide all reasonable assistance to Customer in connection with Customer's efforts to obtain and maintain such Permit, including by signing and submitting any applications or other documentation required to be in Terminal Owner's or another Terminal Owner Party's name.

ARTICLE 7
TITLE AND RISK OF LOSS; PRODUCT LOSS; DEMURRAGE

7.1 Title; Custody and Control. Customer (or its customer, as the case may be) shall retain title to all Product delivered by it to the Terminal, and Terminal Owner acknowledges that it has no title to or interest in the Product. Care, custody and control of (and risk of loss for) all such Product shall pass to Terminal Owner at the time that such Product passes through the Meter at the outlet flange of the applicable truck or pipeline delivering such Product into the Terminal (the "Receipt Point") and shall remain with Terminal Owner until the railcar receiving such Product from the Terminal is no longer located at the Terminal and such railcar is removed from the Terminal by the applicable rail carrier. Title to Product shall not transfer to Terminal Owner by reason of the performance of the Services. For the avoidance of doubt, Customer Terminal Modifications are considered part of the Terminal for purposes of determining the Receipt Point and other purposes of this Agreement, subject to Section 2.7.

7.2 Loss Allowance; Product Degradation. Customer acknowledges that minor losses (shrinkage) in the handling of crude oil is a normal part of the transloading process and, as a result, minor losses of crude oil related to the unloading and loading of such commodity shall be considered negligible if within the Loss Allowance (as hereinafter defined).

(a) Loss Allowance. If Customer Parties and/or Terminal Owner observe Product spillage or loss while transloading from trucks to railcars or from the pipeline to railcars, Customer Parties and Terminal Owner shall determine the volume of lost Product (as reported on the relevant spill report). Terminal Owner shall not be responsible for any loss of Product provided that such loss does not exceed one barrel per railcar (each a "Loss Allowance"). Terminal Owner shall be responsible for loss of Product that exceeds the Loss Allowance.

(b) Loss Credit. Customer shall not owe Terminal Owner any transloading fees for lost Product in excess of the Loss Allowance. In the event of losses in excess of the Loss Allowance, the loss above the Loss Allowance shall be settled and reflected as a credit (the "Loss Credit") to Customer on Terminal Owner's invoice for such Month in an amount equal to the lost barrels in excess of the Loss Allowance multiplied by the then crude oil barrel price of WTI Midland (ARGUS). While Terminal Owner has care, custody and control of the Product pursuant to Section 7.1, Terminal Owner shall be responsible for securing the Product and protecting the Product against loss (above any Loss Allowance) or theft, and any such loss or theft shall not be the basis of a Force Majeure claim by Terminal Owner under this Agreement. Terminal Owner shall indemnify and hold harmless the Customer Parties from and against any Liabilities arising out of, incident to, or in connection with (a) the loss of Product in excess of the Loss Allowance at the Terminal or otherwise due to the acts or omissions of Terminal Owner, or (b) any contamination, damage, degradation or improper transloading of Product at the Terminal; provided, however, that the limit of the indemnification shall be the Loss Credit given to Customer as provided in this Section.

7.3 Demurrage. Terminal Owner shall be responsible for demurrage, standby, delay and similar charges related to the Services incurred by Customer Parties provided under this Agreement for railcars and trucks if the applicable delay resulted from the acts or omissions of any of the Terminal Owner Parties.

7.4 No Security Interest. Unless Customer has defaulted in its payment obligations under this Agreement and such default is not cured, Terminal Owner, for itself and all Terminal Owner Parties, shall not create, incur or suffer to exist any pledge, security interest, lien, levy or other encumbrance of or upon any of the Product delivered to the Terminal or upon the Customer Terminal Modifications. If Terminal Owner does, it shall indemnify, defend and hold harmless the Customer Parties from and against any such pledge, security interest, lien, levy or other encumbrance. Unless Terminal Owner has defaulted in its obligations under this Agreement and such default is not cured, Customer shall not create, incur or suffer to exist any pledge, security interest, lien, levy or other encumbrance of or upon the Terminal (other than with respect to the Customer Terminal Modifications) in connection with this Agreement. If Customer does, it shall indemnify, defend and hold harmless the Terminal Owner from and against any such pledge, security interest, lien, levy or other encumbrance.

ARTICLE 8
TERM; REMEDIES

8.1 Term. Subject to early termination pursuant to this Article 8, the term of this Agreement shall commence on the Effective Date and shall continue until January 1, 2020 (the "Initial Term"). At Customer's election, the term may be renewed and extended for successive

three (3) month periods (each such period, an "Extended Term") by written notice from Customer to Terminal Owner at least sixty (60) Days prior to the expiration of the Initial Term or any Extended Term, as applicable (such Initial Term and any Extended Term(s) are herein collectively, the "Term").

8.2 Termination Due to Failure of Conditions. This Agreement may be terminated at any time prior to the Target Terminal Operations Commencement Date by either Customer or Terminal Owner, by the terminating Party's written notice of termination to the other Party, if all conditions set forth below in this Section 8.2 to such terminating Party's obligations have not been fulfilled by the Target Terminal Operations Commencement Date (as it may be extended by the Parties in writing), unless the failure to so fulfill by such time is due to an uncured breach of this Agreement by the Party seeking to terminate.

(a) Conditions to Customer's Obligations. All obligations of Customer under this Agreement from and after the Terminal Operations Commencement Date are subject to the fulfillment, prior to or on the Target Terminal Operations Commencement Date, of each of the following conditions, any or all of which may be waived in whole or in part by Customer:

(i) Compliance with Representations, Warranties and Agreements. The representations and warranties made by Terminal Owner in this Agreement shall have been true and correct in all material respects as of the Effective Date and as of the Target Terminal Operations Commencement Date with the same force and effect as if such representations and warranties were made at and as of the Target Terminal Operations Commencement Date, except with respect to those representations and warranties specifically made as of an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). Terminal Owner shall have performed or complied in all material respects with all material agreements, terms, covenants and conditions required by this Agreement to be performed or complied with by Terminal Owner prior to or at the Target Terminal Operations Commencement Date, including Terminal Owner's full cooperation with Customer during the Phase I Project, except as specifically provided to the contrary in this Agreement.

(ii) Necessary Company Actions. Terminal Owner shall have taken any and all requisite company actions and other steps and secured any other company approvals, necessary to authorize and consummate this Agreement and the transactions contemplated hereby.

(iii) Regulatory Approvals. The Regulatory Approvals shall have been obtained and are effective.

(iv) No Litigation. No action shall have been taken, and no statute, rule, regulation or order shall have been promulgated, enacted, entered or enforced by any Governmental Authority or by any court, including the entry of a preliminary or permanent injunction, that would make this Agreement or the transactions contemplated hereby illegal, invalid or unenforceable. No action or proceeding before any court or Governmental Authority or by any other Person, in each case, as a result of any Third Party action, shall be threatened, instituted or pending that would reasonably be expected to result in any of the consequences referred to in the preceding sentence.

(v) SPCC & HSE Compliance. Terminal Owner shall have in place an SPCC plan for the Terminal that is reasonably satisfactory to Customer Parties, and shall, upon request, provide to Customer and Customer Parties all HSE and related documentation and maintain practices necessary for Customer to obtain Customer Parties' approval of use of the Terminal.

(vi) Easement. The easement described in Section 2.5 hereof for Customer's benefit shall have been obtained by Target Terminal Operations Commencement Date .

(b) Conditions to Terminal Owner's Obligations. All obligations of Terminal Owner under this Agreement from and after the Terminal Operations Commencement Date are subject to the fulfillment, prior to or on the Target Terminal Operations Commencement Date, of each of the following conditions, any or all of which may be waived in whole or in part by Terminal Owner:

(i) Compliance with Representations, Warranties and Agreements. The representations and warranties made by Customer in this Agreement shall have been true and correct in all material respects as of the Effective Date and as of the Target Terminal Operations Commencement Date with the same force and effect as if such representations and warranties were made at and as of the Target Terminal Operations Commencement Date, except with respect to those representations and warranties specifically made as of an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). Customer shall have performed or complied in all material respects with all material agreements, terms, covenants and conditions required by this Agreement to be performed or complied with by Customer prior to or at the Target Terminal Operations Commencement Date, including the Phase I Project, except as specifically provided to the contrary in this Agreement.

(ii) Necessary Company Actions. Customer shall have taken any and all requisite company actions and other steps and secured any other company approvals, necessary to authorize and consummate this Agreement and the transactions contemplated hereby.

(iii) Regulatory Approvals. The Regulatory Approvals shall have been obtained and are effective.

(iv) No Litigation. No action shall have been taken, and no statute, rule, regulation or order shall have been promulgated, enacted, entered or enforced by any Governmental Authority or by any court, including the entry of a preliminary or permanent injunction, that would make this Agreement or the transactions contemplated hereby illegal, invalid or unenforceable. No action or proceeding before any court or Governmental Authority or by any other Person, in each case, as a result of any Third Party action, shall be threatened, instituted or pending that would reasonably be expected to result in any of the consequences referred to in the preceding sentence.

8.3 Remedies for Default. Except as otherwise specifically provided for under the terms of this Agreement, if either Party fails to perform any of the representations, warranties, covenants or other obligations imposed on it by this Agreement in any material respect (the "Defaulting Party"), then the Party to whom the covenant or obligation was owed (the "Non-Defaulting Party") may (without waiving any other remedy for breach hereof, each of which is

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hereby reserved), notify in writing the Defaulting Party, stating specifically the nature of the default (the "Default Notice"). The Defaulting Party will have thirty (30) Days after receipt of the Default Notice (the "Cure Period") in which to (i) remedy the cause or causes stated in the Default Notice, (ii) provide adequate security satisfactory to Non-Defaulting Party to fully indemnify the Non-Defaulting Party for any and all consequences of the breach, or (iii) to dispute the claim of breach in good faith. If the Defaulting Party either cures the default or provides such adequate security within the Cure Period, then this Agreement shall remain in full force and effect. If the Defaulting Party fails to timely cure such default or to timely provide such adequate security, then, without prejudice to its other remedies under this Agreement, at law or in equity, the Non-Defaulting Party may suspend the performance of its obligations under this Agreement or terminate this Agreement immediately upon giving written notice of such suspension or termination to the Defaulting Party. In the event of any Terminal Owner uncured default, Customer (or its designee) may, at its option, without prejudice to its other remedies under this Agreement, at law or in equity, perform the Services by whatever method Customer reasonably deems expedient, and in such case, Terminal Owner shall be liable to Customer for Customer's reasonable direct damages and costs of cover and performing the Services, if applicable. The effective date of any termination of this Agreement under this Section 8.3 shall be the date established in the notice of such termination delivered by the Non-Defaulting Party exercising its termination right hereunder.

8.4 Termination for Extended Force Majeure. By 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 or (b) sixty (60) Days in any one hundred and twenty (120) consecutive Day period. Following 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).

8.5 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 8.1, Section 8.2, Section 8.3 or Section 8.4, and except as provided in Section 8.3, no Party to this Agreement shall have any further liability or obligation under or in respect of this Agreement, except that the provisions of this Agreement that by their nature survive its termination (including property rights, indemnities, damage limitations, waivers, releases, warranties, Permits, confidentiality and governing law provisions) shall remain applicable and survive such termination and remain in force and effect; provided, however, that the termination of this Agreement shall not (a) relieve any Party from any expense, liability or obligation or remedy therefor that has accrued or attached prior to the date of such termination, nor (b) defeat or impair the right of any Party to pursue such relief as may otherwise be available to it on account of any breach of this Agreement or any of the representations, warranties, covenants or agreements contained in this Agreement by the other Party.

8.6 Specific Performance and Declaratory Judgments. Damages in the event of breach of this Agreement by a Party hereto may be difficult, if not impossible, to ascertain. Therefore, each Party, in addition to and without limiting any other remedy or right it may have, will have the right to seek a declaratory judgment and will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the Parties hereto hereby waives any and all defenses

it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any Party from pursuing any other rights and remedies at law or in equity that such Party may have.

8.7 Cumulative Remedies. Except as otherwise expressly stated in this Agreement, the remedies provided under this Agreement are cumulative and in addition to any other rights or remedies either Party may have now or that may subsequently be available at Applicable Law, in equity, by statute, in any other agreement between the Parties, or otherwise. Subject to the express limitations in Section 10.6 hereof, nothing contained in the Agreement shall preclude either Party, in its sole discretion, from (i) enforcing any or all of its rights or remedies against the other Party for any breach of this Agreement by that other Party or (ii) seeking any injunctive relief necessary to prevent the other Party from breaching its obligations under the Agreement or to compel the other Party to perform its obligations. No election of remedies shall be required or implied as a result of a Party's decision to avail itself of a remedy.

8.8 Reinstatement after Termination. If this Agreement is terminated (other than due to Customer's breach), and Terminal Owner plans to utilize or utilizes the Terminal for the purpose of providing services similar to the Services under this Agreement, then, Terminal Owner shall notify Customer in writing prior to the commencement of such services (an "Alternative Service Notice"), detailing the anticipated arrangement or contract ("Alternative Service"). Any such arrangement or contract for Alternative Service by Terminal Owner shall only be permitted if made expressly subject to Customer's rights under this Section 8.8. Customer shall have thirty (30) Days following receipt of an Alternative Service Notice to elect whether to reinstate this Agreement under an Extended Term to commence on the date set forth in such Customer election (to be a date no later than sixty (60) Days following the date of such election). Failure by Customer to respond within such time period shall be deemed an election not to reinstate this Agreement; provided, however that at the expiration of such Alternative Service, Customer shall have the right to reinstate this Agreement. If Customer elects to reinstate this Agreement, the arrangement that is the subject of the Alternative Service Notice shall not be permitted and shall be cancelled promptly, and this Agreement shall be reinstated in accordance with its terms. Any reinstatement of this Agreement would be subject to the Customer's rights under this Section 8.8.

ARTICLE 9
ASSIGNMENT AND TRANSFER

9.1 Assignment.

(a) Except as specifically otherwise provided in this Agreement, and subject to Section 9.2 and Section 9.3, no Party shall have the right to assign its rights and obligations under this Agreement (in whole or in part) to another Person except with the prior consent of the other Party, which consent may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, a Party may assign its rights and obligations under this Agreement to an Affiliate of such Party without the consent of the other Party; *provided* that (i) such Person assumes in writing the obligations of the assigning Party under this Agreement reasonably acceptable to the non-assigning Party, (ii) such assignment is made subject to this Agreement, and (iii) the assigning Party shall not be released from any of its obligations under this Agreement without the consent of the non-assigning Party. Any assignment in violation of this Section 9.1 shall be void *ab initio*.

(b) Except as provided in (a) above, nothing in this Section 9.1 shall prevent or restrict Customer's members or owners from transferring their respective interests (whether equity or otherwise and whether in whole or in part) in Customer without Terminal Owner's prior consent, and nothing in this Section 9.1 shall prevent or restrict Terminal Owner's members or owners from transferring their respective interests (whether equity or otherwise and whether in whole or in part) in Terminal Owner without Customer's prior consent. However, if a change of Control of a Party gives rise to a reasonable basis for insecurity on the part of the other Party, such change of Control may be the basis for a request of adequate assurance of performance. Each Party shall have the right without the prior consent of the other Party to (i) mortgage, pledge, encumber or otherwise impress a lien or security interest upon its rights and interest in and to this Agreement, and (ii) make a transfer pursuant to any security interest arrangement described in (i) above, including any judicial or non-judicial foreclosure and any assignment from the holder of such security interest to another Person; provided, in each case, such arrangement or action shall only be permitted if it is expressly subject to and subordinated to the terms of this Agreement.

9.2 Right of First Offer (ROFR).

(a) This Section 9.2 shall apply to any sale, assignment, transfer or disposition of the Terminal or any of the Terminal assets in (i) a singular transaction separate and apart from other non-Terminal assets or interests or (ii) a transaction where the Terminal or such Terminal assets comprise more than fifty percent (50%) of the aggregate value of such transaction (each, a "Subsequent Transfer") by Terminal Owner to any Person that is not an Affiliate of Terminal Owner from the Effective Date until the date that is five (5) years following the end of the Term (such period, the "ROFR Period"); *provided* that any sale, assignment, transfer or disposition to an Affiliate of Terminal Owner shall only be made expressly subject to the restriction in this Section 9.2 with such Affiliate agreeing in writing to be bound by such restriction and *provided further* that a Subsequent Transfer includes those sales, assignments, transfers or dispositions for which a contractual agreement was executed within the ROFR Period, even if such transfer is not consummated until after the ROFR Period.

(b) Once the final terms and conditions of a Subsequent Transfer have been fully negotiated, Terminal Owner shall give the Customer a written notice (the "ROFR Notice") stating the assets to be transferred (the "Subsequently Transferred Interest"), and all such final terms and conditions as are relevant to such Subsequent Transfer, together with a copy of all instruments or relevant portions of instruments establishing such terms and conditions. Customer shall have the right, but not the obligation, to elect, in its sole discretion, to acquire such Subsequently Transferred Interest on the terms and conditions set forth in the ROFR Notice. The ROFR Notice shall constitute a binding offer (the "ROFR Offer") by Terminal Owner to sell, assign, transfer and dispose to Customer the Subsequently Transferred Interest at the price and upon the terms specified in the ROFR Notice and such offer shall be irrevocable for thirty (30) Days following receipt of the ROFR Offer by Customer. In the event that the sale price to be paid for the Subsequently Transferred Interest by a proposed bona fide third-party purchaser consists of or includes properties or assets other than cash, the target price to be paid by Customer shall be equal to the fair market value of such non-cash consideration, as reasonably determined by the Parties, plus the amount of any cash consideration. If the Parties are unable to agree on the fair market value of such non-cash consideration, then the fair market value thereof shall be determined by an independent third-party appraisal, the cost of which will be shared equally by the Parties

challenging the proposed fair market value. The independent third-party appraiser who conducts such appraisal shall be selected by the mutual agreement of the Parties. Customer (or its designated Affiliate) may accept such ROFR Offer and acquire all of the Subsequently Transferred Interest by giving written notice of the same to Terminal Owner within such thirty (30) Day period. The failure by Customer to so notify Terminal Owner within such thirty (30) Day period shall be deemed an election by Customer not to accept such ROFR Offer.

(c) If Customer accepts the ROFR Offer, then Terminal Owner and Customer shall cooperate to consummate the Subsequent Transfer to Customer (or its designated Affiliate) as promptly as practicable following such acceptance.

(d) If Customer does not accept the ROFR Offer, then Terminal Owner may transfer all, but not less than all, of the Subsequently Transferred Interest at any time within one hundred eighty (180) Days following the end of the thirty (30) Day period that Customer had to accept the ROFR Offer. Any such Subsequent Transfer shall be (i) at a price not less than the price set forth in the ROFR Notice and (ii) upon such other terms and conditions not, in the aggregate, more favorable to the acquiring party than those specified in the ROFR Notice. If Terminal Owner does not consummate such Subsequent Transfer on such terms within such one hundred eighty (180) Day period, the Subsequent Transfer shall again become subject to the right of first offer set forth in this Section 9.2.

(e) If Terminal Owner structures a Subsequent Transfer as a merger or sale of equity interests, such Subsequent Transfer shall be subject to the restrictions in this Section 9.2; *provided* that the restrictions contained in this Section 9.2 shall not apply to any such indirect transfer that is (i) a transaction involving a merger or other business consolidation of Terminal Owner's ultimate parent entity with a Third Party or a public securities offering; or (ii) an acquisition with a Third Party in which the assets subject to such Subsequent Transfer were included in a divestiture package and the allocated value of such assets does not constitute more than twenty-five percent (25%) of the aggregate value of the acquisition.

9.3 Covenant Running with the Land. Any transfer of Terminal Owner's interests in the Terminal or any of the land on which the Terminal is located shall be subject to Customer's rights under this Agreement. This Agreement is (a) a covenant running with the Terminal and the land described on Exhibit A-2 hereto to the extent Terminal Owner is able to grant such a covenant with respect to the land, it being recognized that Terminal Owner is a lessee of the land and owns no fee interest in the land; and (b) binding on and enforceable by Customer against Terminal Owner and its successors and assigns and their respective right, title and interest in and to the Terminal and the land described on Exhibit A-2 hereto, and as a benefit to Customer, its successors and assigns. If Terminal Owner sells, transfers, conveys, assigns, grants or otherwise disposes of all or any interest in such Terminal or land, then any such sale, transfer, conveyance, assignment, or other disposition shall be expressly subject to this Agreement and expressly state as such in any instrument of conveyance. Terminal Owner hereby authorizes Customer to record a memorandum of this Agreement in the real property records of the relevant county where the Terminal is to be located. The Parties agree that until Customer provides notice to the contrary, all payment terms and pricing information shall remain confidential and be redacted from any filings in the real property records.

ARTICLE 10
INDEMNIFICATION; DAMAGES LIMITATION

10.1 Duty to Indemnify Customer Parties. To the fullest extent permitted by Applicable Law, subject to Section 10.12 and except as otherwise provided in this Agreement, TERMINAL OWNER HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER PARTIES from and against any and all Liabilities (inclusive of claims made by or Liabilities of a Third Party) for any (a) injury or death of persons, (b) damage, loss, or injury to any property, and (c) pollution or threat of pollution from the Terminal, in each case, directly or indirectly arising out of, incident to, or in connection with performing or failure to perform Terminal Owner's obligations under this Agreement, **EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE OUT OF THE GROSS NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY BY ANY MEMBER OF CUSTOMER PARTIES.**

10.2 Duty to Indemnify Terminal Owner Parties. To the fullest extent permitted by Applicable Law, subject to Section 10.1 and except as otherwise provided in this Agreement, CUSTOMER HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS TERMINAL OWNER PARTIES from and against any and all Liabilities (inclusive of claims made by or Liabilities of a Third Party) for any (a) injury or death of persons, (b) damage, loss, or injury to any property (excluding Product loss or damage), and (c) pollution or threat of pollution from the Terminal, in each case, directly or indirectly arising out of, incident to, or in connection with performing or failure to perform Customer's obligations under this Agreement, **EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE OUT OF THE GROSS NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY BY ANY MEMBER OF TERMINAL OWNER PARTIES.**

10.3 Term of Indemnity. The provisions of this Article 10 and any other indemnification provisions set forth in this Agreement shall survive the termination or expiration of this Agreement.

10.4 Express Negligence. **THE RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS OBLIGATIONS PROVIDED FOR IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT THE LIABILITIES, LOSSES, COSTS, EXPENSES AND DAMAGES IN QUESTION AROSE OR RESULTED SOLELY OR IN PART FROM THE GROSS, SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR VIOLATION OF LAW OF OR BY ANY INDEMNIFIED PARTY. CUSTOMER AND TERMINAL OWNER ACKNOWLEDGE THAT THIS STATEMENT COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS "CONSPICUOUS."**

10.5 Notice and Defense. A party indemnified hereunder shall, as soon as practicable after receiving notice of any suit brought against it within this indemnity, furnish to the indemnifying party the full particulars within its knowledge thereof and shall render all reasonable assistance requested by the indemnifying party in the defense of any Liabilities. Each indemnified party shall have the right but not the duty to participate, at its own expense, with counsel of its

own selection, in the defense and/or settlement thereof without relieving the indemnifying party of any obligations hereunder; provided, however, the indemnifying party shall have control over the defense and settlement as long as the settlement does not impose any obligations on the indemnified party. Any claim for indemnification by a member of Customer or Terminal Owner's respective Group may only be brought by Customer or Terminal Owner, as applicable, on behalf of such member seeking indemnification.

10.6 No Consequential Damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER TERMINAL OWNER NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY MEMBER OF THE OTHER'S GROUP, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND THE OTHER PARTY'S GROUP), FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOST PROFITS, WHICH ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF WHETHER IN CONTRACT, TORT OR OTHERWISE; PROVIDED, HOWEVER, THAT THE LIMITATION ON LIABILITY SET FORTH IN THIS SECTION 10.6 SHALL NOT LIMIT EITHER PARTY'S RESPECTIVE INDEMNITY OBLIGATIONS HEREUNDER THIS AGREEMENT FOR ANY LIABILITIES OCCASIONED BY THIRD PARTY CLAIMS, AS EXPRESSLY PROVIDED IN THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT RECOVERY OF THE ACTUAL DIRECT DAMAGES DESCRIBED IN SECTION 6.4 OR SECTION 8.3 SHALL NOT BE PRECLUDED BY THIS SECTION 10.6.**

ARTICLE 11
INSURANCE

11.1 Each Party shall procure and maintain, at its sole expense, policies of insurance (with solvent insurers rated by A.M. Best Company A-VI or higher) set forth in Exhibit D. The insurance provisions of this Agreement, including the minimum required limits of Exhibit D are intended to assure that certain minimum standards of insurance protection are afforded and the specifications herein of any amount or amounts shall be construed to support but not in any way to limit Parties' liabilities and indemnity obligations as specified elsewhere in this Agreement. All required insurance policies shall be endorsed to cover contractual liabilities insuring the indemnifications contained in this Agreement.

11.2 In addition to the insurance required under Section 11.1, Terminal Owner shall procure and maintain at its sole expense a pollution legal liability ("PLL") policy providing coverage for remediation of environmental contamination at the Terminal, for the costs of responding to a spill or release of oil or hazardous materials at or from the Terminal, and for personal injury and property damage claims arising from environmental conditions associated with Terminal operations. The PLL policy shall be in a form reasonably acceptable to Customer, shall name the Customer and its Group as an additional insured, and shall be extended and renewed as necessary to provide coverage that extends for a minimum of two (2) years following the Term, as it may be extended. The PLL policy shall provide for a self-insured retention of not more than $250,000 and for policy limits of not less than $5,000,000.

11.3 All insurance carried by either Party (which insurance is in any way related to the Services), whether or not required by this Agreement, shall, but only to the extent of the risk and liabilities assumed by such Party under this Agreement:

(a) Name the other Party's Group as additional insured (except for worker's compensation/employer's liability or professional liability policies (with such additional insured coverage not being restricted to the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent);

(b) Waive subrogation as to the other Party's Group; and

(c) Be primary and non-contributory to any insurance of the other Party's Group.

11.4 Although the scope of each Party's insurance obligations is defined by reference to the risks and liabilities assumed under this Agreement, the insurance provisions of this Agreement are, to the extent required to maximize their effectiveness, (a) separately and independently enforceable, and (b) distinct and severable from, and shall not in any way limit any release, protect, defense, indemnity or hold harmless obligations in this Agreement.

11.5 The insolvency, liquidation, bankruptcy, or failure of any insurance company providing insurance for either Party, or failure of any such insurance company to pay claims accruing, shall not be considered a waiver of, nor shall it excuse such Party from complying with, any of the provisions of this Agreement.

11.6 Each Party will promptly provide oral and written notice to the other Party of any accidents or occurrences resulting in injuries to persons or property in any way arising out of or related to the Services and/or occurring on or near the Terminal. For the purpose of this subsection, "promptly" requires oral notification to the other Party within two (2) hours of when the incident occurred.

11.7 Unless specific, prior, written approval is obtained from the other Party, a Party may not self-insure any of its obligations under this Agreement. Where approved, neither Party's decision to self-insure shall in any way act as a prejudice against the other Party and its Group. All deductibles, self-insurance coverage or retentions shall be treated as coverage under an insurance policy, and each Party and its Group will have the same benefits and protection thereunder as though the self-insured Party had secured a policy from a separate insurer.

ARTICLE 12
AUDIT; INSPECTION

12.1 Audits. Customer will have the right, upon reasonable notice, to review for compliance with the terms of this Agreement, (a) the movement of Customer's or Customer's third party customers' Product into, through and out of the Terminal, (b) the relevant portion of all books, records, and information kept by or on behalf of Terminal Owner that reasonably relate to Customer's rights and obligations under this Agreement, and (c) any fees and/or costs charged by Terminal Owner pursuant to this Agreement, except for information subject to attorney-client privilege or confidential information associated with the Terminal's personnel. Terminal Owner

shall retain all such books and records for a period of four (4) years from the date the applicable Services are rendered hereunder, or such greater period as required by Applicable Law. Customer may audit such books and records at Terminal Owner's locations where such books and records are stored. Any such audit will be at Customer's expense and will take place on Business Days and during normal business hours. Any and all information, audits, inspections and observations made by Customer under this Section 12.1 shall: (i) be held in confidence, Customer exercising a degree of care not less than the care used by Customer to protect its own proprietary or confidential information that it does not wish to disclose; (ii) be restricted solely to those with a need to know and not to disclose it to any other person, those persons notified of their obligations with respect to the information; and (iii) be used only in connection with the operations that relate to this Agreement. Terminal Owner shall allow Customer's external auditors access to the Terminal, and shall provide any information or explanations requested by such external auditors that Customer would otherwise have access to pursuant to the terms and conditions of this Agreement.

ARTICLE 13
TAXES

13.1 Customer's Obligations. Customer shall pay, or cause to be paid, and shall indemnify and defend Terminal Owner from and against, all Taxes imposed by Applicable Law on Customer with respect to the Product Throughput under this Agreement. Notwithstanding anything in this Agreement to the contrary, Customer shall not be responsible for or be obligated to indemnify or defend Terminal Owner with respect to (i) all ad valorem, property or similar Taxes imposed by Applicable Law on Terminal Owner with respect to its ownership of the Terminal, (ii) any Income Taxes imposed on Terminal Owner, or (iii) any employment, payroll or similar Taxes imposed with respect to Terminal Owner's employees. Customer shall be responsible for paying any sales, use or similar Taxes imposed on the performance of the Services under this Agreement whether collected by Terminal Owner or otherwise.

13.2 Terminal Owner's Obligations. Terminal Owner shall pay, or cause to be paid, and shall indemnify and defend Customer from and against, (i) all ad valorem, property or similar Taxes imposed by Applicable Law on Terminal Owner with respect to its ownership of the Terminal, (ii) any Income Taxes imposed on Terminal Owner, and (iii) any employment, payroll or similar Taxes imposed with respect to Terminal Owner's employees. Notwithstanding anything in this Agreement to the contrary, Terminal Owner shall not be responsible for or be obligated to indemnify or defend Customer with respect to (i) any Income Taxes imposed on Customer, (ii) any employment, payroll or similar Taxes imposed with respect to Customer's employees, or (iii) any sales, use or similar Taxes imposed on the performance of the Services under this Agreement.

ARTICLE 14
FORCE MAJEURE

14.1 Declaration of Force Majeure Event. Except for Customer's obligation to pay Terminal Owner the monetary amounts provided for in Article 4 of this Agreement for Product actually Throughput at the Terminal, neither Party shall be liable to the other for any failure, delay, or omission in the performance of its obligations under this Agreement, or be liable for damages, for so long as and to the extent such failure, delay, omission, or damage arises directly or indirectly from a Force Majeure occurrence; however, the Term of this Agreement shall not be extended by

such period of Force Majeure delay. It is further agreed that the obligations of the Parties that are affected by such Force Majeure (except as provided above), shall be suspended without liability for breach of this Agreement during the continuance of the Force Majeure but for no longer period. The Party affected by Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure condition with all reasonable dispatch, shall give notice to the other Party of the termination of the Force Majeure, and shall resume performance of any suspended obligation promptly after termination of such Force Majeure.

14.2 Force Majeure. A "Force Majeure Event" or "Force Majeure" means 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, and includes, but is not limited to, the following events to the extent consistent with the definition above: an act of God; fire; flood; hurricane; explosion; accident; act of the public enemy; riot; sabotage; epidemic; quarantine restriction; strike, lockout, or other industrial disturbance or dispute or difference with workers; labor shortage; civil disturbance; inability to secure or delays in obtaining labor, materials, supplies, easements, surface leases, or rights-of-way, including inability to secure materials by reason of allocations promulgated by an authorized Governmental Authority, so long as such Party has used commercially reasonable efforts to obtain the same; compliance with a request, recommendation, act, rule, regulation or order of a Governmental Authority having or purporting to have jurisdiction; delays or failures by a Governmental Authority to grant Permits applicable to the Terminal so long as the Party experiencing the occurrence has used its commercially reasonable efforts to make any required filings with such Governmental Authority relating to such Permits; unanticipated or emergency shutdowns or turnarounds for maintenance and repair; freezing of wells or delivery facilities, partial or entire failure of wells, and other events beyond the reasonable control of a Party claiming suspension that affect the timing of production or production levels; the plugging of equipment, lines of pipe or other facilities; destruction, breakage and/or accidents to facilities including machinery, lines of pipe, wells or storage caverns or facilities; the necessity for making repairs to or alterations of pipelines; the unavailability, interruption, delay or curtailment of Product transportation services; or, any other cause or causes beyond the reasonable control of the Party claiming suspension, whether similar or not to those listed. The settlement of strikes or differences with workers shall be entirely within the discretion of the Party claiming suspension.

14.3 Notice of Force Majeure Event. If either Party finds it necessary to declare Force Majeure under this Agreement, then as soon as reasonably possible after the occurrence of Force Majeure, such Party shall immediately notify the other Party, first by telephone or e-mail, and then promptly by mail or overnight express courier, giving reasonably full details of such occurrence and its estimated duration. The cause of such Force Majeure occurrence shall, only if the affected Party deems it reasonable and economic, be remedied with all reasonable dispatch and the other Party shall be notified either of the date so remedied or the decision not to remedy as soon as practicable.

ARTICLE 15
GENERAL PROVISIONS

15.1 Certain Representations and Warranties. Each Party represents and warrants, as of the Effective Date, that (a) it is duly organized and validly existing under the laws of the

jurisdiction in which it is incorporated or formed; (b) it has all necessary power and authority to enter into and perform its obligations under this Agreement; (c) other than the Regulatory Approvals, which are required to be pursued under this Agreement, such Party is duly qualified or licensed to do business in all jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it make such qualification or licensing necessary and where failure to be so qualified or licensed would impair its ability to perform its obligations under this Agreement or would otherwise have a material adverse effect on the other Party; (d) its execution, delivery and performance of this Agreement has been duly authorized by all necessary action on its part and on the part of its Affiliates (as the case may require); (e) its execution, delivery and (provided the required Regulatory Approvals are obtained) performance of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result, by itself or with the giving of notice or the passage of time, in any violation of or default under, any provision of the articles of incorporation or bylaws of such Party or any material mortgage, indenture, lease, agreement or other instrument or any permit, concession, grant, franchise, license, contract, authorization, judgment, order, decree, writ, injunction, statute, law, ordinance, rule or regulation applicable to such Party or its properties; and (f) no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Third Party is required in connection with the execution and delivery of this Agreement by such Party or the consummation by such Party of the transactions contemplated hereby, except for filings required in order to obtain the required Regulatory Approvals, as described in Section 2.1.

15.2 Independent Contractor. This Agreement shall not be construed as creating a partnership, joint venture or establish a principal and agent relationship or any other similar relationship between Customer and Terminal Owner with respect to the subject matter hereof. It is understood and agreed that the relationship created by this Agreement is that of principal and independent operator and not that of principal and agent, master and servant, or employer and employee; and Terminal Owner and its employees and contractors shall not be the employees of Customer for any purpose whatsoever. Customer shall designate the work and services it desires to be performed under this Agreement and the ultimate results to be obtained, but shall defer to Terminal Owner as to the methods and details of performance in accordance with the terms and conditions of this Agreement.

15.3 Notices. Any notice, request, demand or communication required to be given by either Party under this Agreement shall be in writing. It may be delivered or sent to the attention of the contact name and address specified in this Agreement by courier service (which is deemed served when delivered) or fax (which is deemed served on the Business Day it was received with written confirmation made thereof) or by certified mail or its equivalent, postage prepaid, return receipt requested or postage prepaid United States Express Mail or its equivalent (which is deemed served the second Business Day after posting). Unless otherwise provided in this Agreement, Email notice is not sufficient. A Party may change the individual and/or address for notices by giving the other Party notice of such change in the manner set forth above.

If to Terminal Owner:

Maalt, LP
4413 Carey Street

Fort Worth, Texas 76119
Attention: Marty Robertson

With a copy to:

James Lanter
James Lanter, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

If to Customer:

Sequitur Permian, LLC
2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042
Attention: CFO

With a copy to:

Sequitur Permian, LLC
2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042
Attention: General Counsel

15.4 Compliance with Policies and Laws.

(a) HSE Policies. Terminal Owner shall establish, maintain and implement written health, safety and environmental ("HSE") policies, programs and protection and compliance systems covering operations conducted at the Terminal that conform in all material respects with generally accepted industry best practices (as amended from time to time, an "HSE Program"). Terminal Owner shall (a) monitor on a periodic basis its HSE performance and record performance data, (b) conduct an annual review of its HSE Program, and (c) correct any performance deficiencies identified and update the HSE Program as appropriate. Terminal Owner shall notify Customer as soon as reasonably practicable upon becoming aware of any HSE incident or any other material incidents, conditions or HSE matters that could reasonably be expected to adversely affect Terminal operations or Customer. Without limiting the foregoing, Terminal Owner shall maintain currently effective Spill Prevention, Control and Countermeasure ("SPCC") plans and programs, and shall promptly respond to any spill at the Terminal in a manner that (x) is consistent with the SPCC plans, (y) complies with Applicable Law, and (z) seeks to minimize, correct and eliminate any harm to the environment or human health and safety. Terminal Owner shall also comply with and shall cause its subcontractors and their respective employees and consultants to comply with all applicable Customer rules and regulations (as revised from time to time) known to Terminal Owner that relate to the safety and security of persons and property, protection of the environment, housekeeping and work hours.

(b) Compliance with Laws. Terminal Owner agrees that it will comply with, and shall cause its subcontractors and their respective employees, to comply with, all federal, state, and local employment laws and regulations having jurisdiction over the Services, and all other Applicable Law governing the employment relationship and practices and/or protection of the environment. Terminal Owner represents that each of its employees, agents, contractors, subcontractors involved on Terminal Owner's behalf in carrying out the Services is qualified to work pursuant to written documentation from the appropriate regulatory authorities of the United States.

15.5 Applicable Law. This Agreement is subject to all Applicable Law. If this Agreement or any provision of it is found contrary to or in conflict with any such Applicable Law, this Agreement shall be deemed modified to the extent necessary to comply with same.

15.6 Successors. The provisions of this entire Agreement shall be binding upon the respective successors and permitted assigns of the Parties.

15.7 No Third-Party Beneficiaries. This Agreement is entered into for the benefit of the Parties only, and except as may be specifically set forth herein, including the indemnity provisions, no other Person shall be entitled to enforce any provision hereof or otherwise be a third-party beneficiary hereunder.

15.8 Rebates Prohibited. Neither Party will pay any commission, fee, or rebate to an employee of the other Party or favor an employee of the other Party with any gift or entertainment of significant value.

15.9 No Brokers' Fee. Neither Party has incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement for which either Party or any of its Affiliates could be liable.

15.10 Waivers; Cumulative Rights. No term, covenant, condition, benefit or right accruing to a Party under this Agreement (or any amendment) shall be deemed to be waived unless the waiver is reduced to writing, expressly refers to this Agreement, and is signed by a duly authorized representative of such Party waiving compliance. No failure or delay in exercising any right hereunder, and no course of conduct or dealing, shall operate as a waiver of any provision of this Agreement or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

15.11 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CHOICE OF LAW PROVISIONS THAT WOULD REQUIRE APPLICATION OF THE SUBSTANTIVE LAWS OF ANOTHER JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW,

THE PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION OR LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE CONCERNING OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE THE TERMS.

15.12 Captions. The captions used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part thereof.

15.13 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be partially or completely unenforceable, this Agreement shall be deemed to be amended partially or completely to the extent necessary to make such provision enforceable, and the remaining provisions shall remain in full force and effect.

15.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document.

15.15 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties regarding the subject matters set forth herein. No variation, modification or change of the Agreement shall be binding upon either Party unless contained in a written instrument executed by a duly authorized representative of each of the Parties.

15.16 Survival. After termination or expiration of this Agreement, the provisions hereof that by their sense and context are intended to survive the expiration or other termination of the Agreement because they reasonably require some action or forbearance after termination or expiration (including, without limitation, the reinstatement, indemnity, hold harmless and similar obligations under this Agreement) shall so survive.

15.17 Publicity. Neither Party may make a press release or other public announcement concerning this Agreement, except to the extent that such press release or other public announcement is required by Applicable Law or rules and regulation of any governmental agency or any stock exchange, in which case, the disclosing Party shall prior to such disclosure (a) notify the other Party of the reasons or basis for such disclosure, (b) make the proposed disclosure available to other Party and (c) obtain the written consent of other Party with respect to the form of such proposed disclosure, which consent shall not be unreasonably withheld.

15.18 Construction. The following rules of construction will govern the interpretation of this Agreement: (a) "years" will mean calendar years unless otherwise defined; (b) "including" does not limit the preceding word or phrase; (c) section titles or headings do not affect interpretation; (d) "hereof," "herein," and "hereunder" and words of similar meaning refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement; (f) no rule of construction interpreting this Agreement against the drafter will apply; (g) references to Sections and Exhibits refer to Sections

and Exhibits of this Agreement unless otherwise indicated; (h) references to laws refer to such laws as they may be amended from time to time, and references to particular provisions of a law include any corresponding provisions of any succeeding law; (i) references to money refer to legal currency of the United States, unless otherwise specified; (j) the word "or" is not exclusive; (k) references to any Person includes references to such Persons successors and permitted assigns; and (l) the Exhibits attached hereto are hereby incorporated by reference and included as part of this Agreement.

15.19 Attorneys' Fees. In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation, to enforce any provision in this Agreement, the prevailing Party in such dispute shall be entitled to recover from the losing Party all fees, costs and expenses of enforcing any right of such prevailing Party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

15.20 Confidentiality. All non-public, confidential data and information exchanged by the Parties in connection with or under this Agreement and all pricing terms shall be maintained in strict and absolute confidence, and no Party receiving such data, information or terms ("Receiving Party") shall disclose, without the prior consent of the other Party, any such non-public, confidential data, information or pricing terms unless the release thereof is to Receiving Party's Affiliates, and the employees, owners, officers, directors, consultants, attorneys, agents, or representatives of Receiving Party and its Affiliates (collectively, "Representatives") on a clear need-to-know basis and subject to the confidentiality restrictions hereof, required by Applicable Law (including any requirement associated with an elective filing with a Governmental Authority) or the rules or regulations of any stock exchange on which any securities of the Parties or any Affiliates thereof are traded. Nothing in this Agreement shall prohibit the Parties from disclosing whatever information in such manner as may be required by Applicable Law; nor shall any Party be prohibited by the terms hereof from disclosing information acquired under this Agreement to any Representative or any financial institution or investors providing or proposing financing to a Party or to any Person proposing to purchase the equity in any Party or the assets owned by any Party. Notwithstanding the foregoing, the restrictions in this Section will not apply to data or information that (a) is in the possession of the Person receiving such information prior to disclosure by the other Party, (b) is or becomes known to the public other than as a result of a breach of this Agreement or (c) becomes available to a Party a non-confidential basis from a source other than the other Party, provided that such source is not bound by a confidentiality agreement with, or other fiduciary obligations of confidentiality to, the other Party. This Section will survive any termination of this Agreement for a period of twenty (24) Months from the end of the year in which the date of such termination occurred.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers effective for all purposes as of the Effective Date.

Terminal Owner:

Maalt, LP

By: _____
Name: Marty Robertson
Title: President + COO

ATBA

Customer:

Sequitur Permian, LLC

By: _____
Name: Michiel C. vd Bold
Title: President + COO

Exhibit A-1

Rail Terminal Facility

Terminal Facility Address:
Barnhart Loading Facility
44485 W. Hwy 67
Barnhart TX, 76930

Facility description:

Approximately 10,065 ft. of track within a leased (University Lands) site being approximately 2.8 Miles West of the town of Barnhart, being in Irion County, Texas. Rail facility includes #11 (115#) switches (2-mainline & 3-facility) to allow rail extension/access to an existing Texas Pacifico mainline track. Hardwood ties 8' x 6' with #115 lb. new rail with 3 flop over derails and concrete Xing panels. The facility accommodates 6,913 feet of track accessible for crude transloading operations, and includes access roadway from State Highway 67 and all associated drainage/dirt work required on the site. The site has 24/7 capability with all-weather roads and lighting.

Road Access:
Common use, Multi-Tenant Road to the Crude oil off load Terminal.
Hwy 67 access- turn-lanes/ acceleration lanes.

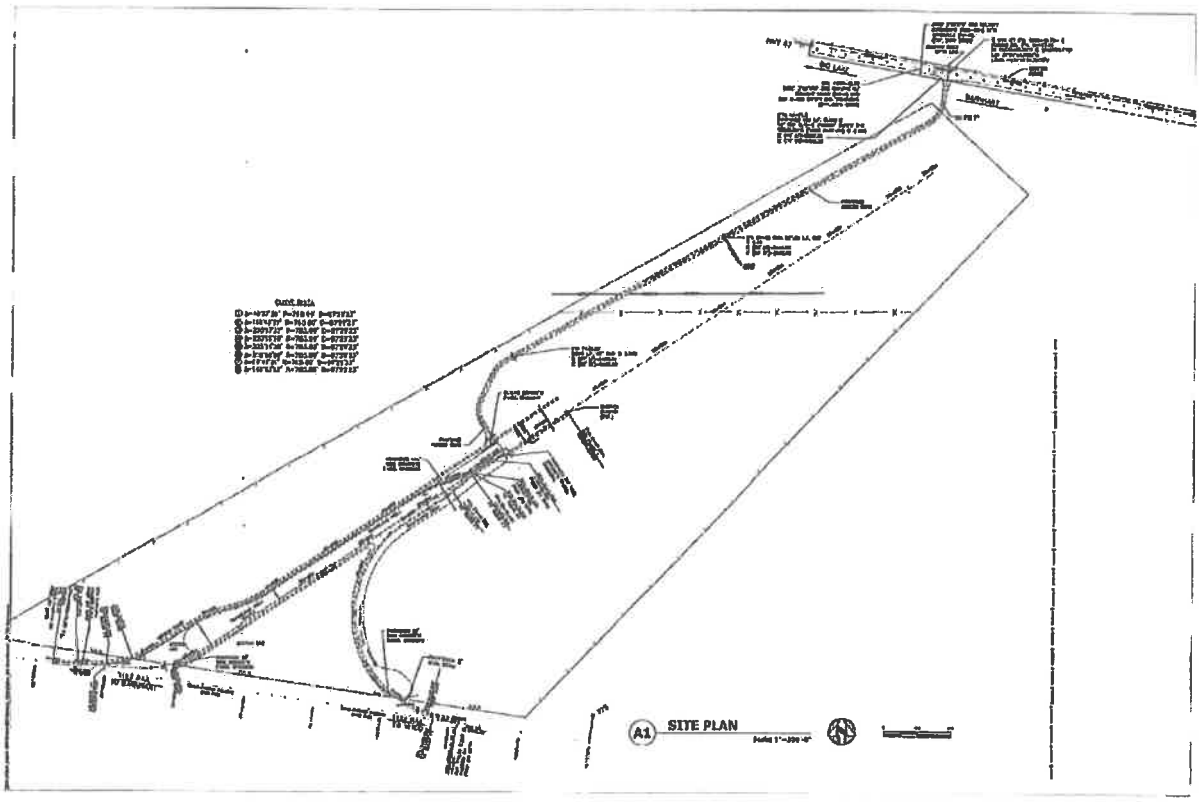


Exhibit A-1

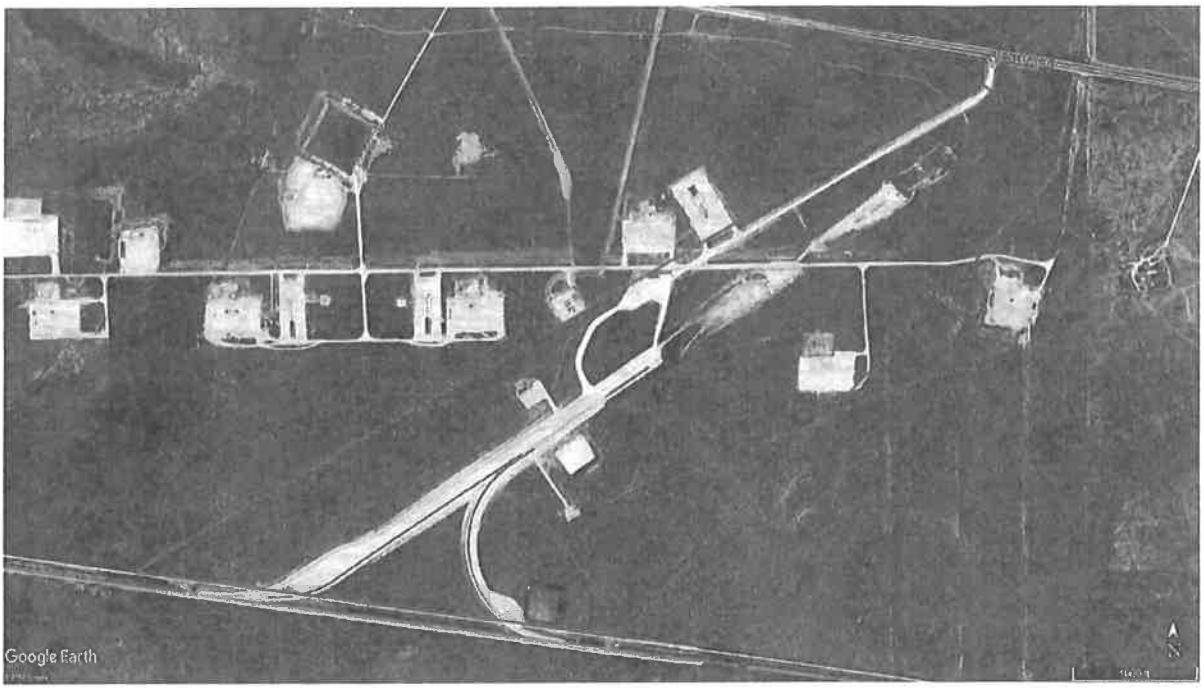


Exhibit A-1

Exhibit A-2

Land

Land description:

269.610 acres of land, more or less, lying in Sections 9, 10, 11, & 12, Block 43, University Lands, Irion County, Texas, as more fully shown below:

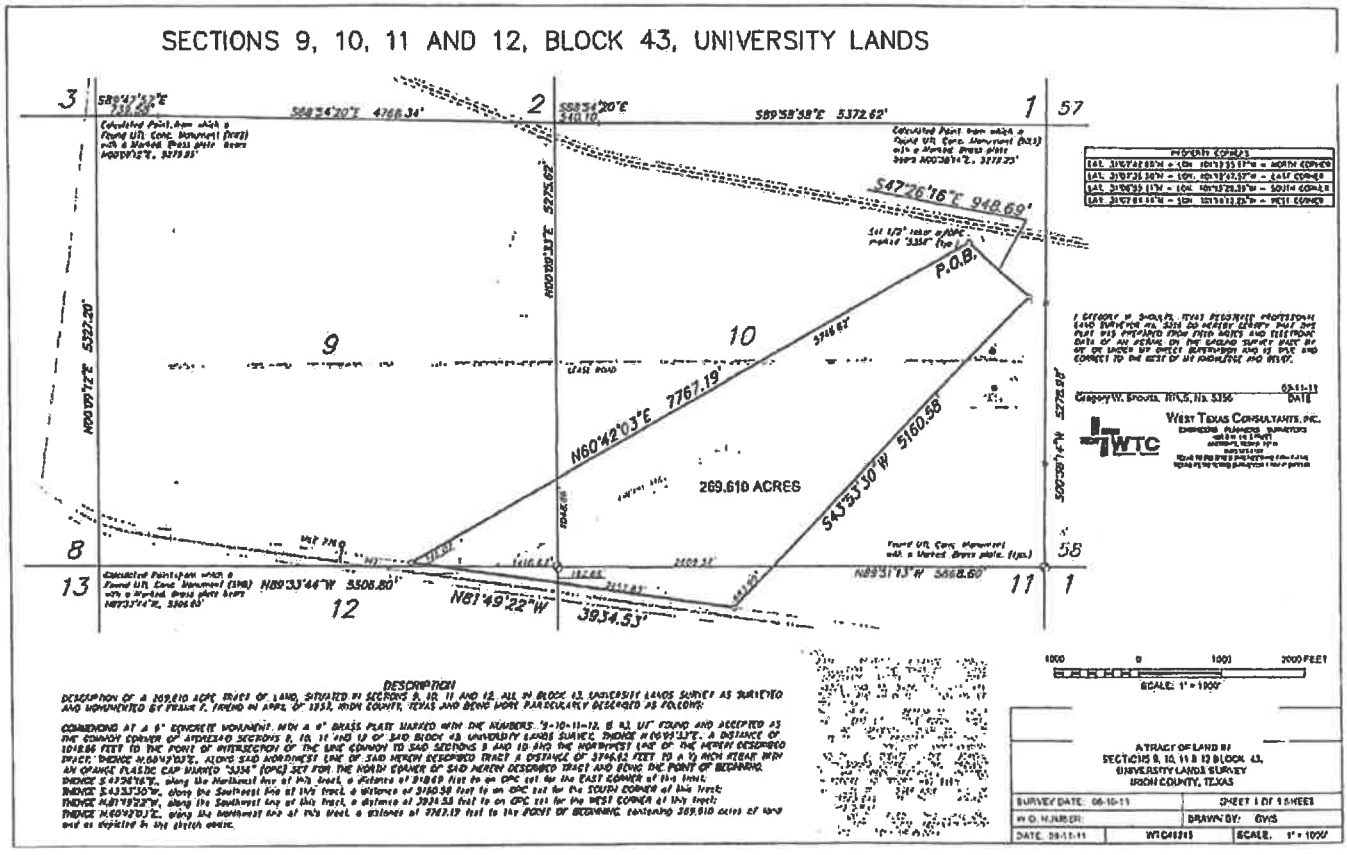


Exhibit B

Phase I Project

Customer will outfit the Terminal with the following items:

- Vent line for connection to trucks and railcars
- Obtain easement from University Lands for the vent lines
- Flare facility (including a flare, separator and a tank) connected to vent lines for gaseous hydrocarbon byproduct
- Transloaders sufficient to transfer Product from trucks (or pipeline in the event Phase II is implemented) onto railcars
- Hoses, valves and fittings to connect vent lines to trucks, railcars, and flare
- Fire extinguishers at manifolds

Exhibit C

Phase II Project

Customer will outfit the Terminal and land near the Terminal with the following items:

- Oil gathering pad with secondary containment, truck racks, charge pumps, electrification, vapor recovery unit, flare, scrubber and automation
- Obtain easements from University Lands for pipelines to the transloading area from nearby land
- Storage tanks with capacity of at least 20,000 barrels sufficient to store oil near the train loading area
- Pipelines connecting the storage tanks to the transloading area
- Fill manifolds tying in the pipelines to the transloaders will be made for transloaders

Exhibit D

Minimum Insurance Requirements

A. **Workers Compensation and Employers Liability (with Alternate Employer):**

Statutory requirements in states where operating, to include all areas involved in Services, but a minimum of.

Employers Liability	$1,000,000 Each Accident
	$1,000,000 Disease Each Employee
	$1,000,000 Disease Policy Limit

B. **Commercial General Liability (CGL):**

Occurrence Form

Each Occurrence	$1,000,000
General Aggregate	$2,000,000
Products-Completed operation aggregate	$2,000,000
Personal and injury	$1,000,000

Coverage to include: Bodily injury and property damage, including broad form property damage, products-completed operations, sudden and accidental pollution, blanket contractual specifically covering the indemnity obligations in this Agreement, severability of interests, actions over, independent contractor(s), personal injury (with contractual exclusion deleted where required by contract), XCU.

C. **Automobile Liability**

Bodily injury and property damage	$1,000,000 combined single limits
Owned, non-owned, and hired autos	per accident
With broadened pollution coverage,	
and MCS-90 endorsement (if carrying cargo)	

D. **Umbrella/Excess Liability** (over EL, CGL, and Auto)

Each Occurrence	$10,000,000

Aggregate	$10,000,000

F. **Property**

Terminal Owner shall provide first party/property insurance covering its own property in the amount of the replacement cost of the property.

Additional Requirements:

1. All insurance policies of Terminal Owner, in any way related to the Services and whether or not required by this Agreement, shall, but only to the extent of the risks and liabilities assumed hereunder: (i) name Customer Parties as additional insured (except for worker's compensation, employer's liability, OEE/COW, or professional liability policies) (with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted (a) to "ongoing operations," (b) to coverage for vicarious liability, or (c) to circumstances in which the named insured is partially negligent), (ii) waive subrogation against Customer Parties, and (iii) be primary and non-contributory to any insurance of Customer Parties.
2. Each Party shall have its policies endorsed to provide not less than thirty (30) Days prior notification in the event of non-renewal, cancellation or material change in the policies. Each Party shall be responsible for any deductibles or self-insured retentions stated in its policies.
3. Terminal Owner shall require the same minimum insurance requirements as listed above of all of its subcontractors will include the same indemnity requirements from each subcontractor. Terminal Owner shall be and responsible for any deficiencies in coverage or limits,
4. Each Party shall provide a certificate of insurance on a form satisfactory to the other Party (attaching appropriate copies of endorsements) and all carriers must have an A.M. Best rating of at least A-VI. Copies of certified policies shall be provided upon written request of a Party.
5. Completed operations coverage shall be maintained by Terminal Owner in favor of indemnitee(s) for a period of two (2) years after final payment to Terminal Owner; Customer Parties shall continue to be named as additional insured(s) during this time frame.
6. Insurance limits required above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella policy. Coverage provided under any excess or umbrella policy must be at least as broad as the coverage provided by the primary policy(s).
7. Nothing in this section shall be deemed to limit any Party's liability under this Agreement, and a Party's decision to self-insure shall work no prejudice on the other Party.
8. Neither the minimum policy limits of insurance required of the Parties nor the actual amounts of insurance maintained by the Parties under their insurance program shall operate to modify the Parties' liability or indemnity obligations in this Agreement.

From: Braden Merrill
To: mrobertson@vprop.com; Chris Favors
Cc: Mike van den Bold
Subject: Notice of Force Majeure
Date: Friday, December 7, 2018 7:16:26 PM
Attachments: image001.png
Notice of Force Majeure - Sequitur Permian - Maalt.pdf

Gentlemen,

Pursuant to Mike's and my conversations with Chris, please find the attached notice of Force Majeure. We have also sent physical copies to Marty and James Lantner via Fedex.

Please don't hesitate to reach out.

Best,
Braden Merrill
Vice President & Chief Financial Officer



Sequitur
ENERGY RESOURCES LLC

O:713-395-3008
F: 713-395-3099
C: 434-466-4294
bmerrill@sequiturenergy.com

Two Briarlake Plaza; 2050 West Sam Houston Pkwy South
Suite 1850; Houston, TX 77042

Sequitur
ENERGY RESOURCES LLC

December 7, 2018

Via email to mrobertson@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Marty Robertson

Via email to cfavors@vprop.com
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Chris Favors

Re: Notice of Force Majeure

Gentlemen:

Reference is made to that certain Terminal Services Agreement ("Agreement") dated August 6, 2018 between Sequitur Permian, LLC ("Customer") and Maalt, L.P. ("Terminal Owner") relating to the use of Terminal Owner's rail terminal facility located in Barnhart, Texas ("Terminal"). All capitalized terms not otherwise defined herein have the same meanings as in the Agreement.

Consistent with the ongoing discussions between our companies, and as you are already aware, there presently exists the following situation that is not within the Customer's reasonable control: the unavailability, interruption, delay, or curtailment of rail transportation services for the Product, despite continued efforts to procure such services ("Existing Force Majeure") to allow for the use of the Terminal for the intended purposes of the Agreement.

Therefore, Customer hereby notifies Terminal Owner of the Existing Force Majeure and hereby finds it necessary to declare Force Majeure under the Agreement. Customer currently anticipates that the Existing Force Majeure will continue for the foreseeable future.

Accordingly, pursuant to the Agreement, Customer is not liable for any failure, delay, or omission of performance arising directly or indirectly from the Force Majeure, and Customer's obligations affected by the Force Majeure, including but not limited to, the obligation to utilize the Terminal for the throughput of Product via rail, are hereby suspended.

Customer will keep Terminal Owner informed of any changes or developments in the status of the existing Force Majeure.

This notice is without prejudice to Customer's rights and remedies, all of which are hereby reserved.

Thank you for your attention to this matter.

Sequitur Permian, LLC
24 Smith Road, Suite 600 · Midland, Texas 79705
P.O. Box 50608 · Midland, Texas 79710
432·218·2001 · *f)* 888·400·4170

Two BriarLake Plaza · 2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042 · SequiturEnergy.com
713·395·3000 · *f)* 713·395·3099

Sequitur
ENERGY RESOURCES LLC

Sincerely,

Braden Merrill
CFO

Cc:

Via FedEx
James Lantner
James Lantner, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

Sequitur Permian, LLC
24 Smith Road, Suite 600 · Midland, Texas 79705
P.O. Box 50608 · Midland, Texas 79710
432·218·2001 · *f)* 888·400·4170

Two BriarLake Plaza · 2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042 · SequiturEnergy.com
713·395·3000 · *f)* 713·395·3099

Sequitur Permian, LLC
2050 W. Sam Houston Parkway S., Suite 2050
Houston, Texas 77042

February 8, 2019

Via email to mrobertson@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Marty Robertson

Via email to cfavors@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Chris Favors

Re: Termination of Terminal Services Agreement

Gentlemen:

Reference is made to (i) that certain Terminal Services Agreement ("Agreement") dated August 6, 2018 between Sequitur Permian, LLC ("Customer") and Maalt, L.P. ("Terminal Owner") relating to the use of Terminal Owner's rail terminal facility located in Barnhart, Texas ("Terminal") and (ii) Customer's letter to Terminal Owner dated December 7, 2018, declaring an existing Force Majeure Event ("Notice of Force Majeure Event"). All capitalized terms not otherwise defined herein have the same meanings as in the Agreement.

The Force Majeure Event described in the Notice of Force Majeure Event has continued for a period of sixty (60) consecutive Days. Accordingly, pursuant to Section 8.4 of the Agreement, Customer hereby notifies Terminal Owner that Customer has elected to terminate the Agreement effective as of the date of this letter. As provided in Section 8.4, Customer shall have no further obligations to Terminal Owner under the Agreement (including, but not limited to, with respect to any Minimum Volume Commitment).

Additionally, pursuant to Section 2.7 of the Agreement, upon termination of the Agreement, Customer, at its sole cost and expense, is permitted to remove any equipment and facilities constituting the Customer Terminal Modifications. As required under the Agreement, Terminal Owner shall provide Customer access to the Terminal to commence and complete the removal of the Customer Terminal Modifications. Customer will be contacting Terminal Owner after the date hereof to (i) discuss the potential acquisition of the Terminal Owner's rights to the surface area and any other appurtenances or (ii) coordinate the removal process.

This notice is without prejudice to Customer's rights and remedies under the Agreement or otherwise, all of which are hereby reserved.

Thank you for your attention to this matter.

Sincerely,

Braden Merrill
CFO

Cc:

Via FedEx
James Lantner
James Lantner, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

CAUSE NO. 19-003

MAALT, LP,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	51st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

MICHAEL VAN DEN BOLD

November 21, 2019

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL VAN DEN BOLD, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 21st day of November, 2019, from 9:31 a.m. to 11:29 a.m., before Patricia Palmer, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Mr. Matthew A. Kornhauser, Hoover Slovacek LLP, 5051 Westheimer Road, Suite 1200, Houston, Texas Houston, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

APPEARANCES

FOR THE PLAINTIFF:
Mr. James Lanter
JAMES LANTER, P.C.
560 North Walnut Creek, Suite 120
Mansfield, Texas 76063
817.453.4800
Jim.lanter@lanter-law.com

FOR THE PLAINTIFF:
Mr. Paul O. Wickes
WICKES LAW, PLLC
5600 Tennyson Parkway, Suite 205
Plano, Texas 75024
972.473.6900
Pwickes@wickeslaw.com

FOR DEFENDANT: Sequitur Permian, LLC
Mr. Matthew A. Kornhauser
Mr. Christopher J. Kronzer
HOOVER SLOVACEK, LLP
5051 Westheimer Road, Suite 1200
Houston, Texas 77056
713.977.8686
Kornhauser@hooverslovacek.com
Kronzer@hooverslovacek.com

ALSO PRESENT:
Mr. Daniel Alpizar, Videographer

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E-mail/Dated: 12/28/18

THE VIDEOGRAPHER: Today's date is November 21st, 2019. This is the video deposition of Michael Van Den Bold. The time is 9:32. We are on the record. The court reporter may now swear in the witness.

THE REPORTER: Are there any stipulations?

MR. KORNHAUSER: By agreement and we would like to read and sign, please.

MR. WICKES: Agreed.

MICHAEL VAN DEN BOLD,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. WICKES:

Q. All right sir, could you state your name for the record?

A. Michael Van Den Bold.

Q. Okay, Mr. Van Den Bold. My name is Paul Wickes and I represent Maalt, LP in this case, you understand that, correct?

A. Correct.

Q. And you understand you are here for a deposition related to a dispute about a terminal service agreement in Barnhart, Texas?

A. I do.

Q. All right. If you could, go ahead and just

state your -- your position with Sequitur and what you do.

A. I am the chief operations officer and president.

Q. Okay. And is there anyone that you report to?

A. I report to the CEO Scott Josey.

Q. Scott Josey?

A. Correct.

Q. Okay. And how long have you been with Sequitur?

A. We -- I am a founding partner and we founded it in 2011.

Q. Okay. Who are the other founding partners?

A. Scott Josey. Dalton Polasek, since retired. Mike McCullough, since retired, Charlie Odom and Larry Long.

Q. Okay. And have you always served in your role as chief operating officer or is that something you worked yourself into?

A. I don't remember the exact date, but approximately two years ago I was named chief operating officer and president.

Q. Okay. Both titles at the same time?

A. Correct.

Q. What titles did you hold before that?

essentially saying that it shouldn't have entered into the relationship for this transaction?
A. I am aware we made a counterclaim.
Q. Okay. From a factual standpoint, what do you contend that Vista or Maalt did that should cause it to have to pay Sequitur damages for electing to go forward with the contract?
A. Well, long before we even signed the TSA in our discussions with Maalt, you know, they made representations that they were rail experts, their employees had worked for the railroads, that they could help get a deal done, that they had relationships, they had the expertise, that they could help, you know, help coordinate and collaborate to get these contracts in place, to help get the deal done, and they weren't able to do things that they promised.
Q. Okay. I just want to get -- first off, from a time standpoint that all of the representations or statements that you are referencing were all -- they all preceded the signing of the terminal services agreement, correct?
A. Right, yes.
Q. Okay. All right.
A. And -- and even during the negotiations and even afterwards.

Q. Okay. And I've heard that they -- well, I shouldn't say I heard that. There has -- there has been some testimony that Maalt would make some introductions or Vista would make some introductions to folks within the industry to assist with -- assist Sequitur in obtaining transportation.
A. Is that a question?
Q. Yeah. Did they do that or do you know?
A. Yeah. No, they -- I mean, all throughout, I can remember even through November, December, they were making calls on our behalf trying to help facilitate getting a contract in place that we could rail that.
Q. Okay. When Vista or Maalt were making these statements or representations to you or to Sequitur, do you have a belief one way or the other if they were generally believed?
A. By us or them?
Q. By you -- or by them?
A. Yeah. I mean, they were making those statements. I genuinely believed that they -- they thought they could do that and we believed them.
Q. Okay. And that's what I was trying to get at. You know, because sometimes you will have a situation where somebody knows they are selling a bill of goods and some -- on the other situation you have someone who

Q. Okay. Did they promise to do anything other than help?
A. The -- the -- I mean, the promises they made is that they -- they were experts and knew the business, the rail by -- sand by rail, and had the relationships. And -- yeah they would help get us -- get this venture off the ground.
Q. Okay. And I guess the distinction I am trying to make is sometimes you hire a third-party and you enter into a contractual relationship, for like a third-merit logistics provider, and that third-party logistic provider contracts to provide you certain services regarding -- in this case, rail cars, rail transportation, that type of thing. Did Sequitur enter into any type of third-party logistics contractual arrangement with Maalt or Vista?
A. No, these were just verbal representations that they could do that.
Q. Okay. Was there ever any contractual arrangement made, verbal or oral even, that in return for X Vista and Maalt will get you rail cars, will get you rail transportation?
A. No it was always a collaborative effort that we would all work together to try to make this a successful JV.

says something, I think we can do this and it just turns out to be false in the end, and I think what you are saying it is the second?
A. Well, in this case it turned out to be false, they weren't able to help us get the deal done.
Q. Okay. But you don't have any real reason to believe that when folks at Maalt or Vista were saying, you know, to the extent we can help you we will, that they believed that they could help you?
A. Well, in hindsight I do believe there was some deception in some cases.
Q. In looking at the -- according to the time they made the statements, do you have any reason to believe at the time they made the statements they didn't believe the statements that what were saying was a fair representation?
MR. KORNHAUSER: Objection form.
THE WITNESS: Say again.
MR. WICKES: Sure. And I probably should've explained this to you earlier, he has a right to say objection form. Unless he instructs you not to answer then you answer it as best you can.
THE WITNESS: Okay. Repeat the question.
MR. WICKES: Yeah I am going to ask her to read it back if that's all right. And if when she reads

it back and it sounds terrible, I will ask it again, which is always a possibility.
(Requested portion read back.)
MR. KORNHAUSER: My form of objection is noted.
A. So the -- the example I will refer to is when Travis said a couple of days before we signed the TSA that they had somebody imminent.
MR. KORNHAUSER: You said Travis said, correct, Travis.
THE WITNESS: Travis, oh sorry. I stand correct.
A. Chris Favors said that they had somebody ready to sign the agreement and then, you know, out of discovery phase, we never seen any evidence that they had somebody.
Q. Any other instances where you felt like that at the time someone with Vista or Maalt was making a statement to Sequitur that they didn't believe that what they were saying was accurate?
A. Nothing comes to mind at this point.
Q. Okay. And -- and I want to go back and make sure I've got everything of the -- the general representations that are the basis for the counterclaim. One was that they are rail experts and that some of

their employees are former rail and worked for railroads?
A. Correct.
Q. Okay. The other was that they would assist in getting a deal done?
A. Correct.
Q. Okay. And getting a deal done, what all does that include?
A. Well, the getting the deal done, Sequitur needed an arrangement where somebody that had rail cars, that had rates and volumes and contracts with the railroads to get from Barnhart to the Gulf Coast.
Q. Okay. And during the -- all the way up until the notice of force majeure, did personnel with Maalt and Vista provide assistance when they could on leads for rail cars, rail transportation, contacts within the railroad industry, that type of thing?
A. They made phone calls and introductions to assist.
Q. Okay. Is there anything during the period from after the terminal services agreement to the notice of force majeure that Sequitur specifically asked Maalt or Vista to do that it did not do?
A. Nothing comes to mind at this point.
Q. Okay and I just want to -- I think for

replowing ground that I apologize. As I try to do this as little as possible, just so we're on the same page. You are not contending that Maalt or Vista promised to get rail cars, but they offered to help Sequitur or its agents in getting rail cars?
A. Yeah. My view is that this was a collaborative effort --
Q. Okay.
A. -- between Jupiter, Maalt and Sequitur to make this a profitable venture for everybody.
Q. Okay.
A. And...
MR. KORNHAUSER: You done.
MR. WICKES: Do you got more to say?
MR. KORNHAUSER: I just want to make sure. Yeah I just want to make sure the record is clear so, as lawyers it is sometimes hard to anticipate when a witness finish answering. So I just want to make sure you have an opportunity to give your answer and when you're done he'll ask another question.
MR. WICKES: Okay. Not a problem. I appreciate you stepping in. Sometimes my questions just stop mid sentence. And sometimes answers do that to us, it's just we are human.
Q. Okay. And by saying collaborative effort, is

it fair to say that what you mean is that if a deal got done for rail transportation and cars Maalt stood to benefit, Jupiter stood to benefit and Sequitur stood to benefit?
A. Right.
Q. And all of them to the extent they were to work towards that goal, they are all moving in the same direction?
A. I mean, we all had our responsibility to try and get a deal done. And unfortunately, it didn't happen.
Q. Okay. And from a contractual standpoint, what Maalt's responsibility was to provide the transporting service, correct?
A. Contractually, but I mean, verbally they also made representations that they would help get the other parts put together.
MR. WICKES: Yeah I am going to object as nonresponsive. And I am just doing that because my question was limited to contractually so.
THE WITNESS: Okay.
Q. And contractually Sequitur had an obligation to do the capital improvements there on the ground and then to provide or locate rail transportation and rail cars?
MR. KORNHAUSER: Objection, form.

Q. Okay. Was my statement not true?
MR. KORNHAUSER: Objection form.
Q. Let me just restate it.
A. Restate the question.
Q. Sequitur was dependent on its joint venture partners who was purchasing its crude to handle the logistic of getting the crude to the Gulf?
A. Correct.
MR. WICKES: Okay. If you could take a look at Exhibit 9, which is actually not there. It is going to be in this notebook.
MR. KORNHAUSER: Which number are we on?
MR. WICKES: Nine.
Q. Exhibit 9 is an -- is an e-mail to you from Mr. Merrill dated June 14th, 2018; is that right?
A. That's correct.
Q. Okay. Excuse me. He says, "Mike, I spoke with Vista on Monday about the difficulty of Shell and BP having secured" -- excuse me, "having" -- "were having securing good numbers from the railroad."
Do you know if the challenge, when he says good numbers, was getting firm numbers, numbers like set in stone or if it was getting good numbers that we liked from a profitability or a low cost standpoint?
A. I don't know. You would have to ask Braden.

Q. Okay. He then says he called them to tell -- I am going to start over because I don't know how to read. He called them to tell them that they were dealing with us and to give us the numbers we needed. Based on the prior sentence, I take that to say he, whoever he spoke with at Vista, called them, meaning the railroads, to tell them they were dealing with us, meaning Sequitur and to give us, Sequitur, the numbers. Is that the way you read it as well?
A. You would have to ask Braden.
Q. Okay.
A. I don't know exactly what he -- what he intended there.
Q. All right. Fair enough. It says, "I spoke with Ben at Shell and Carl at BP yesterday and both of them are still having difficulty getting the railroad to respond."
Did I read that correct?
A. Yep you did.
Q. Okay. So in June 14th, 2018, you were learning that there were some -- going to be some challenges in -- in getting rates and that type of thing from the railroads?
A. Correct.
Q. Okay. Jump down to the paragraph where it

starts out "Also."
A. All right.
Q. It says, "Also in talking with Ben yesterday," I assume that's Ben at Shell?
A. Correct.
Q. "He asked if we would be comfortable locking in the arbitrage opportunity at the point of locking in the contract."
What does that mean?
A. I -- I don't know.
Q. Okay. What does it mean to lock up the arbitrage opportunity?
A. I am not sure what that means.
Q. Okay. Now, at some point Sequitur began talking not only to Shell, but also to a company called Jupiter; are you familiar with them?
A. I am.
Q. When were you introduced to Jupiter?
A. The first recollection I have of being introduced to Jupiter was actually the day of signing the TSA in Maalt's office in Fort Worth.
Q. Okay. Had you talked to them on the phone any before then?
A. Not me, personally, no.
Q. Okay. Folks within Sequitur had had

communications or do you know?
A. I don't know.
Q. Okay. When you went to go sign the TSA, I assume that was in Maalt's offices in Fort Worth?
A. Correct.
Q. And you said that someone from Jupiter was there?
A. It -- I don't know who at Maalt, but they had invited Travis Morris from Jupiter to attend the meeting. We told them that we thought that was inappropriate and premature. They had told us that Jupiter was willing to sign a TSA with paid in full, you know, kind of our monthly minimum. They would pay it 100 percent up front and that it was imminent that they were going to sign with Jupiter and essentially take the exclusive opportunity away from us. So we would not -- we didn't want to be in a meeting with our potential competitor. And then after we signed the TSA, Maalt said we want you to meet Jupiter, we've got a deal with them at our Pecos County, we think they could be a good partner for you. They could -- they rail, they buy, they truck, they do it all. You know, they are the real deal type representation. And that's where I first met Travis.
Q. Okay. Let me break that down a little bit.

You mentioned something that you said Jupiter was willing to pay up front the minimums, transload minimums; is that right?
A. That's right.
Q. Okay. And just so I can try to understand, in the TSA that ultimately was entered into by Sequitur and Maalt, there is a certain minimum volume to be transloaded. And if that's not met than Sequitur is obligated to pay $1.50 fee for every barrel that it is short on that minimum; you understand that, right?
A. I understand.
Q. Okay. Is what you are saying that you understood Jupiter was promising is that over the term of the contract they were going to pay up front that volume times that $1.50 or whatever the agreed transloading fee was?
A. From my understand from Braden in a verbal conversation with Chris Favors that Jupiter was willing to pay, I recall the number being $8 million up front to secure the exclusive rights of the Maalt terminal.
Q. Okay. And that 8 million -- and you may not know. I just want to make sure that I understand what was in your brain for making decisions. Was that 8 million would go towards the minimums, and I guess would be a credit for crude that was actually transloaded

Q. It looks like the letter of intent had a deadline or a term and that it was extended on two occasions?
A. That's my understanding.
Q. Okay. What was the first extension?
A. I don't know if this was the first one, but what I am reading in front of me says, "The parties agree to amend Section 2 of the LOI to change June 26th to July 6th, 2018."
Q. Okay. July 6th. Okay and on the next page, is there another extension?
A. Yes. It says, "Parties agree to amend Section of the LOI to change July 6th to July 23rd."
Q. Okay. Any other extensions after that?
A. Not in front of me.
Q. Okay. Are you aware of any extensions after that?
A. I am not aware.
Q. Okay. As part of entering into the letter of intent and Sequitur's desire to make this project work, did it starts -- did it start spending any money towards the purpose of fulfilling the contract if one were ultimately to be entered into?
A. Yes.
Q. What did it -- what did it spend?

through the facility?
A. I don't know that.
Q. Okay. But there was going to be some form of an $8 million advance of some sort that Jupiter was willing to pay to --
A. That's what was relayed by Maalt to us.
Q. Okay. Now, at that time Maalt and Sequitur were working under a letter of intent; is that right?
A. That is correct.
MR. WICKES: Okay. And I believe that -- I don't know what exhibit that is. Yes, it's there. Hand me that book. I am pretty sure it is in there. Okay. It's actually going to be in that stack, Exhibit 44. I just want to see the extensions.
Q. Okay. What was the term of that letter of intent?
MR. KORNHAUSER: Which exhibit are we on? I am sorry.
MR. WICKES: I'll tell you what, I am going to hand you this. And we are going to go with Exhibit 6. And you if go back to the front, it will show the first page.
THE WITNESS: Was there a question or what?
MR. WICKES: There is. I am still -- I am just trying to get confirmation on --

A. I don't know the dollar amount, but we committed to the start of construction of eight transloaders.
Q. Okay. And you say started construction, is that something you purchased or is that something construct or a combination?
A. We -- we purchased and it had, like, at least a three-month lead time in order to be able to transload in the fall. We needed to get those transloads started.
Q. Okay. I know you don't know the exact dollar figure, but was it a substantial amount?
A. Yes. It was approximately $2 million.
Q. Okay. So at the time that Sequitur made the decision to go ahead and sign the TSA, it had already put $2 million into the project and getting some transloaders ready to go?
A. Correct.
Q. If Maalt had simply said, you know what, we have been doing this letter of intent since June and we are ready to move, we want to move with you guys, but if not, you got somebody else, we are not going to extend the letter of intent unless you sign the TSA, wouldn't Sequitur have gone ahead and signed it given how much it had already invested?
A. No.

Q. Why not?
A. Because we didn't have the contract in place with a buyer, and a rail secured rates and an off loading capacity to do such. Our intent was not to sign the TSA until we had all those pieces locked up.
Q. Okay. And when you signed the TSA, what risk was Sequitur aware of that it knew it was assuming?
A. That we wouldn't be able to find that partner. And so we signed it under the threat of Maalt signing up with Jupiter for that $8 million up front payment and thus kind of derailing the prospect, if you pardon the pun.
Q. Okay. And Sequitur doesn't sound like a company that gets threatened, I mean, y'all are pretty big boys aren't you?
A. No. We are actually very small, less than 100 employees.
Q. What is your revenue in a year?
A. I don't -- actually, revenue, I don't know. But our EBITDA, would be over 100 million this year.
Q. Okay. Ultimately you signed the TSA, correct?
A. Correct.
Q. You did not put any conditions in the TSA on finding rail cars at any particular price, did you?
MR. KORNHAUSER: Objection, form.

A. There were no contractual obligations on anybody's part to do that.
Q. Okay. And the same with rail rates for moving rail cars, there was no contingencies in the TSA about finding rail transportation rates at any given level; is that right?
MR. KORNHAUSER: Objection form.
A. Yeah. Other than the force majeure provision.
Q. Okay. And the force majeure provision and that's Exhibit 13, I believe, the TSA; is that right? If you could turn to Exhibit 13. And you mentioned the force majeure provision, which on Page 23 the force majeure provision is defined; is that right?
A. Correct.
Q. Okay. And take your time. Is there anything in 14.2 that has anything related to the rates for rail transportation?
MR. KORNHAUSER: Objection, form.
A. No, it relates to the ability to get trains.
Q. Okay. Not how much it cost, but ability or availability or not?
MR. WICKES: Objection, form.
A. Right.
Q. Okay. So Sequitur is not taking the position that it couldn't get with -- well, let me rephrase it.

Is Sequitur taking the position that it could not get rails to move crude out of Barnhart at any price?
A. It's taking the position we couldn't get a train into Barnhart into the Gulf at all.
Q. At any price?
A. Correct.
Q. Okay. So it is not saying that rail transportation was available, but if it did it, it was going to take a loss?
A. No.
Q. Okay. So if we go and take a deposition of a railroad employee that says they were familiar with the deal and they were ready, willing and able to move crude out of Barnhart and communicated that to Jupiter or to Murex or to other agents of Sequitur, you would agree then that there is no force majeure?
MR. KORNHAUSER: Objection, form.
A. No, I disagree with that.
Q. Okay. So if a railroad is ready, willing and able to move out of Barnhart --
MR. KORNHAUSER: Hold on. Hold on. Were you done with your answer?
MR. LANTER: I think he was.
MR. KORNHAUSER: Well, I just want to make

sure he was because he paused and you immediately asked another question and I wasn't sure if you were done. I just want to make sure that you are finished with your answer before the next question.
MR. WICKES: Well, I asked if he agreed or not and he said it, he said I don't agree. So that's -- that's a finished answer.
MR. KORNHAUSER: Well, but I don't know if he was or not. He paused and looked like he was going to say something. I just want to make sure that we -- we don't step on his answer.
A. Right. So I don't agree because it is not just moving rail car along one little segment of the railroad. It takes having all segments of the railroad to get from Barnhart to a final destination that that's required.
MR. WICKES: Okay. And I appreciate that clarification.
Q. So you would agree that if a railroad was able to say that we were able in combination with other railroads that we had worked with to move from the Barnhart terminal to the Gulf that no force majeure event would have occurred?
A. If they were able to move it from Barnhart to the Gulf Coast to an offloading place that had capacity,

felt like our property was stolen from us and we weren't sure we were going to get it back. And we had to decide whether to take legal action or call the authorities. So it became a, you know, a time sync for our people to deal with this problem.

Q. Okay.

A. And yeah.

Q. Are you making an emotional distress claim?

A. I am not.

Q. Okay. So the damage would be the time Sequitur that employees had to focus on that as opposed to doing other business things?

A. Correct.

Q. Okay. Have you been able to quantify that amount in any way?

A. I am not.

MR. WICKES: Okay. Let's take another break. I will look at my notes and try to get you out of here.

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is 11:18. Off the record.

(Break taken.)

THE VIDEOGRAPHER: The time is 11:29. Back on the record.

Q. All right, sir, you mentioned during the break there was one name you left off on the founders?

A. Thank you for letting me correct that. There is another founding partner called Charlie Odom.

Q. Okay.

A. O-D-O-M.

Q. And is he retired as well?

A. No, he is still active management.

MR. WICKES: Very good. Thank you for your time, sir. I am going to pass the witness.

MR. KORNHAUSER: We reserve our questions until the time of trial, which means you are done.

THE WITNESS: Okay. Thank you.

THE VIDEOGRAPHER: 11:29. We are off the record.

[Proceedings concluded at 11:29.]

CORRECTION SHEET

WITNESS NAME: MICHAEL VAN DEN BOLD DATE: 11/21/2019

PAGE/LINE CHANGE REASON

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Job No. TX3569880

SIGNATURE PAGE

I, MICHAEL VAN DEN BOLD, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the correction sheet.

_____

MICHAEL VAN DEN BOLD

THE STATE OF TEXAS)

COUNTY OF _____)

Before me, _____ on this day personally appeared MICHAEL VAN DEN BOLD, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of _____, _____.

Job No. TX3569880

_____

NOTARY PUBLIC IN AND FOR THE STATE OF

_____

Commission Expires:

_____

CAUSE NO. 19-003

MAALT, LP, § IN THE DISTRICT COURT OF
§
Plaintiff, §
§
VS. § IRION COUNTY, TEXAS
§
SEQUITUR PERMIAN, LLC, §
§
Defendant. § 51st JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
DEPOSITION OF MICHAEL VAN DEN BOLD
NOVEMBER 21, 2019

I, Patricia Palmer, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, MICHAEL VAN DEN BOLD, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, to the witness or to the attorney for the witness for examination, signature and return to me by _____;

That the amount of time used by each party at the deposition is as follows:

Mr. James Lanter - 00 HRS:00 MINS
Mr. Paul O. Wickes - 01 HRS:34 MINS
Mr. Matthew A. Kornhauser - 00 HRS:00 MINS
Mr. Christopher J. Kronzer - 00 HRS:00 MINS

That pursuant to information given to the

deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. James Lanter and Mr. Paul O. Wickes, Attorneys for Plaintiff
Maalt, LP

Mr. Matthew A. Kornhauser and Mr. Christopher J. Kronzer, Attorneys for Defendant
Sequitur Permian, LLC

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th day of December, 2019.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Paul O. Wickes, Custodial Attorney;

That $ _____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____, and filed with the Clerk.

Certified to by me this _____ day of _____, 2019.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

Kornhauser@hooverslovacek.com

December 9, 2019

RE: Maalt, LP v. Sequitur Permian LLC
DEPOSITION OF: Michael Van Den Bold (# 3569880)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

cc: All counsel

CAUSE NO. 19-003

MAALT, LP,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	51st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

TONY WROTEN

November 20, 2019

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF TONY WROTEN, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 20th day of November, 2019, from 9:35 a.m. to 2:29 p.m., before Patricia Palmer, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Mr. Matthew A. Kornhauser, Hoover Slovacek LLP, 5051 Westheimer Road, Suite 1200, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

APPEARANCES

FOR THE PLAINTIFF:
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FOR DEFENDANT: Sequitur Permian, LLC
Mr. Matthew A. Kornhauser
Mr. Christopher J. Kronzer
HOOVER SLOVACEK, LLP
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Kornhauser@hooverslovacek.com
Kronzer@hooverslovacek.com

ALSO PRESENT:
Mr. Daniel Alpizar, Videographer
Mr. Christopher Favors, Corporate Representative of Sequitur Permian, LLC

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THE VIDEOGRAPHER: Today's date is November 20th, 2019. This is the video deposition of Tony Wroten. The time is 9:35. We are on the record. The court reporter may now swear in the witness.

THE REPORTER: Are there any stipulations?

MR. KORNHAUSER: By agreement, by notice and we would like to read and sign.

MR. WICKES: Agreed.

TONY WROTEN,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. WICKES:

Q. Mr. Wroten, could you state your name for the record?

A. Tony Wroten.

Q. All right. And --

MR. KORNHAUSER: Let's use his microphone.

MR. WICKES: Oh yeah. Let's put your mic right there.

THE VIDEOGRAPHER: Yeah put it on -- put it on your lapel.

THE WITNESS: Right here?

MR. WICKES: There we go. All right now you are ready.

Q. Okay. My name is Paul Wickes, you and I just

met this morning, you understand that?

A. Yes, sir.

Q. And you understand that I represent Maalt, LP in a litigation against Sequitur, the company you work for?

A. Yes, sir.

Q. All right. Have you ever given a deposition before?

A. No, sir.

Q. Okay.

A. This is my first.

Q. All right. It's -- it's a lot of fun. But no, you are doing fine. If I ask any question that doesn't make sense or you don't understand, please ask me to rephrase it as many times as you need to so that you and I can on the same page; is that all right?

A. Yes, sir.

Q. Okay. And it is not an endurance contest. If you need to take a break at any time, let me know. We may need to finish up a question or two, but we will take a break within, you know, a couple of minutes at the most.

A. Great.

Q. And you are here represented by counsel?

A. Yes, sir.

helpful, how about that?
A. Was there ever a time that Jon was not helpful? I would -- you know, from throughout the process he was very helpful. I think one thing that was not helpful was kind of his endorsement of -- of Jupiter as someone that was capable of getting this all done.
Q. Okay.
A. Because as we learned through experience, they couldn't and we wasted a ton of time --
Q. Okay.
A. -- having to deal with them.
Q. What specifically do you recall that was said by Jon Ince regarding Jupiter's capability?
A. We had -- you know, I guess this was back in July, August, time frame. It was our preference to work with Shell at the time. We had been introduced to Jupiter by, you know, the Vista guys, Jon and Chris, and you know, we had initial conversations with them. It just seemed like they were promising the world and you know, we were kind of distrustful of them. So we, you know, in our conversations with Jon, we wanted to get their take on -- on their ability and their -- their -- their capabilities, you know, and he was fully endorsing their ability to do it. And that -- you know, we kind of relied on that and you know, that -- that helped us

feel, you know, get some comfort around potentially doing something with Jupiter if things with Shell didn't -- didn't pan out.
Q. Okay. We will get to that time frame a little bit more, but let me just kind of break that down a little bit. You said they were promising the world, I assume that you mean Travis with Jupiter was promising the world?
A. Travis.
Q. Okay. And I think what you mentioned with regard to Jon and Chris, was what that they -- was the word you used endorsed?
A. Yeah. They -- I believe they had a deal already done or they did have a deal already in place for another terminal. So --
Q. Okay. So they told you --
A. They themselves got into business with them and you know, were endorsing them as a -- as a potential business partner for us at that facility as well.
Q. Okay. And I just -- I don't mean to mince words or anything, I just want to have a full understanding.
A. Yeah.
Q. I think you are correct that there is evidence that Maalt and Jupiter did a deal to move crude out of a

Pecos transload facility that had already been entered into? Is that what you're talking about, the --
A. Yeah the Pecos terminal is what I'm --
Q. Okay. And so -- and I'm using the term Jon and Chris, was it one or the other, was it both?
A. For what?
Q. For endorsing Jupiter because they had done a deal with them to move crude out of Pecos?
A. It was both at, you know, separate times.
Q. Okay. How did they endorse Jupiter other than letting you know that they had put their trust in Jupiter enough to do a deal for transloading crude by rail out of Pecos?
A. A conversation -- a phone conversation with Jon, you know, where he -- you know, he said that they were the real deal, and with Chris it was more of the meeting when we signed the TSA and prior to that, too. You know, they had -- they had mentioned earlier that, you know, they were, you know, talking with Jupiter.
You know, we had -- when we signed the LOI, it was, you know, stipulated that, you know, they couldn't talk to any other parties that we were talking to. We weren't already talking to Jupiter. But you know, through this meeting, right, like, it was, you know, we had already met. They had -- we had already

had that introduction with, you know, to Jupiter prior to that, but it was during that, you know, Chris was pretty, you know, supportive of Jupiter being able to help us and, you know, he had know -- he had knew at that point that Shell was having a hard time. But I think it was in their interest that they wanted to get a deal done, so you know, and Shell wasn't going to be able to do it. They indicated Jupiter would.
MR. WICKES: Okay. Look at Exhibit 5. That's going to be in the notebook.
THE WITNESS: Okay. Got it.
Q. Okay. You were not on this e-mail, so I may ask you something you don't know the answer to and that's fine, just tell me if that's the case. At the bottom e-mail it is from Braden, your boss, to Chris Favors; is that right?
A. Yeah. Yes, sir.
Q. And I am curious on that, the last sentence down there. If you want to read the whole thing for context, just let -- let me know. But it says, "So you know, we are going full steam ahead on our side. We have," and then there is a colon, and the last thing is "Made good progress regarding the transportation and sell of oil via rail."
Do you know what Sequitur had done to make

SIGNATURE PAGE

I, TONY WROTEN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the correction sheet.

_____

TONY WROTEN

THE STATE OF TEXAS)

COUNTY OF _____)

Before me, _____ on this day personally appeared TONY WROTEN, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of _____, _____.

_____

NOTARY PUBLIC IN AND FOR THE STATE OF

_____

Commission Expires:

_____

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. James Lanter and Mr. Paul O. Wickes, Attorneys for Plaintiff
Maalt, LP

Mr. Matthew A. Kornhauser and Mr. Christopher J. Kronzer, Attorneys for Defendant
Sequitur Permian, LLC

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th day of December, 2019.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

CAUSE NO. 19-003

MAALT, LP, § IN THE DISTRICT COURT OF
§
Plaintiff, §
§
VS. § IRION COUNTY, TEXAS
§
SEQUITUR PERMIAN, LLC, §
§
Defendant. § 51st JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
DEPOSITION OF TONY WROTEN
NOVEMBER 20, 2019

I, Patricia Palmer, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, TONY WROTEN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, to the witness or to the attorney for the witness for examination, signature and return to me by _____;

That the amount of time used by each party at the deposition is as follows:

Mr. James Lanter - 00 HRS:00 MINS
Mr. Paul O. Wickes - 03 HRS:17 MINS
Mr. Matthew A. Kornhauser - 00 HRS:00 MINS
Mr. Christopher J. Kronzer - 00 HRS:00 MINS

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Paul O. Wickes, Custodial Attorney;

That $ _____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____, and filed with the Clerk.

Certified to by me this _____ day of _____, _____.

PATRICIA PALMER, Texas CSR 9042
Expiration Date: 07/31/2022
Firm Registration No. 571
Veritext Legal Solutions
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
817.336.3042

Kornhauser@hooverslovacek.com
December 9, 2019
RE: Maalt, LP v. Sequitur Permian LLC
DEPOSITION OF: Tony Wroten (# 3569879)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

cc: All counsel

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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.,1 Debtors.	Case No. 20-42002-ELM-11 (Jointly Administered)
MAALT, LP, Plaintiff,	
v.	
SEQUITUR PERMIAN, LLC, Defendant,	ADV. PROC. NO. 20-04064
v.	
VISTA PROPPANTS AND LOGISTICS, LLC, Third Party Defendant.	

ORAL AND VIDEOTAPED DEPOSITION

MARTIN ROBERTSON

February 25, 2021

(Reported Remotely via Zoom)

ORAL AND VIDEOTAPED DEPOSITION OF MARTIN ROBERTSON, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above-styled and numbered cause on

February 25, 2021, from 9:32 a.m. to 1:11 p.m., before Carla Y. Davis, Certified Shorthand Reporter in and for the State of Texas, reported by computerized machine shorthand, via Zoom video conference, pursuant to the Federal Rules of Civil Procedure, the First Emergency Order regarding the COVID-19 State of Disaster, and the provisions stated on the record or attached hereto.

APPEARANCES

COUNSEL FOR THE PLAINTIFF:
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Mr. Matthew A. Kornhauser
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ALSO PRESENT:
Mr. Martin Flores, Videographer

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PROCEEDINGS

THE VIDEOGRAPHER: We are going on the record. Today's date is Thursday, February 25, 2021. Time is 9:32.

Will all parties present please introduce themselves for the record and who they represent?

MR. KRONZER: This is Chris Kronzer. I'm an attorney representing Sequitur.

MR. LANTER: Jim Lanter representing Maalt, LP and Vista Proppants and Logistics, LLC.

MR. KRONZER: Ready, sir?

THE WITNESS: Yes.

MR. KRONZER: Can you plaze [sic] -- please state your full name for the record?

THE WITNESS: Martin Robertson.

THE REPORTER: I need to swear him in.

THE VIDEOGRAPHER: The reporter needs to swear in the witness.

MR. KRONZER: Okay.

MARTIN ROBERTSON,

having been first duly sworn remotely, testified as follows:

EXAMINATION

BY MR. KRONZER:

Q. All right, sir. Would you -- we started a little early. Will you please state your full name for the record again?

Page 7

A. It's Martin Robertson.

Q. All right. And the depo notice says "Robinson," but it's -- it's Robertson, right?

A. That's correct.

Q. All right. Can you spell that for me, please?

A. R-o-b-e-r-t-s-o-n.

Q. All right. And, Mr. Robertson, what is your date of birth?

A. February 3, 1969.

Q. All right. And what is your home address?

A. 8416 Ashbriar Lane, Fort Worth, Texas 76126.

Q. All right. Mr. Robertson, you understand you're here today to give a deposition in a lawsuit involving Maalt, LP, Sequitur Permian, and Vista Proppants. Is that how you -- how you say it?

A. Correct.

Q. All right. And you understand you're here to give a deposition in that lawsuit, right?

A. Yes.

Q. All right. Have you given a deposition before today?

A. Yes.

Q. Okay. Was this -- how long ago was that?

A. I -- I'd venture to say probably two or three years.

Q. Okay. So you probably remember how this is done, but let's just go over some ground rules real -- real quick so we have an understanding. Okay?

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A. Okay.

Q. All right. So I'm here today to ask you questions regarding the lawsuit and the facts surrounding the lawsuit. Okay?

A. Okay.

Q. You understand you're under oath, right?

A. Yes.

Q. All right. And you're appearing today, not as a corporate representative but, as a fact witness, right?

A. Correct.

Q. Right. And so what I'm -- am going to ask -- when I ask you questions today, I need you to answer based on your personal knowledge. All right?

A. Okay.

Q. Okay. And if I ask you a question and you don't know the answer to the question, it's perfectly acceptable for you to say "I don't know." Okay?

A. Okay.

Q. And if you say "I don't know" to a question, I'm going to have to assume that's based on your best knowledge here today. Okay?

A. Okay.

Q. All right. If for any reason you don't understand any question I ask, I'd ask that you ask me to clarify or repeat the question. Okay?

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A. Okay.

Q. Cause if you give an answer to a question that I ask, I'm going to have to assume that you understood the question. All right?

A. Okay.

Q. All right. And there's no reason you can't give truthful testimony here, right?

A. Can't give what?

Q. You can't give truthful testimony today, right?

A. No problems. Yeah.

Q. All right. So Vista Proppants declared bankruptcy, right?

A. Yes.

Q. All right. And that happened in, I believe, June of last year?

A. That's correct.

Q. All right. Do you currently have -- are you currently employed by Vista?

A. I am not.

Q. All right. And did that employment end upon the bankruptcy filing?

A. It did.

Q. All right. Do you have any ownership in the company anymore?

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A. Not offhand I do not.
Q. Okay. But in -- in June 1, 2018, when this was signed, the consideration was that it -- the -- the term of the -- the later agreement would be -- begin in September of '18, right?
A. Is that noted here where I can just go to it?
Q. The term. See where it says "term" on Attachment A?
A. Yes. I'm sorry. Yes. Yes.
Q. Okay. So that -- that was the understanding as of June is that it would begin in September of '18, right? Excuse me?
A. Yes.
Q. Okay. I think your volume cut out there, but all right. Yes. And then it would last through the following year to December of '19, right?
A. Correct.
Q. All right. Do you know why -- so that's approximately 15 months. Do you know why -- or 16 months. Do you know why it was a 16-month term?
A. I do not.
Q. Okay. Was there any necessity for this agreement to be in place and start occurring by September 2018?
A. Is that going to be in the document, or are you asking --
Q. No, I'm just asking. Based on your recollection, do

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you remember telling Mr. Favors that this needs to be -- begin by September 2018?
A. I do not.
Q. Okay. And then on -- see where it says "rate" down below?
A. Yes.
Q. It says "$1.50 a barrel of products." Do you see that?
A. I do.
Q. Were you part of the negotiations for this $1.50 rate?
A. Negotiating with Sequitur?
Q. Yes.
A. No.
Q. Okay. Do you know why a $1.50 was chosen as the rate?
A. Specifically, no. I would have to believe that that would have come from a -- a model that we ran to cover cost of labor, overhead, that sort of thing; the cost of operating the facility.
Q. Would this have been based on one of the projections that Kristin Smith or someone in her team would have run?
A. Most likely.
Q. Okay. And below rate, it says "volume." Do you see that?

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A. Yes.
Q. And it says that, "Party B agrees to provide products sufficient to fill an average of no fewer than 16 railcars per day," which it looks to be the equivalent of 11,424 barrels. Do you see that?
A. Yes.
Q. You know why that number was chosen?
A. I do not.
Q. Now, if we have that as the 11,424 barrels per day, and we know the rate agreed to is $1.50, we can do the math to figure out what the rate for the barrels is, right?
A. Yes.
Q. All right. And so would that number have been derived based on the projections of Kristin, you believe?
A. I believe.
Q. Okay. Now, would those projections of the operations department or that Ms. Smith [sic] department ran, would those have been discussed during these weekly meetings or presented at the weekly meetings when you were discussing this LOI?
A. Just to be clear, you're asking if those -- the financial models that we're referencing here for the cost per barrel and that sort of thing and the volumes, would it be discussed during the weekly meetings?
Q. Yes, sir.
A. It -- it would have been discussed at one or more of

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the weekly meetings.
Q. All right. Would those documents of the projections or the potential financial cost, would that have been circulated to you and Mr. Humphreys?
A. We would have seen it at least on a -- on a screen.
Q. Okay.
A. Yeah.
Q. All right. We're going to go to another document now. I'm going to show you what's Exhibit 113, and that is the contract between Maalt and Jupiter.
MR. KRONZER: Do you have a copy of that, Jim, or do you want -- do I need to share that?
MR. LANTER: You don't.
MR. KRONZER: Okay.
Q. (BY MR. KRONZER) Do you see that, sir?
A. I do. Can you make it any larger possibly?
Q. I can.
A. Yeah. That might work right there.
Q. Okay. And I'm not going to go through all the details, but I -- I just want you to note that it says that, the transloading agreement is made and entered as of August 1, 2018. Do you see that?
A. I do.
Q. Okay. And then if we go to the last page, it shows that -- that you -- that's your signature on the execution

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Q. Okay. And you see the -- the -- the language in red?
A. Yes.
Q. All right. And -- and I'm assuming, based on the e-mail, that this was -- was your addition or your requested addition to the premises access agreement?
A. That -- that's what I read. Yes.
Q. Okay. Now, is it your understanding that this agreement would permit Sequitur to enter the Barnhart Terminal facility to begin performing the modifications as to the terminal?
A. Yes. Yes.
Q. Excuse me?
A. Yes.
Q. Okay. And the addition that -- that -- that you've added is that if they have not executed the terminal services agreement as of September 1st, that Sequitur shall, in essence, remove the modifications and put the property back to -- as it was by the end of the month, right?
A. Yes.
Q. Okay. And do you recall why you wanted these -- or this language to be added to this agreement?
A. Not specifically.
Q. Okay. And -- and what I see from this language is it -- is it mirrors, a lot, the LOI where the -- the -- the idea was is for them to begin their operations as of September

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18th, fair?
A. Fair.
MR. LANTER: Objection, form.
Q. (BY MR. KRONZER) Now, I assume that Mr. Favors brought this -- this agreement to your attention, right?
A. Yes.
Q. All right. Besides the modifications we see in red, do you remember any other changes or additions you made to this access agreement?
A. I do not.
Q. Okay. Do you recall being presented -- by whether it was Mr. Favors or any other individual -- blueprints or a scope of the modifications that would be needed by Sequitur at the Barnhart facility?
A. I do not.
Q. I'm going to show you what I'm going to mark as Exhibit 132. And it's a -- it's an e-mail that is Maalt 283 through 284. You see that?
(Exhibit No. 132 marked for identification.)
A. There -- there's not an exhibit.
Q. Oh. Have I not shared it? You see it now?
A. I do now.
Q. Okay. And it's -- right here on Maalt 283 it says from Mike van den Bold to Mr. Favors, it says, "Chris, see fully-executed agreement attached." You see that?

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A. I do.
Q. All right. And then I'm just going to scroll down. And you see it's dated July 27th, '18. Do you see that?
A. Yes.
Q. All right. And on the bottom of page 1, you see it has incorporated that redline that you requested?
A. Yes.
Q. Okay. And then on the bottom of page 3, you've executed the document, right?
A. Yes.
Q. All right. And I assume, even though it's not dated, that you -- that the execution happened on or about July 27th?
A. I would assume that.
Q. Okay. And we know -- and we'll get to it in -- in a little bit but -- that the Terminal Services Agreement was executed in August, right?
A. Is that something we just reviewed already?
Q. We can. Here. I'll pull it up. Marked as Exhibit 13. You see this Terminal Services Agreement?
A. I do.
Q. All right. It goes to -- the last page, see here is your signature?
A. Yes.
Q. All right. And it has an effective date of August 6th. Do you see that?

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A. Yes.
Q. All right. So let me go back to the other one. Okay. So this -- this was the -- the previous exhibit we were looking at. This was Exhibit 132.
A. Uh-huh.
Q. And this is the Premises Access Agreement that was executed about two weeks to a week and a half before the -- the TSA, right?
A. Okay.
Q. Do you recall if Sequitur entered into the premises in the time period between July 27th and August 6th?
A. I wouldn't know that.
Q. Okay. Do you recall why or any discussions of -- of why the Premises Access Agreement needed to be entered into?
A. The best I can recollect is that that they wanted to look at the facility and possibly perform work prior to the agreement date or commencing with the agreement. That's -- that's my best guess.
Q. Sitting here today, you don't recall, though, if -- whether any work had been performed or if they had entered the property prior to the execution of the TSA, right?
A. No.
Q. So we just looked, actually, at -- at Exhibit 13, which was the Terminal Service Agreement that you signed, right?

Q. I mean, marketing the Barnhart facility would fall under their duties and their job function, right?
A. Correct.
Q. Okay. So -- but you're saying that you're not aware of what they actually did though to market the Barnhart the facility, right?
A. Not specifically. Correct.
Q. Okay. But you would just assume that they would because it would fall under their job functions?
A. That's correct.
Q. All right.
MR. KRONZER: Pass the witness.
MR. LANTER: Reserve the rest of questions till trial.
THE VIDEOGRAPHER: We are going off the record. Time is 1:11.
(Off the record.)
(Deposition of MR. MARTIN ROBERTSON concluded at 1:11 p.m.)

ERRATA SHEET/SIGNATURE PAGE

PAGE	LINE	CHANGE	REASON

I, MARTIN ROBERTSON, have read the foregoing transcript and hereby affix my signature that same is true and correct, except as noted above.

_____
MARTIN ROBERTSON

THE STATE OF TEXAS
COUNTY OF _____
SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on this the _____ day of _____, 2021.

_____
Notary Public in and for
The State of Texas

COUNTY OF HARRIS)
STATE OF TEXAS)

REPORTERS CERTIFICATE

I, CARLA Y. DAVIS, Certified Shorthand Reporter in and for the State of Texas, hereby certify that this transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me.
I further certify that I am neither attorney nor counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken. Further, I am not a relative or employee of any attorney of record in this cause, nor do I have a financial interest in the action.
Certified to by me this 2nd day of March, 2021.

_____
CARLA Y. DAVIS, Texas CSR 8881
Expiration Date: 12-31-2021
Infinity Reporting Group
Firm Registration No. 782
11200 Richmond Ave., Suite 410
Houston, Texas 77082

Jim Lanter

From: Jon Ince <jince@vprop.com>
Sent: Monday, June 17, 2019 11:47 AM
To: Jim.lanter@Lanter-Law.com
Subject: FW: Executed Agreement
Attachments: 3514_001.pdf

Jon Ince
Director of Logistics
682 252-1716
jince@vprop.com
4413 Carey Street, Fort Worth, TX 76119
www.vprop.com

From: Travis Morris <tmorris@jupitermlp.com>
Sent: Wednesday, June 20, 2018 9:40 AM
To: Chris Favors <cfavors@vprop.com>; Jon Ince <jince@vprop.com>
Subject: Executed Agreement

Please see attached. I am getting on the phone with Sequitur today so we can try to close the Barnhart deal. I do not have firm railcars yet, but we are working several sets with Jonas.

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

JUPITER MLP

www.JupiterMLP.com

EXHIBIT 113 PENGAD 800-631-6989

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forwarding this email to postmaster@jupitermlp.com -- and destroy all copies of this message and any attachments. Thank you.

TRANSLOADING AND STORAGE SERVICES AGREEMENT

This Transloading Agreement (this "Agreement"), is made and entered as of the 1st day of August, 2018 (the "Effective Date"), by and between, MAALT, LP d/b/a Vista Proppants and Logistics, located at 4413 Carey Street, Fort Worth, Texas 76119, (hereinafter referred to as "MAALT"), and Jupiter Marketing & Trading, LLC, a Texas LLC with offices at 440 Louisiana Street, Suite 700, Houston, TX 77002 ("hereinafter referred to as "Customer");

RECITALS

A. MAALT is in the business of transloading and storing commodities in the oil and gas industry.

B. Customer has requested MAALT's assistance in connection with the storage and transportation of its crude oil (hereinafter "crude oil").

C. MAALT desires to perform the transloading services at the request of Customer as set forth herein.

AGREEMENT

In consideration of the representations, warranties, covenants and agreements contained herein, MAALT and Customer, each intending to be legally bound hereby, agree as set forth below.

1. Scope of Services. MAALT shall be prepared to receive trucks containing crude oil 24 hours per day, 7 days per week, at the facilities listed below (together the "Facilities"), as provided herein:

Pecos, TX, located at 18 CR 408, Pecos, TX 79772

(a) Receipt of Crude Oil. MAALT shall receive trucks containing crude oil owned by Customer at the Facilities and shall provide transloading services as described herein (the "Services").

(i) Shrinkage. Customer acknowledges that minor losses (shrinkage) in the handling of crude oil is a normal part of the transloading process and, as a result, minor losses of crude oil related to the unloading and loading of such commodity shall be considered negligible. Absent fraud, misrepresentation, gross negligence or willful misconduct MAALT shall not be responsible for any shrinkage in Customer's crude oil inventory located at the Facilities.

(ii) Reporting. Upon Customer's request, MAALT shall provide a daily inventory statement (the "Daily Statement") to Customer reflecting the total amount of crude oil transloaded, po#, trucking company name and truck number, destination city and state, rail car into which it was transloaded, date, and time. The amount of Customer's inventory located at the Facilities at any one time shall be calculated based upon verification of the amount of commodity received, less documentation showing commodity shipped from the Facilities pursuant to Customer's instructions thus reducing inventory to the then present volume.

(b) Unloading & Handling of Railcars.

(i) Delivery of Trucks and Railcars. A trucks and railcars shall be deemed delivered to the applicable Facility and in MAALT's custody, control, and possession when secured at the applicable Facility for unloading.

(ii) Unloading of Trucks. MAALT shall unload Customer's crude oil directly into railcars identified by Customer.

(iii) Railcar Placement. Customer may request railcar placements from time to time to facilitate shipments of its crude oil in accordance with weekly material forecasts, as provided to MAALT by Customer

(the "Weekly Material Forecast Report"). In the event Customer requests a railcar placement, Customer shall provide MAALT with the Weekly Material Forecast Report no less than twenty-four (24) hours prior to commencement of the week referenced in the applicable Weekly Material Forecast Report. MAALT shall make commercially reasonable efforts to provide and maintain adequate unloading equipment at the Facilities in order to unload railcars pursuant to such forecasts.

(iv) Personnel, Equipment, Tools, Maintenance & Repair. MAALT will provide all personnel with appropriate qualifications, equipment and tools necessary to perform the Services, and will provide a foreman on duty at all times during the performance of the Services that is capable of supervising and directing the operations of MAALT relative thereto.

(v) Bills of Lading; Railcar Tickets & Records. MAALT shall prepare all bills of lading, receipts of unloaded railcar tickets and other shipping papers in connection with the performance of the Services. MAALT shall keep necessary records relating to Customer's crude oil inventories stored at the Facilities. Bills of lading shall be faxed or emailed to Customer the day of the shipment is received by MAALT at the Facilities along with a current inventory report (by commodity size) reflecting the current crude oil inventory of Customer both trans-loaded and in silo storage along with quantities shipped.

(vi) Crude Oil Transloading Equipment and Railcars. Customer shall supply MAALT with all equipment required for the safe and efficient transloading of crude oil as well as all railcars to receive the crude oil. In no event shall MAALT be responsible for procuring railcars to receive Customer's crude oil.

2. **Delays; Notice of Deliveries.** Customer shall be responsible for all demurrage and private lease car storage charges incurred by MAALT from the railroad due to Customer's trucks not being available for transloading. Notwithstanding the foregoing, in no event shall MAALT be responsible for any demurrage and private lease car storage charges to the extent such charges are caused or contributed to by (i) the acts or omissions of Customer, its agents or representatives, (ii) the Railroad, (ii) circumstances outside the sole and reasonable control of MAALT, or (iv) circumstances constituting a Force Majeure Event (defined below). Customer will notify MAALT two (2) business days prior to shipping a rail system car or truck to the Facilities. If MAALT can not accommodate (receive, unload, and release) said railcar(s) within two (2) business days of the truck containing crude oil arriving at the applicable Facility, then MAALT will notify Customer within forty-eight (48) hours of receiving notification of the applicable shipment. In any event, MAALT will use its commercial reasonable efforts to transload shipments from trucks to the appropriate railcar within forty-eight (48) hours of the arrival of a truck and/or railcar at the applicable Facility.

3. **Risk of Loss or Contamination.** After accepting any truck and/or crude oil delivered to the Facilities by or on behalf of Customer, MAALT shall be responsible for storing and maintaining such trailer containing crude oil for a reasonable time at the Facilities and until such time as the crude oil has been transferred to a railcar designated by Customer. MAALT shall use its commercially reasonable efforts to prevent the contamination of any crude oil at the points of transloading. In the event MAALT detects contamination to any crude oil delivered to the Facilities prior to transloading a contaminated shipment, MAALT shall notify Customer of such contamination prior to transloading and will deliver a sample of such contaminated product to Customer. In such event, Customer shall test the contaminated product to determine its disposition within twenty-four (24) hours of receiving the sample and shall notify MAALT of the requested disposition immediately upon receiving results of the test. In no event shall MAALT be responsible for any costs, expenses, delays, demurrage and private lease carc storage charges, fees or damages resulting from or related to MAALT's detection of a potentially contaminated shipment delivered to the Facilities. Title to all crude oil shall at all times remain with Customer until as such time the title passes to a purchaser of the the crude oil.

4. **Representations and Warranties; Compliance with Laws.**

(a) Performance of Services. MAALT represents and warrants that it has reviewed the requirements set forth in this Agreement regarding the performance of the Services and represents that it possesses all personnel, equipment and tools necessary to perform the Services in a workmanlike manner.

(b) Compliance with Laws. MAALT represents and warrants that all permits, licenses and consents necessary for performance of the Services contemplated under this Agreement, including but not limited to such permits and licenses as may be necessary for the operation of machinery and equipment to handle and store crude oil, are in full force and effect.

5. **Compensation.**

(a) Transload Fees. In consideration for the Services rendered by MAALT pursuant to this Agreement, Customer shall pay MAALT a transloading service fee of $1.50 per barrel transloaded from truck to railcar or railcar to truck.

(b) Take or Pay. Customer shall deliver a minimum quantity of 380,000 barrels of crude oil per month to the Facilities for transloading. If Customer does not deliver 4,553,280 barrels of crude oil for transloading during the Term, it shall pay MAALT the difference between the amount paid for actual transloading and $6,829,920.00 within thirty (30) days of the end of the Term; it being intended that the total compensation paid to MAALT during the Term shall be a minimum of $6,829,920. Take or Pay minimum quantity subject to railroad performance.

(c) Invoicing & Payment. MAALT shall generate initial invoices at the time of loading all railcars. Customer shall pay invoices within thirty (30) days from the date of such invoice. Invoicing may be submitted to Customer via regular US Mail, fax, or email to an address specified by Customer. Payments by Customer may be made electronically via Automatic Clearing House transfer to the account specified on Exhibit "A" hereto, or by check at the following address:

Payment Address: MAALT, LP
4413 Carey Street
Fort Worth, Texas 76119

All electronic fund transfers must include the remittance information necessary for the accurate application of the payment. This includes name, invoice numbers, and invoice amounts.

6. **Inspection.**

Upon prior written notice, Customer may inspect the Facilities at a time to be determined by MAALT in its sole and exclusive discretion. Any inspection of the Facilities by Customer must be made at the point of transloading of crude oil at the applicable Facility. Customer may, at its sole cost and expense, have a representative visit the Facilities for the purpose of such inspection. Customer agrees to indemnify and hold MAALT harmless from any loss, damage, liability and/or expense resulting from an inspection or any determination by Customer that any portion of its crude oil inventory stored at the Facilities is contaminated or otherwise unacceptable provided that such contamination is not the result of MAALT's negligence or willful misconduct.

7. **Term and Termination.**

(a) Term. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of one (1) year after the Effective Date (the "Term"). This Agreement may be extended for two additional periods of six (6) months each upon request of Customer. Upon delivering or receipt of a notice of

termination of this Agreement, the parties hereto shall cooperate with one another and use their commercially reasonable efforts to promptly remove all of Customer's remaining product from the Facilities prior to the contemplated termination date of this Agreement.

(b) Termination.

(i) Termination for Cause. Either party may terminate this Agreement immediately upon written notice to the other party if (i) such other party is in material breach of any of its obligations under the Agreement and fails to cure such breach within thirty (30) business days after written notice thereof to such other party; or (ii) such other party is insolvent or makes any arrangement with its creditors generally, or has a receiver appointed for all or a substantial part of its business or properties, or an insolvency, bankruptcy of similar proceeding is brought by or against such other party and involving such other party is not dismissed within 60 business days of its institution, or if such other party goes into liquidation or otherwise ceases to function as a going concern.

(ii) Termination without Cause. Notwithstanding anything stated in this Agreement to the contrary, after the expiration of the Term, either party hereto may at its option terminate this Agreement at any time upon thirty (30) days prior written notice to the other party, in which case MAALT shall be entitled to payment for Services rendered prior to termination. Customer, upon reasonable notice, shall use its commercially reasonable efforts to cooperate with MAALT to cause any of Customer's crude oil remaining in storage at the Facilities to be removed therefrom prior to the contemplated termination of this Agreement. Neither party shall be entitled to any claim for damages as a result of a valid termination of this Agreement, including but not limited to any claim for loss of anticipated profits.

8. **Independent Contractor.** MAALT is being engaged as an independent contractor, and in no event shall MAALT or any principal, partner, employee, agent or subcontractor of MAALT be considered a partner, employee, joint venturer, or agent of Customer.

9. **Indemnification.** Each party agrees to defend, indemnify and hold the other party harmless from any loss, damage, liability and/or expense (including attorneys' fees) incurred or suffered by such other party as the result of any claims, suits, actions or demands of any kind, including but not limited to personal injury (including death) or property loss or damage, to the extent such loss or damage is caused by the negligent, grossly negligent, willful, or intentional acts or omissions of the indemnifying party, its employees or agents; provided, (a) the indemnifying party is given prompt written notice of any such claim; (b) the indemnified party cooperates with the indemnifying party in the defense of such claim, at such indemnifying party's expense; and (c) the indemnifying party is given full authority to control the defense and/or settlement of such claim (including, without limitation, the selection of attorneys, forums, strategies, etc.).

10. **Insurance.** During the Term of this Agreement, MAALT shall maintain all insurance and/or bonds required by law or this Agreement, including, but not limited to: (a) Worker's compensation and related insurance as prescribed by the laws of the State of Texas; (b) employer's liability insurance with limits of at least $1,000,000 per occurrence, and (c) comprehensive general liability insurance, and, if the use of motor vehicles is required, comprehensive motor vehicle liability insurance, each with limits of at least $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, including death, and/or property damage. MAALT agrees, upon the request of Customer, to furnish Customer with evidence of the foregoing insurance.

11. **Force Majeure.** Neither party shall be liable for delay or failure to perform hereunder, in whole or in part, by reasons of contingencies beyond the reasonable control of the party affected whether herein specifically enumerated or not, including among others, acts of nature, act of terror, fire, explosion, railroad failures or delays, breakdown of plant, strike, lockout, labor dispute, accident or casualty, earthquake, flood, tornado, floods, high or low water, washouts, river icing, adverse weather conditions, operation of law, order proclamation, regulation, demand or requisition by any governmental agency whether local, state, or federal (each a "Force Majeure Event"), provided, however, that the party so affected shall promptly give written notice to the other party whenever such event or other act becomes reasonably foreseeable, and the party shall use its commercially reasonable efforts thereafter to overcome the effects of the such event as promptly as possible.

12. **Product Notification.**

Prior to delivering any crude oil to the Facilities, Customer shall provide MAALT with any applicable Material Safety Data Sheets reflecting safety information for each grade of crude oil to be delivered by Customer to the Facilities including, but not limited to, the heath hazards, handling requirements and storage instructions for such commodity.

13. **Miscellaneous Matters.**

(a) Notices. Any notice or other communication hereunder shall be in writing and shall be deemed given and effective when delivered personally, by fax (and confirmed by certified or registered mail, postage prepaid, return receipt requested), or by overnight carrier, addressed to a party at its address stated below or to such other address as such party may designate by written notice to the other party in accordance with the provisions of this Section.

To MAALT:
MAALT, LP
4413 Carey St.
Fort Worth, Texas 76119
Attn: Marty Robertson
Fax:

To Customer:
Jupiter Marketing & Trading, LLC
440 Louisiana Street, Suite 700
Houston, TX 77002
Attn: Travis Morris
Fax:

(b) Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas excluding conflict of law rules and principles. All legal actions arising under or relating to this Agreement shall be brought in appropriate court of law located in Tarrant County, Texas, to the exclusion of all other venues.

(c) Entire Agreement/Merger. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiation, commitments and understandings of the parties. This Agreement may not be changed or amended except by a writing executed by both parties hereto.

(d) Severability. If any provision of this Agreement shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to render it legal, valid and enforceable while to the fullest extent possible preserving the business and financial intent and impact of the original provision, and the legality, validity and enforceability of all other provisions of the Agreement shall not be affected thereby.

(e) No Waiver. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, or give rise to estoppel or acquiescence, nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

(f) Assignment. Neither party shall assign or subcontract their rights or delegate their duties hereunder, either by operation of law or by voluntary transfer, without the prior written consent of the other party; except that either party may assign their rights and delegate their duties to any of their respective subsidiaries or affiliates or in connection with the purchase or acquisition by another entity of all or substantially all of either party's assets. However, such an assignment of rights and delegation of duties by a party hereto shall not relieve such party from its obligations hereunder and it shall, together with the assignee and delegate, remain jointly and severally liable upon its obligations herein. Any attempted assignment and delegation in accordance with these provisions shall require

the assignee to assume and to perform all the terms and conditions of this Agreement. Any attempted assignment not in accordance with this paragraph shall be null, void and of no effect.

(g) Confidentiality. Neither party shall disclose to any third party the terms of this Agreement, or any proprietary or business knowledge of the other party without the prior written consent of the other party, except where clearly necessary to carry out the terms of this Agreement.

(h) Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same instrument. For purposes of negotiating and finalizing this Agreement, if this Agreement is transmitted by facsimile machine ("fax") or electronic means, it shall be treated for all purposes as an original document. Additionally, the signature of any party on this Agreement transmitted by way of a facsimile machine or electronic means shall be considered for all purposes as an original signature. Any faxed or electronic transmission of this Agreement reflecting the signature of a party hereto shall be considered to have the same binding legal effect as an original document. At the request of any party, a faxed or emailed version of this Agreement shall be re-executed by each signatory party in an original form.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first above written.

MAALT, LP
d/b/a Vista Proppants and Logistics

By: Denetz Logistics, LLC
a Texas limited liability company,
its general partner

By: _____
Name: Marty Anderson
Title: President
Date: 6/7/18

Jupiter Marketing & Trading, LLC

By: _____
Name: Travis Morris
Title: Chief Commercial Officer
Date: 6/18/18

EXHIBIT A

MAALT WIRING INSTRUCTIONS

Name of Bank:
Account Name:
Account Number:
ABA Routing Number:

From: Chris Favors
To: Mike van den Bold
Cc: Braden Merrill
Subject: RE: Access Agreement
Date: Friday, July 27, 2018 3:19:16 PM
Attachments: image001.png
image006.png
image007.png
Maalt LP - Sequitur - Premises Access Agreement 2018-07-27 Maalt revision v2.docx

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Mike,

We accepted the change that you proposed; however we changed the word "owner" to "Maalt".

Our President, Marty Robertson, also asked that we add the language at the bottom of page 1 on the attachment. If you are agreeable to that language, I have a signed copy that I can send over to you.

Thanks,

Chris Favors
Business Development
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com

From: Mike van den Bold <mcvdb@sequiturenergy.com>
Sent: Friday, July 27, 2018 1:17 PM
To: Chris Favors <cfavors@vprop.com>
Cc: Braden Merrill <bmerrill@sequiturenergy.com>
Subject: Access Agreement

Chris,

Attached are redline and clean draft versions of the captioned Agreement. We accepted all your edits except for not assuming liability for Maalt's gross negligence.
The new edits are merely for clarification of the tie to the Terminal Services Agreement. Upon execution of the TSA, this Access Agreement will terminate.
We need to start construction next week in order to meet Sept 1 online date.

If you are OK with these edits, I'm prepared to sign today and send an executable version to you.

Call either number below if any questions,

Thx,

Mike van den Bold, *President and COO*

Sequitur
ENERGY RESOURCES LLC

Two BriarLake Plaza
2050 West Sam Houston Parkway S., Suite 1850
Houston, TX 77042
Office - 713.395.3004 Cell - 832.567.8649
mcvdb@sequiturenergy.com

PREMISES ACCESS AGREEMENT

THIS PREMISES ACCESS AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2018 (the "Effective Date") by and between Maalt, LP, a Texas limited partnership ("Maalt") and Sequitur Permian, LLC, a Texas limited liability company, and SEM Operating Company LLC, a Texas limited liability company (collectively, "Sequitur" or "Company"), who desires to perform certain services for Maalt from time to time on Maalt's premises as more particularly described hereinbelow. Maalt and Sequitur shall be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Maalt operates a rail terminal facility located in Barnhart, Texas, as more specifically described on Exhibit A-1 hereto on the land more specifically described on Exhibit A-2 hereto (collectively, the "Premises"); and

WHEREAS, Sequitur owns and operates various oil and gas wells which produce crude oil and other liquid hydrocarbon products (the "Products"); and

WHEREAS, Maalt and Sequitur desire to enter into a Terminal Services Agreement (the "Terminal Agreement") pursuant to which Sequitur will utilize the Premises and Maalt's services for the throughput of Sequitur's Products, as well as other related services; and

WHEREAS, in order to utilize the Premises in a timely manner, it is necessary for Sequitur to commence construction of its throughput-related facilities on the Premises (the "Services") prior to execution of the Terminal Agreement; and

WHEREAS, Maalt desires that Sequitur perform such Services on the Premises from time to time, provided that Sequitur makes the agreements set forth below.

NOW, THEREFORE, IN CONSIDERATION of Maalt engaging Sequitur to perform the Services and Sequitur being permitted to access Maalt's premises, Sequitur agrees as follows:

For the Sequitur Group (as hereinafter defined), Sequitur fully assumes such risks, including the risk of personal injury, death, or property damage due to any conditions of the Premises or due to any negligence of Maalt or otherwise, except as to Maalt's gross negligence or willful misconduct while Sequitur is in or upon the Premises performing Services, and agrees to (i) exercise reasonable care while on the Premises and (ii) comply with any procedures, requests or instructions (especially those related to safety) of Maalt or any of its representatives while Sequitur is on the Premises.

Sequitur may maintain on the Premises any equipment, materials, and personnel necessary for performance of the Services. Such equipment and materials must be located in a manner that does not interfere with entering, leaving, and using the Premises or any contiguous property.

Sequitur shall, in connection with the Services, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, Sequitur, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for the Services.

In the event that a Terminal Services Agreement is not executed by Maalt and Sequitur by September 1, 2018, Sequitur shall stop all work under this Agreement, and immediately restore the Premises to the condition it was in before Sequitur began its work. All such restoration work shall be completed no later than September 30, 2018 at no cost to Maalt.

FOR ITSELF AND ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER ("SEQUITUR GROUP"), SEQUITUR HEREBY EXPRESSLY RELEASES, AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, MAALT, AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, INVITEES, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER, AND OTHER REPRESENTATIVES OF EACH (COLLECTIVELY, THE "MAALT GROUP"), FROM ANY AND ALL LIABILITY FOR DAMAGES, CLAIMS AND COSTS (INCLUDING ATTORNEYS' FEES) ARISING OUT OF (A) PERSONAL INJURY TO OR DEATH OF ANY MEMBER OF SEQUITUR GROUP, OR FOR DAMAGE OR DESTRUCTION OF THEIR RESPECTIVE PERSONAL PROPERTY, CAUSED WHILE PRESENT ON THE PREMISES OR ON ANY OTHER PREMISES OPERATED BY MAALT GROUP, INCLUDING THE MAALT GROUP-MAINTAINED ROADWAYS USED IN CONNECTION WITH THE PREMISES, REGARDLESS OF THE CAUSE OR FAULT OF SUCH INJURY, DEATH, OR DAMAGE AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, (B) PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED BY ANY THIRD PARTY THAT WAS PROXIMATELY CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL CONDUCT OF ANY MEMBER OF THE SEQUITUR GROUP AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, AND (C) ANY BREACH OF SEQUITUR'S OBLIGATIONS HEREUNDER, UNLESS ARISING FROM MAALT GROUP'S NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OR WILLFUL MISCONDUCT.

The obligations under this Agreement are in addition to any provision contained in any other agreement between the parties, existing now or hereafter made, relating to the subject matter. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, exclusive of conflicts of law principles.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

[Signature page follows.]

Maalt:

Maalt, LP

By: _____

Name: _____

Title: _____

Sequitur:

Sequitur Permian, LLC

By: _____

Name: _____

Title: _____

SEM Operating Company LLC

By: _____

Name: _____

Title: _____

From: Chris Favors
To: Brian McConn; Gary Humphreys; Marty Robertson; Steven McCarley; Tom Ramsey; Travis Morris
Subject: Barnhart Crude Oil Transload Opportunity

Tom & Travis,

We would like to meet with Jupiter for an hour prior to having the Sequitur team join us. If y'all are available for lunch after the meetings, we would like to take you to lunch as well.

Regards,

Chris

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

ORDER

On this day, came to be heard Plaintiff, MAALT, LP's THIRD MOTION FOR SUMMARY JUDGMENT previously filed in the above-entitled and numbered cause. The Court, having considered the Motion, the brief and appendix, any response and brief, the reply, and the arguments of counsel, is of the opinion that the Motion should be DENIED.

Signed this the _____ day of _____, 2021.

_____

Judge Edward L. Morris

END OF ORDER # #

Prepared and submitted by:

HOOVER SLOVACEK LLP

By: */s/Matthew A. Kornhauser*
Matt A. Kornhauser
State Bar No. 11684500
Dylan B. Russell
State Bar No. 24041839
Christopher J. Kronzer
State Bar No. 24060120
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haselden@hooverslovacek.com

Attorneys for Sequitur Permian, LLC

-and-

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Local Counsel for Sequitur Permian, LLC