

3. All envelopes utilized in the service of the foregoing contained the following legend:
“LEGAL DOCUMENTS ENCLOSED. PLEASE DIRECT TO THE ATTENTION OF
ADDRESSEE, PRESIDENT OR LEGAL DEPARTMENT.”

/s/ Forrest Kuffer

Forrest Kuffer

Sworn to before me this

29th day of June, 2018

/s/ John Chau

Notary Public, State of New York

No. 01CH6353383

Qualified in the County of Queens

Commission Expires January 23, 2021

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ULTRA PETROLEUM CORP., *et al*

Reorganized Debtors.

ULTRA RESOURCES, INC.,

Plaintiff,

V.

SUNOCO PARTNERS MARKETING &
TERMINALS, L.P.,

Defendants.

Chapter 11

Case No. 16-32202 (DRJ)

Jointly Administered

Adv. Pro. No. 16-03272 (MI)

**ULTRA RESOURCES, INC.'S ANSWER TO SUNOCO PARTNERS MARKETING &
TERMINALS, L.P. AMENDED COUNTERCLAIM**

Ultra Resources, Inc. (“Ultra”), by and through its undersigned counsel, hereby files this Answer (the “Answer”) to the *Answer and Counterclaim on Behalf of Defendant Sunoco Partners Marketing & Terminals, L.P. to Plaintiff’s Second Amended Adversary Complaint* [Adv. No. 16-03272, Docket No. 113] (the “Amended Counterclaim”), filed by Sunoco Partners Marketing & Terminals, L.P. (“Sunoco”). Ultra respectfully state as follows.

Responses to Allegations in the Amended Counterclaim

Ultra denies all allegations in the Complaint that are not specifically admitted.

1. Ultra is incorporated in Delaware, and has its principal place of business in Houston, Texas.

Answer: Ultra admits the allegations in paragraph 1.

2. Sunoco is a Texas limited partnership.

Answer: Ultra admits the allegations in paragraph 2, upon information and belief.

3. The United States Bankruptcy Court for the Southern District of Texas (this “Court”) has jurisdiction over this controversy pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334.

Answer: The allegations in paragraph 3 consist of Sunoco’s legal conclusions, to which no response is required.

4. This Counterclaim constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B).

Answer: The allegations in paragraph 4 consist of Sunoco’s legal conclusions, to which no response is required.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1409 based on Ultra’s Bankruptcy case filed under chapter 11 of title 11 of the United States Code.

Answer: The allegations in paragraph 5 consist of Sunoco’s legal conclusions, to which no response is required

6. Ultra and its affiliates operate an independent oil and natural gas business.

Answer: Ultra admits the allegations in paragraph 6.

7. Sunoco and its affiliates own and operate a logistics business consisting of a geographically diverse portfolio of complementary crude oil, natural gas liquids, and refined products pipelines, terminalling and acquisition and marketing assets which are used to facilitate the purchase and sale of crude oil, natural gas liquids, and refined products.

Answer: Ultra admits the allegations in paragraph 7, upon information and belief.

8. On July 31, 2013, Ultra (through its predecessor-in-interest Axia Energy, LLC) and Sunoco (through its predecessor-in-interest EDF Trading North America, LLC (“EDF”) entered into a Crude Oil Purchase Contract (the “Original Contract” and as amended by Amendment, the “Purchase Contract”) whereby Ultra agreed to deliver, and Sunoco agreed to take, certain daily minimum volumes of crude oil at an agreed-upon price. A copy of the Purchase Contract is attached hereto as **Exhibit A**.

Answer: The crude oil purchase contract, dated July 21, 2013 (the “Purchase Contract”), is a writing that speaks for itself. Ultra denies the allegations in the first sentence of paragraph 8 to the extent they differ from, are inconsistent with, or improperly characterize the text contained therein. Ultra respectfully refers the Court to the Purchase Contract for a full and complete reading of its contents, but denies any characterization thereof. To the extent a response is required to the first sentence of paragraph 8, Ultra admits that it is a party to the Purchase Contract with Sunoco via their respective predecessors-in-interest, Axia Energy LLC (“Axia”), and EDF Trading North America, LLC (“EDF”) on July 31, 2013, but otherwise denies the allegations in the first sentence of paragraph 8. Ultra admits the allegations in the second sentence of paragraph 8, upon information and belief.

9. The Purchase Contract has a term of September 1, 2013 through July 31, 2017.

Answer: The Purchase Contract is a writing that speaks for itself. Ultra denies the allegations in the first sentence of paragraph 8 to the extent they differ from, are inconsistent with, or improperly characterize the text contained therein. Ultra respectfully refers the Court to the Purchase Contract for a full and complete reading of its contents, but denies any characterization thereof.

10. On April 22, 2014, Ultra and Sunoco (through EDF) executed Crude Oil Purchase Contract Amendment #1 (the “Amendment”) which, among other things, amended and restated the terms of the Original Contract. Among other changes, the Amendment modified the minimum daily volumes Ultra was required to deliver to Sunoco thereunder. A copy of the Amendment is included in **Exhibit B** attached hereto.

Answer: The amendment to the Purchase Contract, dated April 22, 2014 (the “April Amendment”), is a writing that speaks for itself. Ultra denies the allegations in the first and second sentences of paragraph 10 to the extent they differ from, are inconsistent with, or improperly characterize the text contained therein. Ultra respectfully refers the Court to the April Amendment for a full and complete reading of its contents, but denies any characterization

thereof. To the extent a response is required to the first and second sentences of paragraph 10, Ultra admits that it entered into the April Amendment with Sunoco via EDF, but otherwise denies the allegations in the first and second sentence of paragraph 10. Ultra admits the allegations in the third sentence of paragraph 10, upon information and belief.

11. Prior to April 29, 2016 (the “Petition Date”), Ultra failed to meet its minimum daily delivery volumes.

Answer: Ultra denies the allegations in paragraph 11.

12. Specifically, during Phase 1 of the Purchase Contract, Ultra committed to deliver 184,000 bbls to Sunoco. During that period, however, Ultra actually delivered only 120,033 bbls, a shortfall of 63,967 bbl.

Answer: The Purchase Contract and April Amendment are writings that speak for themselves. Ultra denies the allegations in the first sentence of paragraph 12 to the extent they differ from, are inconsistent with, or improperly characterize the text contained therein. Ultra respectfully refers the Court to the Purchase Contract and the April Amendment for a full and complete reading of its contents, but denies any characterization thereof. Ultra denies the remaining allegations in paragraph 12.

13. Likewise, during Phase 2 of the Purchase Contract, Ultra committed to deliver 1,597,500 bbls to Sunoco through April 2016. During that period, however, Ultra actually delivered only 818,788 bbls, a shortfall of 778,712 bbl.

Answer: The Purchase Contract and April Amendment are writings that speak for themselves. Ultra denies the allegations in the first sentence of paragraph 13 to the extent they differ from, are inconsistent with, or improperly characterize the text contained therein. Ultra respectfully refers the Court to the Purchase Contract and the April Amendment for a full and complete reading of its contents, but denies any characterization thereof. Ultra denies the remaining allegations in paragraph 13.

14. During the term of the Purchase Contract, Ultra entered into other contracts with third-parties whereby Ultra was required to deliver certain volumes of black or yellow wax crude oil.

Answer: Ultra admits that it entered into contracts with third-parties relating to the delivery of black wax crude oil, but otherwise denies the allegations in paragraph 14.

15. During the term of the Purchase Contract, Ultra's delivery commitments exceeded the actual amount of black or yellow wax crude oil it produced.

Answer: Ultra denies the allegations in paragraph 15.

16. Notwithstanding its delivery obligations under the Purchase Contract, Ultra wrongfully diverted its black or yellow wax crude oil production to fulfill its other delivery contracts and was, therefore unable or unwilling to satisfy its delivery obligations to Sunoco.

Answer: Ultra denies the allegations in paragraph 16.

17. Ultra's Phase 1 delivery shortfall damaged Sunoco in the amount of at least \$1,279,349.80.

Answer: Ultra denies the allegations in paragraphs 17.

18. Ultra's Phase 2 delivery shortfall damaged Sunoco in the amount of at least \$15,574,240.00.

Answer: Ultra denies the allegations in paragraph 18.

19. Prior to the Petition Date, Ultra advised Sunoco that it would no longer perform its obligations under the Purchase Contract. As a result, on April 29, 2016 (at the time without knowledge of Ultra's bankruptcy filing), Sunoco sent to Ultra a notice in accordance with the Purchase Contract terminating the Purchase Contract (the "Termination Letter"). A copy of the Termination Letter is attached hereto as **Exhibit C**.

Answer: Ultra denies the allegations in the first sentence of paragraph 19. Ultra admits that Sunoco sent Ultra a notice on April 29, 2016, purporting to terminate the Purchase Contract, but otherwise denies the allegations in the second sentence of paragraph 19. Ultra admits the allegations in the third sentence of paragraph 19, upon information and belief.

20. Sunoco repeats and incorporates the allegations contained in paragraphs 1 through 19 as if fully set forth herein.

Answer: The allegations in paragraph 20 consist of Sunoco's claims or rights and legal conclusions to which no response is required. To the extent a response is required, Ultra denies the allegations in paragraph 20.

21. The Purchase Contract was a valid and enforceable contract.

Answer: Ultra admits the allegations in paragraph 21, upon information and belief.

22. Ultra failed to fulfill its commitments by 842,679 bbls.

Answer: Ultra denies the allegations in paragraph 22.

23. Ultra breached the Purchase Contract by failing to meet its minimum daily delivery volumes.

Answer: Ultra denies the allegations in paragraph 23.

24. Ultra's breach was wrongful and unreasonable, particularly given that it had sufficient production to fulfill its delivery obligations under the Purchase Contract but instead decided to divert its production to fulfill its delivery obligations on

Answer: Ultra denies the allegations in paragraph 24.

25. As a result of Ultra's failure to meet its minimum delivery volumes, Sunoco suffered a loss under the Purchase Contract of at least \$16,853,589.80.

Answer: Ultra denies the allegations in paragraph 25.

26. In addition, Sunoco is entitled to reimbursement for all reasonable attorneys' fees as provided for under Section 38.001(8) of the Texas Civil Practices and Remedies Code.

Answer: The allegations in paragraph 26 consist of Sunoco's claims or rights and legal conclusions to which no response is required. To the extent a response is required, Ultra denies the allegations in paragraph 26.

27. Sunoco's damages include, but are not necessarily limited to, all amounts provided for under Section 2.713 of the Texas Business and Commerce Code.

Answer: The allegations in paragraph 27 consist of Sunoco's claims or rights and legal conclusions to which no response is required. To the extent a response is required, Ultra denies the allegations in paragraph 27.

28. Prior to Sunoco's tender of the Termination Letter to Ultra upon its wrongful repudiation of the Purchase Contract, Sunoco was willing and able to accept Ultra's minimum delivery commitments in accordance with the Purchase Contract.

Answer: Ultra denies that it wrongfully repudiated the Purchase Contract. Ultra lacks sufficient information to admit or deny the remaining allegations in paragraph 28.

Separate Affirmative Defenses

Without admitting any of the allegations in the Amended Counterclaim, Ultra asserts the following affirmative defenses and expressly reserves its right to supplement these separate affirmative defenses.

First Affirmative Defense

Sunoco has failed to state a claim upon which relief can be granted.

Second Affirmative Defense

Sunoco is barred from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim for failure to mitigate damages.

Third Affirmative Defense

Sunoco is barred from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim because of its original breach of the Purchase Contract and the April Amendment, which extinguished and terminated the duties purportedly owed by Ultra under either the Purchase Contract or the April Amendment.

Fourth Affirmative Defense

Sunoco is barred from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim because of its fraudulent conduct and omissions in obtaining Ultra's consent to enter into the April Amendment.

Fifth Affirmative Defense

By and through its own conduct, omissions, statements, and actions, Sunoco has waived any and all of the claims asserted in the Amended Counterclaim.

Sixth Affirmative Defense

By and through its own conduct, omissions, statements, and actions, Sunoco is equitably estopped from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim.

Seventh Affirmative Defense

By and through its own conduct, omissions, statements, and actions, Sunoco is barred from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim by the doctrine of laches.

Eighth Affirmative Defense

By and through its own conduct, omissions, statements, and actions, Sunoco is equitably estopped from pursuing or recovering from any and all of the claims asserted in the Amended Counterclaim by the doctrine of unclean hands.

[Remainder of page intentionally left blank]

Dated: June 29, 2018

/s/ David R. Seligman

David R. Seligman (admitted *pro hac vice*)

Michael B. Slade (Texas Bar No. 24013521)

Luke C. Ruse (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: david.seligman@kirkland.com

michael.slade@kirkland.com

luke.ruse@kirkland.com

Kevin K. Chang (*pro hac vice* pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

555 California Street

San Francisco, California 94104

Telephone: (415) 439-1400

Facsimile: (415) 439-1500

Email: kevin.chang@kirkland.com

T Brooke Farnsworth (Texas Bar No. 06828000)

FARNSWORTH & vonBERG

333 N. Sam Houston Parkway, Suite 300

Houston, Texas 77060

Telephone: (281) 831-8902

Facsimile: (281) 931-6032

Email: brooke@fvllp.com

Counsel to the Reorganized Debtors

Certificate of Service

I certify that on June 29, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ David R. Seligman

David R. Seligman

EXHIBIT B

UPT_124_ADV3272_FCM_06-29-18

DUANE MORRIS LLP
COUNSEL TO SUNOCO
ATTN: MICHAEL LASTOWSKI, JARRET
HITCHINGS
222 DELAWARE AVENUE, SUITE 1600
WILMINGTON, DELAWARE 19801

UPT_124_ADV3272_FCM_06-29-18

DUANE MORRIS LLP
COUNSEL TO SUNOCO
ATTN: JAMES J. HOLMAN
30 S. 17TH STREET
PHILADELPHIA, PENNSYLVANIA 19103

UPT_124_ADV3272_FCM_06-29-18

KURT LAUTERBACH
ONE FLUOR DANIEL DRIVE
BUILDING A, LEVEL 3
SUGAR LAND TX 77478