

**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA**

DEEPGULF, INC. and

TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E"

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, AND  
COUNTER-CLAIM**

COMES NOW, Defendant Marc Moszkowski, Pro-Se, and, pursuant to Rules 1.140 and 1.170 of the Florida Rules of Civil Procedure, submits the following Answer, Affirmative Responses, and Counterclaim:

**A. ANSWER**

**JURISDICTION AND THE PARTIES**

1. Defendant admits DeepGulf, Inc. is a Florida corporation established in Escambia County, Florida, but he is unable to admit or deny whether it is currently doing business, and

therefore whether or not it has a principal place of business, and if so, if that principal place of business is in Escambia County Florida.

2. Defendant admits DeepGulf's field of business is pipeline handling and transportation of hydrocarbons which includes energy transportation, but the remainder of this allegation is denied and strict proof demanded thereof.
3. Defendant admits Toke Oil & Gas S.A. was an entity domiciled in East Timor, and Defendant acknowledges certain steps were taken by DeepGulf, Inc. to purchase Toke Oil & Gas S.A., but the balance of the allegations of this paragraph are denied and strict proof demanded thereof.
4. Admitted.
5. Admitted.
6. Defendant admits that he resided in Escambia County, Florida for certain periods since the creation of Deep Gulf, Inc., but he is not an American citizen, and for reasons related to some extent to the matters of this lawsuit, he no longer has a visa allowing residence in the United States.
7. Admitted.

8. Defendant admits that the document referenced dated 1 December 2004 relates to the powers and authorities of DeepGulf's officers, but denies that any of those powers or authorities were removed from him lawfully, pursuant to a meeting held 26 December 2017 or otherwise. Any allegations to the contrary are denied and strict proof demanded thereof.
9. Defendant demands strict proof thereof. Assertion is in plain contradiction with the "*Affidavit of Rustin Howard in Support of Plaintiffs' Motion for Summary Judgment*" of September 6, 2024.
10. Plaintiffs dismissed this action against Hostgator on 12 October, 2021.

### **COUNT I - INJUNCTIVE RELIEF-**

### **INTELLECTUAL PROPERTY AND DEVELOPMENTS AND BUSINESS OPPORTUNITY**

11. Defendant reincorporates his responses to Paragraphs 1 through 10 as if fully set out herein.
12. Admitted.
13. Admitted.
14. Admitted.

15. Admitted.
16. Admitted.
17. See below:
  - (a) Defendant admits the information set out in this subsection is correct.
  - (b) Defendant admits the information set out in this subsection is correct.
  - (c) Defendant admits the information set out in this subparagraph is correct.
  - (d) Defendant admits the information set out in this subparagraph is correct.
  - (e) Publication number 20060130729 was filed 20 December 2004, per (iv) of this subparagraph preexisted the execution of the agreement identified in Paragraph 11 (eleven) above and attached to the Complaint as Exhibit "A".
  - (f) The allegations in this subparagraph are denied and strict proof demanded thereof.
18. Defendant admits the allegations of this Paragraph as limited or explained in Paragraph 17 (seventeen) above or in the alternative as may be limited to interpretation and enforcement

pursuant to the affirmative defenses set out below.

19. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
20. Defendant admits that he communicated with the indication “Commercial In Confidence” clearly indicated on the communications in question, and admits that this was the proper terminology to indicate proprietary and confidential content.

Defendant denies that Plaintiff has any right to injunction or the return of any of the described property, and demands strict proof in support of any such relief.

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

21. Defendant realleges his responses to Paragraphs 1 through 10 as clarified and addressed in Paragraphs 11 through 20 as if fully set out herein.
22. Admitted.
23. Admitted.
24. Admitted.
25. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

26. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

27. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

28. Admitted.

Defendant denies that Plaintiff is entitled to any injunction or the return of any of the described property, and demands strict proof in support of any such relief.

### **COUNT III - CIVIL THEFT**

29. Defendant denies he is in violation of Section 772.11 Florida Statutes.

30. Defendant adopts the responses to Paragraphs 1 through 10, and Paragraphs 12 through 20, and Paragraphs 22 through 28, insofar as they address or explain any of the prior responses as if set out in full herein.

31. Admitted.

32. Defendant denies the allegations in this Paragraph.

33. Defendant denies the allegations in this Paragraph.

34. Defendant admits he traveled to East Timor but denies all other

allegations in this Paragraph and demands strict proof thereof.

35. Admitted.

36. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

37. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

38. Defendant admits the first two sentences in this Paragraph. The third sentence is denied and strict proof is demanded thereof.

39. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

40. Admitted.

41. Admitted.

42. Admitted in part.

43. Defendant admits he told the Board of DeepGulf that he was holding an interest in Toke Oil and Gas S.A. in his name for the benefit of DeepGulf, and that it would have been reckless to hold that interest in DeepGulf's name. All other allegations in this Paragraph are denied and strict proof is demanded thereof.

44. Toke Oil and Gas S.A. completed three (3) contracts, with the last project completed in May 2012. The other allegations in this

Paragraph are denied and strict proof is demanded thereof.

45. Defendant admits certain monies were allocated to directors salaries, including payment to himself, as a director of Toke Oil and Gas S.A., but denies the remaining allegations in this Paragraph and demands strict proof thereof.

46. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

47. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

48. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

49. Defendant admits Plaintiff made certain demands, but denies that they meet the statutory requirements, or that this Defendant has committed any wrong under this Florida Statute Section or under Florida law.

50. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

Defendant demands an award of reasonable attorney's fees and costs in that this Count is without substantial fact or legal support.



#### **COUNT IV - CIVIL THEFT**

51. This Paragraph does not require an admission or denial by this Defendant.

52. Defendant realleges Paragraphs 1 through 10, and Paragraphs 12 through 20, Paragraphs 21 through 28, and Paragraphs 29 through 50, insofar as they address or explain any of the prior responses as if set out in full herein.

53. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

54. Defendant admits Plaintiff made certain demands, but denies that they meet the statutory requirements, or that this Defendant has committed any wrong under this Florida Statute Section or under Florida law.

55. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

Defendant demands an award for reasonable attorney's fees and costs in that this Count is without substantial fact or legal support.

#### **COUNT V - CONVERSION**

56. This Paragraph does not require an admission or denial by this

Defendant.

- 57. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, and Paragraphs 51 through 55, insofar as they address or explain any of the prior responses as if set out in full herein.
- 58. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
- 59. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

#### **COUNT VI - CONVERSION**

- 60. This Paragraph does not require an admission or denial by this Defendant.
- 61. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, and Paragraphs 56 through 59, insofar as they address or explain any of the prior responses as if set out in full herein.
- 62. Defendant denies the allegations in this Paragraph and

demands strict proof thereof.

63. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

**COUNT VII.-.FRAUDULENT MISREPRESENTATION**

64. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, Paragraphs 56 through 59 and Paragraphs 60 through 63, insofar as they address or explain any of the prior responses as if set out in full herein.
65. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
66. Defendant denies the first sentence in this Paragraph, and admits the second and third sentences.
67. Admitted.
68. Defendant admits he was involved in the preparation of the PPM, but denies all other allegations in this Paragraph and demands strict proof thereof.
69. Admitted.
70. Admitted.

71. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
72. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
73. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
74. Defendant admits the first sentence, but denies all other allegations in this Paragraph and demands strict proof thereof.
75. Admitted.
76. Admitted.
77. Admitted.
78. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
79. Admitted.
80. Admitted.
81. Admitted.
82. Admitted.
83. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
84. Defendant denies the allegations in this Paragraph and

demands strict proof thereof.

85. Defendant cannot admit or deny whether DeepGulf, Inc. has the right to the records of Toke Oil and Gas S.A. considering “records” are not sufficiently defined in this Paragraph. All other allegations in this Paragraph are denied and strict proof is demanded thereof.
86. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
87. Defendant is unable to admit or deny whether the purchase of Toke Oil and Gas S.A. shares was completed by DeepGulf, Inc. and therefore demands strict proof of the allegations contained within this Paragraph.
88. Defendant is unable to admit or deny the allegations in this Paragraph as it does not specifically define the documents at issue, or the entity to which Plaintiffs refer. Therefore, this Paragraph is denied and strict proof is demanded thereof.
89. Defendant is unable to admit or deny the allegations in this Paragraph in that it does not specifically define the documents at issue. Therefore, this Paragraph is denied and strict proof is demanded thereof.

90. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
91. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
92. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
93. Defendant admits the last 19 words but denies the allegations in the first part of this Paragraph and demands strict proof thereof.

#### **COUNT VIII - DECLARATORY RELIEF**

94. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, Paragraphs 56 through 59, Paragraphs 60 through 63, and Paragraphs 64 through 93, insofar as they address or explain any of the prior responses as if set out in full herein.
95. Defendant denies the allegations in this Paragraph and demands strict proof thereof.
96. Defendant is unable to admit or deny the allegations contained in this Paragraph. As such, Defendant denies the allegations in

this Paragraph and demands strict proof thereof.

**COUNT IX.-.ACCOUNTING**

97. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, Paragraphs 56 through 59, Paragraphs 60 through 63, Paragraphs 64 through 93, and Paragraphs 94 through 96, insofar as they address or explain any of the prior responses as if set out in full herein.
98. This Paragraph does not require an admission or denial by this Defendant. .
99. Defendant acknowledges he has certain legal duties and responsibilities to the Plaintiffs. All other allegations in this Paragraph are denied and strict proof is demanded thereof.
100. Defendant requests the application of Florida Law and Equity be applied equal to all parties in this matter, and in turn requests an accounting from the Plaintiffs and the relief as requested by the Plaintiffs as requested in this Count.

### **COUNT X - BREACH OF CONTRACT**

101. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, Paragraphs 56 through 59, Paragraphs 60 through 63, Paragraphs 64 through 93, Paragraphs 94 through 96, and Paragraphs 97 through 100, insofar as they address or explain any of the prior responses as if set out in full herein.
102. Admitted.
103. Admitted
104. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

### **COUNT XI - INJUNCTIVE RELIEF**

105. Defendant realleges Paragraphs 1 through 10, and Paragraphs 11 through 20, Paragraphs 21 through 28, Paragraphs 29 through 50, Paragraphs 51 through 55, Paragraphs 56 through 59, Paragraphs 60 through 63, Paragraphs 64 through 93, Paragraphs 94 through 96, Paragraphs 97 through 100, and Paragraphs 101 through 104, insofar as they address or explain



any of the prior responses as if set out in full herein.

106. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

107. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

108. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

109. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

110. Defendant denies the allegations in this Paragraph and demands strict proof thereof.

## **B. AFFIRMATIVE DEFENSES**

As affirmative defenses, Defendant would assert duress, estoppel, failure of consideration, fraud, illegality, laches, license, that each cause of action, claim, and item of damages did not accrue within the time prescribed by law for them before this action was brought (statute of limitations), waiver, and failure or lack of standing by these Plaintiffs to bring this cause against this Defendant.

**C. COUNTER-CLAIM OF MARC M. MOSZKOWSKI**

**COUNT I: ACCOUNTING**

1. This is an action for an accounting.
2. Counter-Claimant is a stockholder of the Plaintiff /  
Counter-Defendant entities.
3. Florida law and equity requires Plaintiff / Counter-Defendants to  
account for their use of their assets to the Counter-Claimant.

WHEREFORE, Defendant / Counter-Claimant demands judgment for an accounting of all of the Plaintiffs / Counter-Defendants assets and a lien against those assets for any judgment of amounts owed Counter-Claimant by Counter-Defendants plus attorney's fees and interest and any other relief that the trier of fact deems appropriate.

**COUNT II: BREACH OF CONTRACT**

4. Plaintiffs / Counter-Defendants and Defendant /  
Counter-Claimant entered into multiple contracts wherein  
Defendant / Counter-Claimant agreed to perform certain work  
for Plaintiffs in exchange for reasonable compensation.
5. Plaintiffs breached these agreements in that they have failed to

compensate your Defendant as agreed.

6. As a consequence of Plaintiffs / Counter-Defendants' breach,  
Defendant / Counter-Plaintiff suffered damages.

WHEREFORE, based on the foregoing, the Counter-Claimant demands judgment against the Plaintiffs / Counter-Defendants for breach of contract in an amount to be determined by the trier of fact, in excess of the jurisdictional minimum of this Court, plus costs.

### **COUNT III: WORK AND LABOR DONE**

7. Defendant / Counter-Claimant claims, of the Plaintiffs /  
Counter-Defendants, sums due for work and labor done.

WHEREFORE, based on the foregoing, the Counter-Claimant demands judgment against the Plaintiffs / Counter-Defendants for work and labor done in an amount to be determined by the trier of fact, in excess of the jurisdictional minimum of this Court, plus costs.

### **COUNT IV: BREACH OF CONTRACT**

8. Plaintiffs / Counter-Defendants and Defendant /  
Counter-Claimant entered into an agreement whereby Plaintiffs  
/ Counter-Defendants agreed to take all necessary and

reasonable steps to obtain a permanent resident visa for the Defendant / Counter-Claimant.

9. Plaintiffs / Counter-Defendants breached said agreement in that they failed to obtain the permanent resident visa for the Defendant / Counter-Plaintiff.
10. Counter-Claimant suffered actual injury in loss of income and other damages as a result of Plaintiff / Counter-Defendant's breach.

WHEREFORE, based on the foregoing, the Counter-Claimant demands judgment against the Plaintiffs / Counter-Defendants for breach of contract in an amount to be determined by the trier of fact, in excess of the jurisdictional minimum of this Court, plus costs.

#### **COUNT V: FRAUD BASED ON PROMISE TO PAY**

11. On a series of occasions between 2008 and 2017, Plaintiffs / Counter-Defendants made certain assurances to Defendant / Counter-Plaintiff concerning compensation.
12. On all of those occasions, Plaintiffs / Counter-Defendants represented to Defendant / Counter-Claimant that he would receive compensation for his work and contribution to the

Plaintiffs / Counter-Defendants.

13. Said representations were false and Plaintiffs / Counter-Defendants knew or should have known those representations were false.
14. Plaintiffs / Counter-Defendants intended for Defendant / Counter-Claimant to rely on said representations and induced Defendant / Counter-Plaintiff to rely thereon.
15. Counter-Claimant believed said representations and promises and relied on them justifiably.
16. On or about 10 February 2017, Counter-Claimant discovered said fraud.
17. As a proximate result of said fraud, the Defendant / Counter-Claimant was caused to incur substantial financial and emotional distress.
18. Counter-Claimant would assert compensatory and punitive damages against Plaintiffs / Counter-Defendants based on the intentional and/or reckless nature of their conduct.

WHEREFORE, based on the foregoing, the Counter-Claimant demands judgment against the Plaintiffs / Counter-Defendants for fraud based on promise to pay in an amount to be determined by the trier of fact, in excess

of the jurisdictional minimum of this Court, plus costs.

**COUNT VI: FRAUDULENT MISREPRESENTATION**

19. On a series of occasions between 2008 and 2017, Plaintiffs / Counter-Defendants made certain assurances to Defendant / Counter-Plaintiff concerning his immigration status.
20. On those occasions, and all times relevant thereto, Plaintiffs / Counter-Defendants represented to that they were attempting to obtain a permanent resident visa for Counter-claimant.
21. Said representations were false and Plaintiffs / Counter-Defendants knew or should have known they were false.
22. Plaintiffs / Counter-Defendants intended for Defendant / Counter-Claimant to rely on said representations and induced Defendant / Counter-Claimant to rely thereon.
23. On or about 10 February 2017, Counter-Claimant discovered said fraud.
24. As a proximate result of said fraud, the Defendant / Counter-Claimant was caused to incur substantial financial and emotional distress.

25. Counter-Claimant would assert compensatory and punitive damages against Plaintiffs / Counter-Defendants based on the intentional and/or reckless nature of their conduct.

WHEREFORE, based on the foregoing, the Counter-Claimant demands judgment against the Plaintiffs / Counter-Defendants for fraudulent misrepresentation in an amount to be determined by the trier of fact, in excess of the jurisdictional minimum of this Court, plus costs.

Respectfully submitted this 20<sup>th</sup> day of February, 2025

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 20<sup>th</sup> day of February 2025, a copy of this motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

*M. Marzowski*