

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and

TOKE OIL AND GAS, S.A.<sup>1</sup>

Plaintiffs,

Case No.: 2018 CA 000543

vs.

Division:

MARC M. MOSZKOWSKI and

HOSTGATOR.COM, LLC,

a Florida Limited Liability Company,

Defendant.

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**FIRST AMENDED COMPLAINT**

Plaintiffs DeepGulf, Inc. (hereinafter referred to as “DeepGulf”) and Toke Oil and Gas, S.A., by and through their undersigned attorneys, sue Defendant Marc M. Moszkowski (hereinafter referred to as “Moszkowski”) and Defendant, Hostgator.com, LLC, (hereinafter referred to as “Hostgator”) alleges as follows:

**JURISDICTION AND THE PARTIES**

1. Plaintiff DeepGulf is a Florida Corporation with its principal place of business in Escambia County, Florida.
2. DeepGulf’s field of business includes but is not limited to energy transportation including handling and transportation of hydrocarbon in pipeline either onshore or offshore or on ships.
3. Plaintiff Toke Oil & Gas is a wholly owned subsidiary of DeepGulf domiciled in Timor Leste also known as East Timor in the United States.
4. Defendant Moszkowski was, during all times pertinent to the allegations of this Complaint an Officer and Director of DeepGulf and is a resident of France.
5. Moszkowski is a founder of DeepGulf.

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<sup>1</sup> Plaintiff is correcting a scrivener’s error from its’ name as designated in the original Complaint filed in this case.

6. During all times pertinent to the allegations in this Complaint, Moszkowski was residing in Escambia County, Florida.

7. During all times pertinent to the allegations in this Complaint, Moszkowski was the President of DeepGulf, until December 26, 2017.

8. Moszkowski held all the rights, powers, and authorities of DeepGulf's Executive Officer by virtue of the CONSENT OF DIRECTORS AND SHAREHOLDERS IN LIEU OF FIRST MEETING OF DIRECTORS AND SHAREHOLDERS OF DEEPGULF, INC. on December 1, 2004 till those rights, powers and authorities were removed from him during the Board of Directors Meeting held on December 26, 2017.

9. During all times pertinent to the allegations in this Complaint, Moszkowski was a Director of DeepGulf until Defendant was removed completely from the Board of Directors on July 7, 2020.

10. Defendant Hostgator is a Florida Limited Liability Company.

**COUNT I—INJUNCTIVE RELIEF—**  
**INTELLECTUAL PROPERTY AND DEVELOPMENTS**  
**AND BUSINESS OPPORTUNITY**

11. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

12. On September 15, 2005, Moszkowski and DeepGulf, Inc. entered into a NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT a true and correct copy of which is attached hereto as Exhibit "A."

13. Paragraph 14 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT addresses Governing Law, Forum Selection Clause, grant that the Governing law shall be Florida Law and the venue shall be any state or Federal court located in Florida.

14. Paragraph 13 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT, in addition to a legal remedy, provides for injunctive relief, specific performance and other equitable relief to prevent violation of his obligations.

15. The opening paragraph of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT, defines Business Relationship as follows:

- a. In consideration and as a **condition of my service or continued services as an employee, officer, director, or consultant (such service is described herein as maintaining or being involved in a “Business Relationship”) of DeepGulf, Inc.** and any of its subsidiaries, divisions or affiliates (the “Company”), I hereby agree as follows:

16. Paragraph 6 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT, addresses Assignment of Developments and provides that:

If at any or times during my Business Relationship with the Company, I shall, either alone or in concert with others make, conceive, create, discover, invent, or reduce to practice any Development that: (i) Relates to the Business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured, or sold by the Company or which may be used in relation therein: (ii) Or, results from tasks assigned to me by the Company; (iii) Or, results from the use of premises or assets, either tangible or intangible, owned, leased, or contracted for by the Company, **then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company** and its assigns, as works made for hire or otherwise. The term “Development” shall mean any invention, modification, design, development, improvement, trade secret or intellectual property rights, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, software programs, discovery whatsoever or any interest therein, whether patentable or registerable under copyright, trademark, or similar statutes or subject to analogous protection, relating to the business of the Company. I shall promptly disclose to the Company or any person or persons designated by the Company each such Development. I hereby assign all rights including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks, I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information, including plans and models, relating thereto to the Company.

17. During the time when Moszkowski was serving as an officer and director of DeepGulf, Moszkowski filed several patent applications, some of which have been granted:

- a. **Method of fully expelling compressed gas from a tank**
  - i. Patent number: 9644792

- ii. Abstract: The method of transferring compressed gas at from a first tank to a second tank without decompressing the compressed gas and then re-pressuring the compressed gas comprising filling the second tank with a fluid, connecting a first fluid connection on the first tank to a second fluid connection on the second tank with a first line with one or more first valves, connecting a first gas connection on the first tank to a second gas connection on the second tank with a second line with one or more second valves, opening the first valves and the second valves to allow the compressed gas to pressurize the fluid, and pumping the fluid in the second tank into the first tank, thereby causing the compressed gas in the first tank to be displaced into the second tank.
- iii. Type: Grant
- iv. Filed: June 3, 2015
- v. Date of Patent: May 9, 2017

**b. Dual gradient pipeline evacuation method**

- i. Patent number: 8146667
- ii. Abstract: The method of removing a first liquid from a subsea pipeline which has a central portion lower than each of the ends of the subsea pipeline by pumping a second lower density fluid into the pipeline and the either removing the second lower density fluid by either displacing it with gas or evaporating the second lower density fluid to a gas.
- iii. Type: Grant
- iv. Filed: July 19, 2010
- v. Date of Patent: April 3, 2012

**c. Method of providing an outlet on a subsea pipeline**

- i. Publication number: 20120014751
- ii. Abstract: The method of providing an accessible outlet on a subsea pipeline which has an unknown rotational orientation comprising connecting a first end of a flexible hose to the subsea pipeline, providing a multiplicity of connected bend restrictor sections around the flexible hose to restrict the bending of the hose, and providing buoyancy to the end of

the hose such that the second end of the hose will remain accessible for future operations.

- iii. Type: Application
- iv. Filed: July 19, 2010
- v. Publication date: January 19, 2012

**d. Method of filling CNG tanks**

- i. Publication number: 20120012225
- ii. Abstract: The method of charging a tank with a gas product up to a desired pressure and temperature without increasing the gas in the tank to a pressure and temperature higher than a desired pressure and temperature, comprising pressurizing the incoming gas to be put into the tank to a pressure equal to or higher than the pressure of the resident gas already in the tank, cooling the incoming gas to a temperature lower than the resident gas, mixing the incoming gas with the resident gas up to the desired pressure such that the pressure and temperature of the combined gas will be increased without increasing the temperature and pressure of the resident gas to a pressure and temperature higher than the desired pressure or temperature.
- iii. Type: Application
- iv. Filed: July 19, 2010
- v. Publication date: January 19, 2012

**e. Dynamic positioning connection**

- i. Publication number: 20060130729
- ii. Abstract: A method of providing for the dynamic positioning of a vessel comprising providing a dynamically positioned service boat, linking the service boat to the vessel by a rigid link with a first connection between the link and the vessel, a second connection between the link and the service boat, the combination of connections having 3 degrees of rotational freedom, said supply boat having one degree of axial freedom relative to said vessel, and using the power of the service boat to dynamically position said vessel in a desired location.

- iii. Type: Application
- iv. Filed: December 20, 2004
- v. Publication date: June 22, 2006
- f. It is believed that there are other inventions and / or patentable ideas or methods which have not been disclosed yet to DeepGulf

18. Each and every invention in Paragraph 17 is a "Business of the Company" as defined in Paragraph 6 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT as described in Exhibit "A" which includes but is not limited to energy transportation including handling and transportation of hydrocarbon in pipeline or on ships either onshore or offshore.

19. Moszkowski, acting as President of DeepGulf communicated business plans, technologies, methodologies, processes, and know how to various individuals who were under the protection of nondisclosure and non-compete agreements.

20. Such information was sent under aviso or declaration that included the terminology "Commercial In Confidence" in the header of every page of these communications. Moszkowski represented to the Board of Directors of DeepGulf that this was the proper terminology in Asia to indicate the information was proprietary and confidential and the property of DeepGulf.

WHEREFORE, Plaintiff demands that this honorable court declare that the intellectual property described in Paragraph 17 is owned by DeepGulf, that Defendant be enjoined from utilizing any DeepGulf "invention, modification, design, development, improvement, trade secret or intellectual property rights, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, software programs, discovery whatsoever or any interest therein, whether patentable or registerable under copyright, trademark, or similar statutes or subject to analogous protection, relating to the business of the Company," including the intellectual property described in Paragraph 17 for his personal gain, that Defendant return all software, hardware and other intellectual property, including customer list and other information to DeepGulf, without cost or delay, and without disclosing to others the same, all available information, including plans and models, relating thereto to the Company and such other and further relief as this Court deems necessary and proper.

## **COUNT II—BREACH OF NON-COMPETITION AGREEMENT**

21. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

22. Paragraph 1 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT that is attached hereto as Exhibit “A” reads as follows:

**Paragraph 1. Non-competition.** During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reason or reasons for my termination, I shall not, alone or as a consultant, partner, officer, director, employee, joint venture lender or stockholder of any entity, (a) accept employment with any business or entity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed, or sold by the Company, or (b) engage in any business or activity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed, or sold by the Company.

23. Paragraph 2 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT that is attached hereto as Exhibit “A” reads as follows:

**Paragraph 2. Non-solicitation of Customers.** During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reason or reasons for my termination, I shall not, alone or as a consultant, partner, officer, director, employee, joint venture lender or stockholder of any entity, solicit or do business with any customer or potential customer of the Company (a) with whom I have had contact or (b) about whom I have obtained information, or became familiar with through Confidential Information (as defined in Paragraph 4.), during the course of my Business Relationship with the Company.

24. Paragraph 5 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT that is attached hereto as Exhibit “A” reads as follows:

**Paragraph 5 Non-disclosure.** I shall not at any time, whether during or after the termination of my Business Relationship with the Company, reveal to any person or entity any Confidential Information except to directors, officers and employees of the Company who a need to know the Confidential Information or as otherwise authorized in writing by the Company. The term “Confidential Information” shall include any information concerning the organization, business or finances of the Company or any other third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. In furtherance

of, and not by way of limitation to, the preceding sentence, Confidential Information shall include trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, engineering data, specifications, blueprints, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans, and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of providing services to the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss, or may be calculated to injure or cause loss to the Company, either directly or indirectly.

25. In various board conversation in the presence of Rus Howard and Bill Lott, Moszkowski repeatedly expressed his intent to leave the company, establish a new company that would then compete with DeepGulf to complete its projects using DeepGulf technology.

26. In various board conversation in the presence of Rus Howard and Bill Lott, Moszkowski repeatedly expressed his intent to leave the company, and work for a competitor company to bring the projects to fruition not for the benefit of DeepGulf.

27. In various board conversation in presence of Rus Howard and Bill Lott, Moszkowski repeatedly expressed his intent to leave the company, establish a new company that would then compete with DeepGulf but would reward some DeepGulf shareholders and exclude other DeepGulf shareholders.

28. Paragraph 8 of the NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT that is attached hereto as Exhibit "A" reads as follows:

**Paragraph 8 Further Assurances.** I shall, during and at any time after my Business Relationship with the Company, at the request and cost of the Company, promptly sign, execute, make, and do all such deeds, documents, acts, and things as the Company and its duly authorized officers may reasonably require: To apply for, obtain, register, and vest in the name of the Company alone, unless otherwise directed by the Company, patents, copyrights, trademarks, or other analogous protections in any country throughout the world relating to the Development and when so obtained or vested to renew and restore the same;

WHEREFORE, Plaintiff demands that this honorable court declare that Defendant be enjoined from utilizing any of the intellectual property described in Paragraph 17 for his personal gain, that Defendant return all software, hardware, and other intellectual property, including customer list and other information to DeepGulf, and such other and further relief as this Court deems necessary and proper.



### **COUNT III—CIVIL THEFT**

29. This is an action against Defendant for treble damages pursuant to Section 772.11, Florida Statutes, for Civil Theft.

30. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

31. On or about September 10, 2007, DeepGulf received an inquiry from a potential customer about DeepGulf's Patented Ultra-deepwater J-Flex Pipelay system and the possibility of using it to lay pipe between Sunrise gas field and East Timor.

32. Rus Howard on behalf of DeepGulf passed this inquiry on to Moszkowski.

33. Upon information and belief, in addition, the potential customer had clicked the "contact us" button on the DeepGulf website that sent an email to [deepgulf@deep-gulf.com](mailto:deepgulf@deep-gulf.com) which was received by Moszkowski.

34. On October 15, 2007, DeepGulf sent Moszkowski to East Timor to investigate the opportunity.

35. Moszkowski has repeatedly declared in various emails and letters that DeepGulf has not paid for his travel expenses to East Timor.

36. DeepGulf instructed Moszkowski to submit an expense report with receipts to enable reimbursement.

37. Moszkowski has not submitted an expense report or provided any receipts that would enable DeepGulf to write him a reimbursement check.

38. On February 2, 2008, at a DeepGulf Board Meeting, Moszkowski gave information regarding the potential for pipeline operation in East Timor following his recent time spent researching the project. He informed the Board, and adamantly still maintains, it would not be possible to do business in Timor as a US corporation. Based upon this information, the Board acted, and a resolution was passed to create a subsidiary company to be named Toke Petroleum.

39. In Timor, Moszkowski established Toke Oil and Gas and made himself an owner and the President Director General, rather than DeepGulf.

40. Upon information and belief and based on documents provided and represented by Moszkowski to be the Founding Documents of Toke Oil and Gas, the earliest of them dated

December 8, 2007 the three Founders of Toke Oil and Gas are VoGue Lda. Company, Hali Group S.A. Company, and Moszkowski an individual.

41. Upon information and belief and based on documents provided and represented by Moszkowski to be the Founding Documents of Toke Oil and Gas, Moszkowski, an individual, received 30,000 shares or 33% of Toke Oil and Gas.

42. Upon information and belief and based on documents provided and represented by Moszkowski to be the Founding Documents of Toke Oil and Gas, the initial meeting of Shareholders was dated January 2008 wherein Directors were appointed and Moszkowski was appointed President-Director.

43. Moszkowski led the Board of DeepGulf to believe that he established and was holding Toke Oil and Gas in his name for the benefit of DeepGulf, and that it would have been reckless to hold that interest in DeepGulf's name.

44. Toke Oil and Gas completed three contracts with total revenue of \$14.9 million US dollars. The last project was completed in May, 2012. During those projects, Moszkowski distributed \$1.304 million in "Director Salaries". At the same time, Moszkowski was also receiving his full time DeepGulf salary. While the President Director General, Moszkowski caused Toke Oil & Gas to pay Director Salaries without the knowledge and approval of the DeepGulf Board.

45. Moszkowski caused \$345,000 of monies allocated to Directors Salaries to be paid to himself.

46. The Board has sought to uncover the details of all monies spent.

47. Moszkowski continues to conceal this information and refuses to provide the records. He strenuously and repeatedly states that any and all records and documentation regarding Toke Oil and Gas are his, and his alone, despite DeepGulf's acquisition of Toke Oil & Gas' shares in May, 2012.

48. Moszkowski knowingly obtained and / or used Plaintiff's property with the intent to, either temporarily or permanently: (a) deprive Plaintiff of a right to the property or a benefit from the property, and / or (b) appropriate Plaintiff's property to Defendant's own use or to the use of other persons not entitled to use of the property.

49. More than thirty days before filing this action, Plaintiff made written demand upon Defendant for the treble damage amount by regular U.S. Mail and Certified U.S. Mail. A true and correct copy of the demand is attached hereto as Exhibit "B."

50. Defendant has failed and refused to comply with Plaintiff's demand as required by Section 772.11(1), Florida Statutes and is liable for treble damages and reasonable attorney's fees and costs pursuant to the provisions of the statute.

WHEREFORE, Plaintiff requests that this honorable court enter a judgment against Defendant for treble damages, court costs, attorney's fees, and for such other and further relief as this Court deems just and proper.

#### **COUNT IV—CIVIL THEFT**

51. This is an action against Defendant for treble damages pursuant to Section 772.11, Florida Statutes, for Civil Theft.

52. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 and 31 through 44 as if fully set forth herein.

53. Moszkowski knowingly obtained and / or used Plaintiff's property with the intent to, either temporarily or permanently: (a) deprive Plaintiff of a right to the property or a benefit from the property, and / or (b) appropriate Plaintiff's property to Defendant's own use or to the use of other persons not entitled to use of the property.

54. More than thirty days before filing this action, Plaintiff made written demand upon Defendant for the treble damage amount by regular U.S. Mail and Certified U.S. Mail. A true and correct copy of the demand is attached hereto as Exhibit "C."

55. Defendant has failed and refused to comply with Plaintiff's demand as required by Section 772.11(1), Florida Statutes and is liable for treble damages and reasonable attorney's fees and costs pursuant to the provisions of the statute.

WHEREFORE, Plaintiff requests that this honorable court enter a judgment against Defendant for treble damages, court costs, attorney's fees, and for such other and further relief as this Court deems just and proper.

#### **COUNT V—CONVERSION**

56. This is an action for damages that exceed \$15,000, which is brought in the alternative to Count III.

57. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 and 31 through 48 as if fully set forth herein.

58. Defendant exercised over the property of Plaintiff an ownership that was inconsistent with Plaintiff's right or possession of that property.

59. Defendant's actions, in which Defendant converted to its own use that property, deprived Plaintiff of Plaintiff's property.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, court costs, and such other and further relief as this Court deems proper and just.

#### **COUNT VI—CONVERSION**

60. This is an action for damages that exceed \$15,000, which is brought in the alternative to Count IV.

61. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 and 31 through 44 as if fully set forth herein.

62. Defendant exercised over the property of Plaintiff an ownership that was inconsistent with Plaintiff's right or possession of that property.

63. Defendant's actions, in which Defendant converted to its own use that property, deprived Plaintiff of Plaintiff's property.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, court costs, and such other and further relief as this Court deems proper and just.

#### **COUNT VII—FRAUDULENT MISREPRESENTATION**

64. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

65. DeepGulf began to seek additional funding for its business on August 6, 2012. Preparation for this round of funding began in 2011.

66. Timor Leste is a country in the Indonesian Archipelago just North of Australia. "Leste" is the Portuguese word for the English word "East." East Timor is the English name of the Country called Timor Leste in the national language of Portuguese.

67. Moszkowski sought and secured three contracts from East Timor and was the project manager of all three projects performed in East Timor.

68. Jointly during the time period referred to in Paragraph 65, preparation of a Private Placement Memorandum (hereinafter the "PPM") seeking funding for DeepGulf was a joint effort of Rus Howard and Moszkowski. Moszkowski provided all the technical information and the history of DeepGulf. Mr. Howard put the information received from Moszkowski into the PPM.

69. Other than Moszkowski, no other member of the Board of Directors nor the management team has visited East Timor, or negotiated contracts with East Timor, or talked directly to any DeepGulf client.

70. All information about the company and the projects was generated by Moszkowski or came from him to the rest of the management team.

71. Plaintiff and Rus Howard's sole source of information was Moszkowski.

72. Moszkowski prohibited Rus Howard from contacting clients and any individual in East Timor, Indonesia to obtain or confirm information

73. The PPM makes various representations that the Board of Directors for DeepGulf has later discovered to be false and misleading.

74. The PPM states, "the Company (DeepGulf, Inc.) was invited to Timor-Leste to evaluate whether the Company would be able to use its technologies to lay a pipeline to meet the needs of the Country of Timor-Leste which hoped to lay a large gas pipeline from the Greater Sunrise oil field to the Shores of Timor-Leste. In order to determine the feasibility of the project and to enable comprehensive planning of the infrastructure for this and future projects, the Company's Timorese subsidiary TOKE completed three projects in the Timor Sea and in Timor-Leste during the years 2008 through 2012."

75. Moszkowski has represented that the three projects completed in East Timor were DeepGulf projects and that project revenue totaled U.S. \$14.9 million.

76. Moszkowski represented to investment bankers that DeepGulf completed three projects in East Timor or in the Timor Sea with revenue of 15 million US Dollars.

77. Moszkowski has represented to shareholder's, the Board or Directors, potential investors, investment bankers, government officials that the three projects completed in Timor were DeepGulf's projects and that revenue was 15 million US dollars.

78. Moszkowski lead the board to believe that he held shares in Toke Oil and Gas for the benefit of DeepGulf from the foundation of the company in 2008.

79. DeepGulf was a Toke Oil and Gas shareholder of record since 2010.

80. Moszkowski negotiated DeepGulf's purchase of 30,000 shares or 33% of Toke Oil and Gas from Vincente Ximenes on or about August 12, 2010.

81. Moszkowski negotiated DeepGulf's purchase of an additional 30,000 shares or 33% of Toke Oil and Gas from Vincente Ximenes on or about May 25, 2012.

82. DeepGulf purchased an additional 30,000 shares or 33% of Toke Oil and Gas from Moszkowski on or about May 25, 2012, making DeepGulf the sole owner of Toke Oil and Gas.

83. On or about July 17, 2017, the Board of Directors requested that the records of the transactions of the three projects in East Timor be turned over to the Board for examination, Moszkowski refused to deliver a copy of Toke Oil & Gas' records.

84. Moszkowski insists that despite earlier representations to the public and to investors that the projects were DeepGulf project he now asserts that the projects were Toke Oil & Gas' projects and not DeepGulf projects.

85. Moszkowski asserts that because Toke Oil & Gas was an independent offshore company at the time of the projects DeepGulf has no rights to the records.

86. Furthermore, Moszkowski currently asserts that Toke Oil & Gas is not a DeepGulf subsidiary.

87. Moszkowski also asserts that the purchase of Toke Oil & Gas' shares was not completed and therefore DeepGulf is not the owner of Toke Oil & Gas and has no right to Toke Oil & Gas' records.

88. Moszkowski asserts the DeepGulf was a subcontractor to Toke Oil & Gas and has no rights to the records of the Contractor.

89. Moszkowski continues to refuse to provide documents relating to Toke Oil & Gas to Plaintiffs.

90. Moszkowski fraudulently misrepresented and concealed material information about DeepGulf, Toke Oil & Gas, their relationship to each other, the three projects, who owned and owns Toke, who performed the projects, the revenue generated by the projects and to whom it belonged, and DeepGulf's purchases of Toke Oil & Gas shares.

91. DeepGulf raised money based on the PPM that incorporated false and misleading information from Moszkowski about the projects and DeepGulf's role in the projects.

92. Moszkowski hid facts and provided false and misleading information to shareholders, which induced them to invest.

93. Moszkowski hid facts and provided false and misleading information to the Board about the Toke Oil & Gas structure, ownership, directorship, operations, and the nature of the relationship between DeepGulf and Toke Oil & Gas, and DeepGulf should have received, at a minimum its pro rata portion of profits from Toke Oil & Gas activity.

WHEREFORE, Plaintiffs demand judgment against Defendant for damages, court costs, and such other and further relief as this Court deems proper and just.

#### **COUNT VIII—DECLARATORY RELIEF**

94. Plaintiffs reincorporate Paragraphs 1 through 10 and 78 through 82 and 86 as if fully set forth herein.

95. There is a present, actual need for a declaration regarding the rights, title, and interest of Plaintiffs and Defendant in Toke Oil & Gas.

96. Plaintiffs' ownership rights in Toke Oil & Gas are in doubt because of declarations and actions of Defendant.

WHEREFORE, Plaintiffs request that this court declare the rights, title and interest of Plaintiffs and Defendant in Toke Oil & Gas and for such further relief as this Court deems necessary and proper.

#### **COUNT IX—ACCOUNTING**

97. Plaintiff reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

98. This is an action for an Accounting.

99. Defendant has a fiduciary duty to Plaintiff and entered into several complex transactions with Plaintiff.

100. Florida law and equity require Defendant to account for his use of the assets of Plaintiff.

WHEREFORE, Plaintiff demands:

- a. judgment for an accounting of the amounts due from Defendant;
- b. for an order requiring production of documents related and relevant to the accounting;
- c. for a lien on the proceeds received by Defendant; for judgment requiring Defendant to pay the amounts found to be due to Plaintiff in the accounting and after trial on issues of law found to exist from the accounting;
- d. for their attorneys' fees, as allowed by law, pre- and post-judgment interest on the liquidated amounts found to be owed, costs;
- e. such other orders as shall be proven to be appropriate at the conclusion of the accounting; and
- f. any such other relief as the Court deems necessary and proper

**COUNT X – BREACH OF CONTRACT**

101. Plaintiffs reincorporate and restate Paragraphs 1 through 10 as if fully set forth herein.



102. Defendant and Plaintiff DeepGulf, Inc. entered into a written agreement which is attached hereto as Exhibit "A" which states as follows:

**Paragraph 1. Non-competition.** During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reason or reasons for my termination, I shall not, alone or as a consultant, partner, officer, director, employee, joint venture lender or stockholder of any entity, (a) accept employment with any business or entity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed, or sold by the Company, or (b) engage in any business or activity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed, or sold by the Company.

103. From 2010 to 2011, Defendant was paid \$345,000.00 by Toke Oil & Gas, S.A. <sup>2</sup>

104. By working for Toke Oil & Gas, S.A. and accepting these payments, Defendant breached the contract attached as Exhibit "A".

WHEREFORE, Plaintiff demands judgment against Defendant for damages, together with prejudgment interest, costs, and such other and further relief as this Court seems just and proper.

#### **COUNT XI – INJUNCTIVE RELIEF**

105. Plaintiff DeepGulf reincorporates and restates Paragraphs 1 through 10 as if fully set forth herein.

106. Defendant has exclusive access to the domain name information and passwords for website utilized by DeepGulf, Inc. – to wit, but may not be currently limited to, [www.deepgulf.net](http://www.deepgulf.net), [www.deep-gulf.net](http://www.deep-gulf.net), [www.deepgulf.com](http://www.deepgulf.com), [www.deep-gulf.com](http://www.deep-gulf.com), and <http://pipepredictor.com>.

107. Defendant also has exclusive electronic access to data and information which is owned by Plaintiff DeepGulf, Inc.

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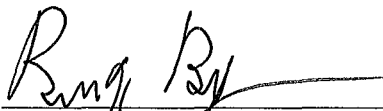
<sup>2</sup> Toke Oil & Gas, S.A. is currently owned by Deepgulf, Inc., but was owned by others in 2010 and 2011.

108. The domain names, passwords, and electronic data and information are all critical to the ongoing business of Plaintiff, DeepGulf, Inc.

109. Defendant's refusal to turn over these items to Plaintiff, DeepGulf, is a violation of the Agreement attached hereto as Exhibit "A".

110. Defendant Hostgator is hosting the websites referred to in Paragraph 105 and is being made part of this lawsuit only to be bound by a Final Judgment in this case, should Defendant Moszkowski refuse to turn over the domain names, passwords, and elective data and information requested.

WHEREFORE, Plaintiff demands that this Honorable Court declare that the intellectual property described in Paragraphs 105 and 106 is owned by DeepGulf, Inc., that the Defendant be enjoined from using any of the intellectual property described in Paragraphs 106 and 107, that the Defendant turn over all of the intellectual property described in Paragraphs 106 and 107 to Plaintiff, DeepGulf, Inc., that should Defendant Moszkowski not turn over the requested items that Defendant Hostgator be Ordered to give access to DeepGulf, Inc. to the requested items, and such other and further relief as the Court deems necessary and proper.



**Braden K. Ball, Jr.**

Florida Bar No. 89000

LITVAK BEASLEY WILSON & BALL, LLP

40 Palafox Place, Suite 300

Pensacola, Florida 32502

Office: (850) 432-9818

Facsimile: (850) 432-9830

Attorney for Plaintiffs

Primary E-mail: [braden@lawpensacola.com](mailto:braden@lawpensacola.com)

Secondary E-mail: [mandrews@lawpensacola.com](mailto:mandrews@lawpensacola.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 3<sup>rd</sup> day of June, 2021 served a copy of the foregoing First Amended Complaint to Defendant, Marc M. Moszkowski ([m.moszkowski@deepgulf.net](mailto:m.moszkowski@deepgulf.net)), via the Court's E-filing system .



**Braden K. Ball, Jr.**

Florida Bar No. 89000

LITVAK BEASLEY WILSON & BALL, LLP

40 Palafox Place, Suite 300

Pensacola, Florida 32502

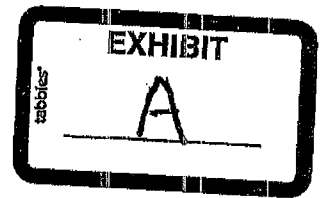
Office: (850) 432-9818

Facsimile: (850) 432-9830

Attorney for Plaintiffs

Primary E-mail: [braden@lawpensacola.com](mailto:braden@lawpensacola.com)

Secondary E-mail: [mandrews@lawpensacola.com](mailto:mandrews@lawpensacola.com)



## NONCOMPETITION, NONDISCLOSURE AND DEVELOPMENTS AGREEMENT

In consideration and as a condition of my service or continued service as an employee, officer, director or consultant (such service is described herein as maintaining or being involved in a "Business Relationship") of DeepGulf, Inc. and any of its subsidiaries, divisions or affiliates (the "Company"), I hereby agree as follows:

1. Noncompetition. During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, (a) accept employment with any business or entity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company, or (b) engage in any business or activity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company.

2. Nonsolicitation of Customers. During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (a) with whom I have had contact or (b) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 4), during the course of my Business Relationship with the Company.

3. Nonsolicitation of Employees.

(a) During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of the termination of my Business Relationship, was employed by the Company within 6 months of the termination of my Business Relationship, or is or was employed by the Company during the period of one year after the termination of my Business Relationship.

(b) During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of the termination of my Business Relationship, was employed by the Company within 6 months of the termination of my Business Relationship, or is or was employed by the Company during the period of one year after the termination of my Business Relationship, to leave his or her employment, relationship or engagement with the Company.

4. Nondisclosure. I shall not at any time, whether during or after the termination of my Business Relationship with the Company, reveal to any person or entity any Confidential Information except to directors, officers and employees of the Company who need to know such Confidential Information, or as otherwise authorized by the Company in writing. The term "Confidential Information" shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. In furtherance of, and not by way of limitation to, the preceding sentence, Confidential Information shall include trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing services to the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

5. Company Property. I agree that during my Business Relationship with the Company I shall not make, use or permit to be used any Company Property otherwise than for the benefit of the Company. The term "Company Property" shall include all notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, software code, data, computers, cellular telephones, pagers, credit and/or calling cards, keys, access cards, documentation or other materials of any nature and in any form, whether written, printed, electronic or in digital format or otherwise, relating to any matter within the scope of the business of the Company or concerning any of its dealings or affairs and any other Company property in my possession, custody or control. I further agree that I shall not, after the termination of my Business Relationship with the Company, use or permit others to use any such Company Property. I acknowledge and agree that all Company Property shall be and remain the sole and exclusive property of the Company. Immediately upon the termination of my Business Relationship with the Company, I shall deliver all Company Property in my possession, and all copies thereof, to the Company.

6. Assignment of Developments.

(a) If at any time or times during my Business Relationship with the Company, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or assets (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. The term "Development" shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes or subject to analogous protection) relating to the business of the Company. I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my Business Relationship with the Company and not owned by any of my prior employers, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. IF THERE ARE ANY SUCH DEVELOPMENTS TO BE EXCLUDED, THE UNDERSIGNED SHOULD INITIAL HERE; OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH EXCLUSIONS. \_\_\_\_\_.

7. Further Assurances. I shall, during and at any time after my Business Relationship with the Company, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.

8. Relationship At Will. I understand that this Agreement does not constitute an implied or written employment contract and that my Business Relationship with the Company is on an "at-will" basis. Accordingly, I understand that either the Company or I may terminate my Business Relationship at any time, for any or no reason, with or without prior notice.

9. Severability. I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of the Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. Amendments; Waiver. Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. Survival. This agreement shall be effective as of the date entered below. My obligations under this Agreement shall survive the termination of my Business Relationship with the Company regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. Assignment. The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. Representations.

(a) I represent that my Business Relationship with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my Business Relationship with the Company. I have not entered into, and I shall not enter into, any agreement either written or oral in conflict herewith.

(b) I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.

14. Governing Law; Forum Selection Clause. This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of Florida and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located State of Florida, and I hereby submit to the jurisdiction and venue of any such court.

15. Entire Agreement. This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the undersigned has executed this Agreement as a sealed instrument as of the date first above written.

  
Signature

Rustin Howard  
Print Name

Date: September 15, 2005

Address: c/o DeepGulf, Inc.  
700 S. Palafox Street; Suite 160  
Pensacola, FL 32502

ACKNOWLEDGED AND AGREED:

DEEPGULF, INC.

By: M. Moszkowski

Name: Marc Moszkowski

Title: President

Date: September \_\_, 2005

**APPENDIX – TITLE/PURPOSE OF DEVELOPMENTS**

**The following is a complete list of all Developments and the purpose of those Developments:**

RM

**No Developments**

\_\_\_\_\_

**See Below**

**Developments and purpose:**

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## NONCOMPETITION, NONDISCLOSURE AND DEVELOPMENTS AGREEMENT

In consideration and as a condition of my service or continued service as an employee, officer, director or consultant (such service is described herein as maintaining or being involved in a "Business Relationship") of DeepGulf, Inc. and any of its subsidiaries, divisions or affiliates (the "Company"), I hereby agree as follows:

1. Noncompetition. During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, (a) accept employment with any business or entity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company, or (b) engage in any business or activity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company.

2. Nonsolicitation of Customers. During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (a) with whom I have had contact or (b) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 4), during the course of my Business Relationship with the Company.

3. Nonsolicitation of Employees.

(a) During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of the termination of my Business Relationship, was employed by the Company within 6 months of the termination of my Business Relationship, or is or was employed by the Company during the period of one year after the termination of my Business Relationship.

(b) During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of the termination of my Business Relationship, was employed by the Company within 6 months of the termination of my Business Relationship, or is or was employed by the Company during the period of one year after the termination of my Business Relationship, to leave his or her employment, relationship or engagement with the Company.

4. Nondisclosure. I shall not at any time, whether during or after the termination of my Business Relationship with the Company, reveal to any person or entity any Confidential Information except to directors, officers and employees of the Company who need to know such Confidential Information, or as otherwise authorized by the Company in writing. The term "Confidential Information" shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. In furtherance of, and not by way of limitation to, the preceding sentence, Confidential Information shall include trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing services to the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

5. Company Property. I agree that during my Business Relationship with the Company I shall not make, use or permit to be used any Company Property otherwise than for the benefit of the Company. The term "Company Property" shall include all notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, software code, data, computers, cellular telephones, pagers, credit and/or calling cards, keys, access cards, documentation or other materials of any nature and in any form, whether written, printed, electronic or in digital format or otherwise, relating to any matter within the scope of the business of the Company or concerning any of its dealings or affairs and any other Company property in my possession, custody or control. I further agree that I shall not, after the termination of my Business Relationship with the Company, use or permit others to use any such Company Property. I acknowledge and agree that all Company Property shall be and remain the sole and exclusive property of the Company. Immediately upon the termination of my Business Relationship with the Company, I shall deliver all Company Property in my possession, and all copies thereof, to the Company.

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(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my Business Relationship with the Company and not owned by any of my prior employers, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. IF THERE ARE ANY SUCH DEVELOPMENTS TO BE EXCLUDED, THE UNDERSIGNED SHOULD INITIAL HERE; OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH EXCLUSIONS. \_\_\_\_.

7. Further Assurances. I shall, during and at any time after my Business Relationship with the Company, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.

8. Relationship At Will. I understand that this Agreement does not constitute an implied or written employment contract and that my Business Relationship with the Company is on an "at-will" basis. Accordingly, I understand that either the Company or I may terminate my Business Relationship at any time, for any or no reason, with or without prior notice.

9. Severability. I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of the Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. Amendments; Waiver. Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. Survival. This agreement shall be effective as of the date entered below. My obligations under this Agreement shall survive the termination of my Business Relationship with the Company regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. Assignment. The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. Representations.

(a) I represent that my Business Relationship with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my Business Relationship with the Company. I have not entered into, and I shall not enter into, any agreement either written or oral in conflict herewith.

(b) I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.

14. Governing Law; Forum Selection Clause. This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of Florida and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located State of Florida, and I hereby submit to the jurisdiction and venue of any such court.

15. Entire Agreement. This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has executed this Agreement as a sealed instrument as of the date first above written.

M. Moszkowski  
Signature

Marc Moszkowski  
Print Name

Date: September 15, 2005

Address: c/o DeepGulf, Inc.  
700 S. Palafox Street; Suite 160  
Pensacola, FL 32502

ACKNOWLEDGED AND AGREED:

DEEPGULF, INC.

By: Rustin Howard

Name: Rustin Howard

Title: Chairman of the Board of Directors

Date: September \_\_, 2005



**APPENDIX – TITLE/PURPOSE OF DEVELOPMENTS**

The following is a complete list of all Developments and the purpose of those Developments:

No Developments

See Below

**Developments and purpose:**

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LITVAK BEASLEY WILSON & BALL  
LLP  
ATTORNEYS AT LAW



KRAMER A. LITVAK \*  
ROBERT O. BEASLEY  
PAUL A. WILSON†  
BRADEN K. BALL, JR.

226 East Government Street  
Pensacola, Florida 32502-3503

TELEPHONE: (850) 432-9818  
FACSIMILE: (850) 432-9830

PENNY HENDRIX  
PHILLIP A. PUGH‡  
DEWITT D. CLARK

\*ALSO ADMITTED IN ALABAMA  
†LL.M. IN TAXATION  
‡BOARD CERTIFIED TAX ATTORNEY

January 31, 2018

Via International Registered Mail and Regular Mail

Marc Moszkowski  
Le Verdos 83300  
Chateaudouble  
France

Marc Moszkowski  
Chalet de Bulvedere  
Le Crey 73350,  
Champagny-en-Vanoise  
France

Re: Deepgulf, Inc.

**DEMAND PURSUANT TO FLA. STAT. §772.11 (CIVIL THEFT STATUTE)**

Dear Mr. Moszkowski:

Our firm has the privilege of representing Deepgulf, Inc. This letter is a civil remedy notice given pursuant to Fla. Stat. 772.11. You have stolen a business opportunity that you were to obtain for Deepgulf, Inc. Instead, you misappropriated such business opportunity for your own purposes.

Your actions constitute civil theft, subjecting you to liability for that civil theft. To date, the actual damages sustained as a result of this theft is \$345,000.00, as your compensation obtained based upon your misappropriation of my clients' business opportunity.

This letter constitutes written demand, pursuant to Fla. Stat. §772.11, that you pay \$1,035,000.00

directly to this office within thirty (30) days from receipt of this notice. <sup>1</sup> This amount represents three times the amount of known damages my client has incurred as a result of your actions, as provided by Florida law.

If such amount is not paid by the date stated above, I have been instructed by my client to file a lawsuit against you to include a count for civil theft. Please note that the civil theft statute also provides for recovery of attorney's fees and costs my clients spend in prosecuting such an action.

Should you wish to resolve this matter short of litigation, please promptly contact me.

Sincerely,

LITVAK, BEASLEY, WILSON & BALL, LLP

  
Braden K. Ball, Jr.

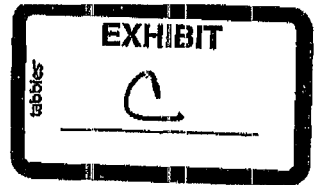
BKB:mea

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<sup>1</sup> Payment should be by certified funds payable to "Braden K. Ball, Jr., P.A. Trust Account" and delivered to our office.



LITVAK BEASLEY WILSON & BALL  
LLP  
ATTORNEYS AT LAW



KRAMER A. LITVAK\*  
ROBERT O. BEASLEY  
PAULA A. WILSON\*  
BRADEN K. BALL, JR.

226 East Government Street  
Pensacola, Florida 32502-3503

TELEPHONE: (850) 432-9818  
FACSIMILE: (850) 432-9830

PENNY HENDRIX  
PHILLIP A. PUGH\*  
DEWITT D. CLARK

\*ALSO ADMITTED IN ALABAMA  
\*LL.M. IN TAXATION  
\*BOARD CERTIFIED TAX ATTORNEY

January 31, 2018

Via International Registered Mail and Regular Mail

Marc Moszkowski  
Le Verdos 83300  
Chateaudouble  
France

Marc Moszkowski  
Chalet de Bulvedere  
Le Croy 73350,  
Champagny-en-Vanoise  
France

Re: Deepgulf, Inc.

**DEMAND PURSUANT TO FLA. STAT. §772.11 (CIVIL THEFT STATUTE)**

Dear Mr. Moszkowski:

Our firm has the privilege of representing Deepgulf, Inc. This letter is a civil remedy notice given pursuant to Fla. Stat. 772.11. You have stolen a business opportunity that you were to obtain for Deepgulf, Inc. Instead, you misappropriated such business opportunity for your own purposes.

Your actions constitute civil theft, subjecting you to liability for that civil theft. To date, the actual damages sustained as a result of this theft is \$959,764.22, which you distributed to the directors in the entity you formed to steal my client's business opportunity.

This letter constitutes written demand, pursuant to Fla. Stat. §772.11, that you pay \$2,879,292.66

directly to this office within thirty (30) days from receipt of this notice. <sup>1</sup> This amount represents three times the amount of known damages my client has incurred as a result of your actions, as provided by Florida law.

If such amount is not paid by the date stated above, I have been instructed by my client to file a lawsuit against you to include a count for civil theft. Please note that the civil theft statute also provides for recovery of attorney's fees and costs my clients spend in prosecuting such an action.

Should you wish to resolve this matter short of litigation, please promptly contact me.

Sincerely,

LITVAK, BEASLEY, WILSON & BALL, LLP

A handwritten signature in dark ink, appearing to read "Braden K. Ball, Jr.", followed by a horizontal line.

Braden K. Ball, Jr.

BKB:mca

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<sup>1</sup> Payment should be by certified funds payable to "Braden K. Ball, Jr., P.A. Trust Account" and delivered to our office.