

**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 NOTICE OF FILING DEFENDANT'S SUPPLEMENT TO  
MOTION TO DISQUALIFY**

COMES NOW the Defendant, Marc Moszkowski, Pro Se, and hereby gives notice of the filing of the following document in the above-captioned matter:

**Supplement to Motion To Disqualify: Evidence of Patterned  
Judicial Disregard and Substantive Mischaracterization of Record**

Respectfully submitted on this 6<sup>th</sup> day of May, 2025.

Marc Moszkowski, Pro Se  
Email: [m.moszkowski@deepgulf.net](mailto:m.moszkowski@deepgulf.net)  
Le Verdos  
83300 Châteaudouble, France

A handwritten signature in blue ink that reads "M. Moszkowski". The signature is written in a cursive style with a large initial "M" and a period after the first name.

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 6<sup>th</sup> day of May, 2025, a copy of this Notice has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

A handwritten signature in blue ink that reads "M. Moszkowski". The signature is written in a cursive style with a large initial "M" and a period after the first name.

**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY,  
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MARC M. MOSZKOWSKI

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Case No.: 2018 CA 000543

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**SUPPLEMENT TO MOTION TO DISQUALIFY: EVIDENCE OF  
PATTERNED JUDICIAL DISREGARD AND SUBSTANTIVE  
MISCHARACTERIZATION OF RECORD**

The following table summarizes the essential contrast between Plaintiff Moszkowski's 2020 Verified Complaint, the Defendants' Motion to Dismiss, and the Plaintiff's rebuttal comments. This exhibit is submitted to demonstrate:

1. That the prior case (2020 CA 001021) was never adjudicated on the merits;
2. That the Court failed to engage with or meaningfully evaluate the factual basis of Plaintiff's claims;

3. That repeated mischaracterizations of the record have compounded procedural injustice;
  4. That the current Judge's disregard of 61+ unacknowledged filings follows an established pattern of institutional indifference.
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### **COUNT I: MALICIOUS PROSECUTION**

- **Complaint:** Defendants conspired to file a frivolous suit after the statute of limitations expired, based on falsified narratives.
- **Motion to Dismiss:** Dismissal sought on grounds that the appeal had not concluded and Defendants were not technically plaintiffs in prior case.
- **Comment:** Plaintiff was precluded from suing the entity (DeepGulf) of which he was part owner and director. Defendants alone controlled the litigation.

### **COUNT II: ABUSE OF PROCESS**

- **Complaint:** Lawsuit initiated on behalf of a corporation co-owned by Plaintiff; process abused to create harm without accountability.

- **Motion to Dismiss:** Asserted that abuse of process requires misuse *after* issuance of process, not at filing.
- **Comment:** The entire case structure was an abuse from inception; process was used not for adjudication, but retaliation.

### **COUNT III: BREACH OF CONTRACT (Corporate Bylaws)**

- **Complaint:** Defendants refused to enforce indemnification bylaws entitling Plaintiff to litigation expense reimbursement.
- **Motion to Dismiss:** Argued claim was against corporation, not individuals.
- **Comment:** Defendants were the only acting officers and directors; responsibility lay with them exclusively.

### **COUNT IV–IX: FRAUD (Various Counts)**

- **Complaint:** Detailed falsifications of corporate records, proxy manipulation, concealment of shareholder lists, financial misreporting, and perjury.
- **Motion to Dismiss:** Responded primarily with procedural defenses: litigation privilege, lack of particularity, or statute of limitations.

- **Comment:** Plaintiff repeatedly alleged and documented precise instances of falsified documents, concealed records, and misappropriated authority. The defense offered no substantive rebuttal.

#### **COUNT X: FRAUD (Concealment of Written Commitment)**

- **Complaint:** Defendant Howard concealed a 2005 written commitment to guarantee Plaintiff's unpaid salaries using his personal real estate. Plaintiff was never informed of its existence.
- **Motion to Dismiss:** Asserted that the claim was time-barred by the statute of limitations.
- **Comment:** The existence of the commitment was not revealed to Plaintiff until discovery in 2018. Dozens of filings since then have raised the issue in detail. Opposing counsel has never substantively addressed them, despite repeated notice. The statute did not begin to run until the commitment was uncovered, rendering the limitation defense inapplicable.

## COUNT XI: CONSPIRACY TO COMMIT FRAUD (Misrepresentation of Loan)

- **Complaint:** Plaintiff alleged that Defendants colluded to misrepresent a 2013 loan as originating from a shareholder, when in fact it came from Chairman Howard as an accounting device. This misrepresentation later formed the basis of a French lawsuit, won by default in 2018–2023 because Plaintiff was barred from appearing pro se and lacked counsel.
- **Motion to Dismiss:** Claimed Plaintiff “admitted” the French court agreed with the shareholder’s position in ¶59, and asserted the four-year statute of limitations under Fla. Stat. § 95.11(3)(o).
- **Comment:** Paragraph 59 does not admit the Court ruled on the merits. It states the case was lost **by default**, in **absentia**, because French courts **prohibit pro se appearance**, and Plaintiff had **no means to secure counsel or notice of the hearing**. The fraud conspiracy continued through the 2018–2023 French proceedings and was the subject of **dozens of filings** in this case since then. The cause of action was not discoverable earlier, rendering the statute of limitations defense inapplicable.

## **COUNT XII: FRAUD (Artificial Inflation of Capital and Falsification of Shareholder Records)**

- **Complaint:** Plaintiff alleged that Defendant Howard falsely reported corporate capital by attributing contributions to a fictitious shareholder, thereby diluting Plaintiff's equity and enabling fraudulent proxy acquisition. Specific figures and transaction patterns were provided, including a \$99,000 inflation and reversal of capital entries.
- **Motion to Dismiss:** Counsel for Defendants claimed the allegations were incomprehensible and cited Plaintiff's phrase about a "large Shareholder ... who proved not to exist" as ambiguous.
- **Comment:** The referenced shareholder was fictitious—used as a mechanism to inflate capital falsely on paper while avoiding share dilution. This fraud artificially decreased Plaintiff's relative shareholding and was instrumental in the illegal proxy acquisition. The complaint's language was supplemented in **dozens of filings**, which Mr. Ball ignored. An attorney's failure to understand does not render a count legally deficient, especially where clarification was made available and never disputed.



## **COUNT XIII: FRAUD (Board Manipulation and Deprivation of Director Seat)**

- **Complaint:** Plaintiff detailed how Defendants Howard and Johnson fraudulently altered corporate records, stock structure, and board procedures to remove Plaintiff from the Board of Directors and replace a departing Director with a compliant ally. They subsequently reduced the number of board seats from three to two, thereby disqualifying Plaintiff's reelection despite a 2,050,000-share vote.
- **Motion to Dismiss:** Counsel claimed the count was "rambling" and "difficult to understand," and offered no substantive rebuttal aside from referencing the board seat reduction.
- **Comment:** The Count outlines a deliberate scheme to seize board control by fraud, coercion, and procedural trickery. Far from "rambling," it documents a multi-stage strategy to eliminate Plaintiff's governance role and fabricate authority to initiate litigation. Defendants' later filings repeatedly contradict their claim—referring to Plaintiff as a sitting Director despite having fraudulently abolished the third seat. The contradiction itself reveals the fragility of their position.

## COUNT XIV: PERJURY

- **Complaint:** Defendant Howard lied under oath in deposition.
  - **Motion to Dismiss:** Claimed perjury is not a civil cause of action.
  - **Comment:** If true, then criminal prosecution should follow. The lack of consequence has emboldened repeated falsehoods.
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### Conclusion:

Contrary to the Motion to Dismiss' characterization, the 2020 Complaint presented detailed, documented, and specific allegations. The dismissal was never based on factual insufficiency, but rather on technical defenses, procedural avoidance, and unwillingness to confront the record. The same pattern is repeating in the current case. The successor Judge is respectfully urged to take these facts under full consideration.

**APPENDIX A** – Comparative Record of 2020 Complaint and Defendants' Motion to Dismiss (Filed as Exhibit BD)


Respectfully submitted this 6<sup>th</sup> day of May, 2025

Marc Moszkowski, Pro Se  
Email: [m.moszkowski@deepgulf.net](mailto:m.moszkowski@deepgulf.net)  
Le Verdos  
83300 Châteaudouble, France



### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 6<sup>th</sup> day of May, 2025, a copy of this Supplement has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.



COMPARATIVE RECORD OF 2020 COMPLAINT VS. DEFENDANTS’ MOTION TO DISMISS

COMPLAINT	DEFENDANTS
<p>IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA</p> <p>MARC M. MOSZKOWSKI, Plaintiff, vs. RUSTIN R. HOWARD Defendant and THOMAS J. JOHNSON, Defendant</p> <p>Case No.: 2020 CA 001021 Division: E</p> <p><u>COMPLAINT</u></p> <p>Plaintiff MARC M. MOSZKOWSKI (hereinafter referred to as “MOSZKOWSKI”), Pro Se, sues Defendants RUSTIN R. HOWARD (hereinafter referred to as “HOWARD”), and THOMAS J. JOHNSON (hereinafter referred to as “JOHNSON”).</p>	<p><u>MOTION TO DISMISS</u></p> <p>Comes now, Rustin R. Howard and Thomas I. Johnson, by and through the undersigned attorney, and move to dismiss Plaintiffs complaint for failure to state a cause of action, pursuant to Rule 1.140(b)( 6), Florida Rules of Civil Procedure, and in support</p>

Plaintiff alleges as follows:

thereof states:

### **JURISDICTION AND THE PARTIES**

1. Plaintiff MOSZKOWSKI is a Founder of Florida Corporation DeepGulf, Inc. (hereinafter referred to as “DEEPGULF”), which has its registered address in Escambia County, Florida, and of which he is the largest shareholder, with close to 50% ownership<sup>1</sup>;
2. Plaintiff MOSZKOWSKI is also the President and a Director of DEEPGULF;
3. Plaintiff MOSZKOWSKI is a French citizen and a resident of France;
4. Defendant HOWARD is a Director, Founder, and Chairman of the Board of DEEPGULF;
5. Defendant JOHNSON is a Director of DEEPGULF;
6. Both Defendants are U.S. citizens and reside in Escambia County, Florida;
7. The damages claimed in this lawsuit exceed the First Judicial Circuit Court Jurisdictional threshold of \$30,000, in effect since

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<sup>1</sup> The exact figure cannot be assessed with certainty because of discrepancies in corporate documents prepared by Defendant HOWARD.

January 1, 2020;

8. On April 3, 2018, Defendants HOWARD and JOHNSON caused DEEPGULF, together with extinct, and therefore legally non existing foreign corporation Toke Oil and Gas S.A., to file a frivolous and unmeritorious lawsuit against MOSZKOWSKI in the Circuit Court in and for Escambia County, Florida (Case No. 2018 CA 000543, Division: K);

9. On June 25, 2018, MOSZKOWSKI removed the lawsuit to the United States District Court for the Northern District of Florida, Pensacola Division (Case No. 3:18-CV-1466-TKW-MJF);

10. On July 2, 2020, Final Judgement was rendered. Of the 9 Counts of DEEPGULF's complaint against MOSZKOWSKI, 8 were denied or dismissed, the only Count that was not denied or dismissed being for a point that MOSZKOWSKI understands had been in effect all but moot ever since the lawsuit was filed;

11. Plaintiff MOSZKOWSKI is now suing both Defendants HOWARD and JOHNSON personally as co-conspirators;

12. A severe conflict of interest would bar MOSZKOWSKI from suing the corporations, since he is the largest shareholder of the first, with close to 50% of the stock, and is a Director and President, and would therefore be both Plaintiff and Defendant

concurrently<sup>2</sup>. As for the other co-Plaintiff, foreign corporation Toke Oil and Gas S.A., it has no legal existence anymore, and while it had legal existence MOSZKOWSKI was one of its two Directors.

### **COUNT I – MALICIOUS PROSECUTION**

13. HOWARD and JOHNSON conspired to knowingly and frivolously cause a malicious lawsuit to be filed jointly by DEEPGULF and extinct foreign corporation Toke Oil and Gas S.A. against MOSZKOWSKI, long after the Statute of Limitations had expired, while never producing a single piece of authentic evidence;

14. MOSZKOWSKI believes that the lawsuit was meant as a preemptive and distractive strike in an attempt to conceal HOWARD's own mismanagement of corporate funds and records;

15. HOWARD and JOHNSON based the lawsuit on a highly fictional narrative of their own writing, which wrongly and absurdly reported events that occurred starting in 2007 in the distant country of East Timor, in which they were not personally involved. More than ten years after the fact, they arranged the false narrative to artificially support their wrongful accusations, but never produced a semblance of authentic evidence. The narrative bears very little

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<sup>2</sup> HOWARD and JOHNSON attempted in July 2020 to discharge MOSZKOWSKI of his corporate positions, a few days only after U.S. District Court had denied DEEPGULF's accusations against MOSZKOWSKI of theft, conversion, breach of agreement, fraudulent misrepresentation. However, the discharge procedure was irregular and possibly fraudulent, and could thus not be acknowledged by MOSZKOWSKI.

### **COUNT I-MALICIOUS PROSECUTION.**

The parties to this case have not met in litigation prior to this action brought by Plaintiff. DeepGulf, Inc. and Toke Oil & Gas, S.A. sued the Plaintiff in the present case in a case that was ultimately heard in the Northern District of Florida as Case No. 3:18-CV-1466-TKW-MJF. That case is currently on appeal in the United State Court of Appeals for the Eleventh Circuit, as Case Number 20-12897-G.

Plaintiff's claim for malicious prosecution should be dismissed for several reasons. The simplest reason is that in a case for malicious prosecution, such cause of action does not accrue until an appeal is decided. Cazares v. Church of Scientology of California, Inc. " 444 So.2d 442 (Fla. 5th DCA 1983).

In addition to the reasoning above, the Defendants in the present case are not the Plaintiffs in the prior case. Thus, as they have not prosecuted anyone, they cannot be subject to a claim for malicious prosecution, as they have not prosecuted a case at all. Moreover,

resemblance to actual facts, and was written despite their ignorance of the country of East Timor at the time MOSZKOWSKI established a business relationship in that distant nation, which was then in violent civil and military turmoil, sourced and organized all international and local contractors, hired hundreds of workers, and negotiated and signed multi-million dollar contracts between foreign corporation Toke Oil and Gas S.A.<sup>3</sup> on one hand, and the East Timorese Government on the other, as well as with a Consortium of large South Korean corporations<sup>4</sup>, without any help whatsoever from either of the Defendants or from DEEPGULF;

16. Before the lawsuit, and later in his pleadings, MOSZKOWSKI wrote hundreds of thoroughly documented pages that exposed the falsity of the narrative and of the accusations;

17. HOWARD and JOHNSON progressively watered down a number of their unsupported and absurd statements in DEEPGULF's pleadings, when faced with the abundant contradicting evidence provided by MOSZKOWSKI;

18. In their pleadings, as the Court and MOSZKOWSKI understood it, HOWARD and JOHNSON finally claimed that DEEPGULF was

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<sup>3</sup> DEEPGULF was one of several subcontractors hired by East Timorese corporation Toke Oil and Gas S.A., of which 66.67% was owned by local nationals and 33.33% was in the name of MOSZKOWSKI for reasons of practicability and security, MOSZKOWSKI having been appointed Toke Oil and Gas S.A.'s President Director General.

<sup>4</sup> The Korean Consortium consisted of 9 large Korean corporations, among which were Samsung, STX, KOGAS, LG International, and GS CALTEX.

there was not a bona fide adjudication on the merits of the case in Plaintiffs favor, as by Plaintiffs own allegation in Paragraph 10 of the Complaint, 1 Count was ruled on in DeepGulf's favor in the underlying litigation. Additionally, any such claim would be barred by litigation immunity.

Finally, when a case is adjudicated based upon an affirmative defense (1) such a resolution cannot support a claim for malicious prosecution. Jones v. State Farm Mut. Auto. Ins. Co." 578 So.2d 783 (Fla. 1st DCA 1991).

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<sup>1</sup> Paragraph 13 of the Complaint alleges that the case was filed "long after the Statute of Limitations had expired."



entitled to the shareholder distributions derived from the 33.33% share of foreign corporation Toke Oil and Gas S.A.'s that MOSZKOWSKI was holding in his name<sup>5</sup>, and they caused DEEPGULF to claim that amount from MOSZKOWSKI;

19. However, an analysis of financial records, including DEEPGULF's own financial records, which were subpoenaed from HOWARD and JOHNSON by MOSZKOWSKI, shows unequivocally that foreign corporation Toke Oil and Gas S.A. paid DEEPGULF substantially more than 33.33% of Toke Oil and Gas S.A.'s shareholder distributions, since in fact it paid DEEPGULF 50.3% thereof;

20. In effect, DEEPGULF was paid by Toke Oil and Gas S.A. 150.9% of the shareholder distributions to which DEEPGULF claimed it was entitled;

21. Furthermore, the shareholder distributions claimed from MOSZKOWSKI by HOWARD and JOHNSON in the lawsuit they instigated are much lower in value than the amounts unequivocally owed by DEEPGULF to MOSZKOWSKI for past promised, but still unpaid, salaries and expenses, including legal, and represent

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<sup>5</sup> MOSZKOWSKI was holding the 33.33% share in his name for various technical and legal reasons, but primarily to protect DEEPGULF from direct exposure in the exceedingly hazardous environment of East Timor in 2008, an environment he has described in great detail in his letters to the shareholders and in his pleadings. MOSZKOWSKI later agreed to sell his 33.33% holding to DEEPGULF for \$100, which would have been the only benefit he ever derived from holding that share in his name (had the \$100 amount been actually paid), while he had volunteered for several years to assume all risks in a personal capacity, in order to protect young DEEPGULF, should anything have gone wrong with the difficult and exotic contracts.

about 30% of the amounts DEEPGULF owes MOSZKOWSKI;

22. To summarize, as instigators of the lawsuit, HOWARD and JOHNSON absurdly claimed from MOSZKOWSKI shareholder distributions which were:

a) significantly lower in value than the amounts MOSZKOWSKI had caused Toke Oil and Gas S.A. to pay DEEPGULF in reality;

b) considerably lower in value than the amounts DEEPGULF owes MOSZKOWSKI;

c) notwithstanding that HOWARD and JOHNSON caused the lawsuit to be filed long after the expiration of the Statute of Limitations.

23. As a consequence of the irrational and untimely lawsuit, MOSZKOWSKI dedicated a period exceeding two years to defending himself and counter-fighting HOWARD and JOHNSON through DEEPGULF, acting without the support of an attorney for almost a year, enduring considerable hardship and damages in the process, and finally spending on his defense, when he finally obtained counsel, an amount of money that is to him considerable but is however unequivocally due to him by DEEPGULF as per company's bylaws;

24. As a consequence of the irrational and untimely lawsuit, the

goodwill of DEEPGULF has been all but destroyed;

25. HOWARD and JOHNSON commenced the original civil judicial proceeding;

26. HOWARD and JOHNSON were the legal cause of the proceeding against MOSZKOWSKI;

27. The *bona fide* termination of the original proceeding is in favor of MOSZKOWSKI;

28. There was absence of probable cause in the original proceeding;

29. HOWARD and JOHNSON acted with malice.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT II – ABUSE OF PROCESS:**

**CONFLICT OF INTEREST**

30. HOWARD and JOHNSON caused the lawsuit they instigated to be filed on behalf of DEEPGULF, of which MOSZKOWSKI is the largest shareholder, with nearly 50% of the stock, a Director, and the President, instead of in a derivative action on behalf of other shareholders, which created a severe conflict of interest, to the extent that MOSZKOWSKI was in effect suing himself, being at the same time both Plaintiff and Defendant, while DEEPGULF owes him the reimbursement of the legal costs he incurred for his defense;

31. HOWARD's and JOHNSON's action thus caused injury to MOSZKOWSKI without HOWARD and JOHNSON incurring any foreseen personal risk to themselves, in a process in which most of DEEPGULF's resources, of which MOSZKOWSKI owns nearly half, were wasted, instead of being spent for the development of DEEPGULF;

**COUNT II-ABUSE OF PROCESS.**

The elements of a cause of action for abuse of process under Florida law are: (1) an illegal, improper, or perverted use of process by the defendant; (2) an ulterior motive or purpose in exercising the illegal, improper, or perverted process; and (3) damages to the plaintiff as a result. Antoine v. State Farm Mut. Auto. Ins. Co., 662 F.Supp.2d 1318 (M.D. Fla. 2009). Under Florida law, “ [a] cause of action for abuse of process requires both allegations of a willful and intentional misuse of process for some wrongful or unlawful object, or collateral purpose, and that the act or acts constituting the misuse occur **after the process is issued.**” (emphasis added) Whitney

Information Network, Inc. v. Gagnon}, 353 F.Supp.2d 1208 (M.D.

Fla. 2005); Marty v. Gresh , 501 So.2d 87 (Fla. pt DCA 1987).

Additionally , filing a lawsuit with the ulterior motive of

harassment does not constitute abuse of process ... the tort of abuse of process is concerned with the improper use of process after it

issues, Della-Donna v. Nova University, Inc. " 512 So.2d 1051 (Fla. 4th DCA 1987).

The only alleged fact that could be possibly construed as being abuse of process is found in Paragraph 30 where Plaintiff alleges that "Howard and Johnson caused the lawsuit they instigated to be filed on behalf of DeepGulf, of which Moszkowski is the largest shareholder, with nearly 50% of the stock, a Director, and the President, instead of in a derivative action on behalf of other shareholders ... " (emphasis added). This allegation, which the Defendants vehemently deny, relates to the initial filing of the prior lawsuit, and is clearly not after the process is issued, as required under Florida law to support an abuse of process claim.

<sup>1</sup> *Paragraph 13 of the Complaint alleges that the case was filed "long after the Statute of Limitations had expired."*

32. HOWARD and JOHNSON had ulterior motive or purpose in exercising the process;

33. HOWARD and JOHNSON willfully and intentionally made illegal, improper, and perverted use of process.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT III – BREACH OF CONTRACT:**

**VIOLATION OF CORPORATE BYLAWS**

34. HOWARD and JOHNSON have ignored consistently MOSZKOWSKI's just requests for the payment by DEEPGULF of MOSZKOWSKI's legal costs, which are due by DEEPGULF according to DEEPGULF's own bylaws, said bylaws mandating in Article XI that DEEPGULF must unequivocally pay for MOSZKOWSKI's legal costs;

35. HOWARD and JOHNSON, who represent two thirds of DEEPGULF's Board of Directors, and thus still control it, must unequivocally ensure that MOSZKOWSKI is reimbursed of all his legal costs, which were incurred as a consequence of the unmeritorious and absurd lawsuit they instigated against MOSZKOWSKI.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT III-BREACH OF CONTRACT**

Count III claims that the Defendants have ignored Plaintiff's request for payment of legal fees in accordance with DeepGulf's own Bylaws, said bylaws mandating in Article XI that **DeepGulf** must unequivocally pay for Plaintiff's legal costs. Plaintiff by his own allegation in Paragraph 34 states that the alleged obligation to pay attorney's fees is that of DeepGulf. As such, Plaintiff cannot state a claim against Defendants and Defendants are not proper parties to

Count III.

**COUNT IV – FRAUD:**

**FALSIFICATION OF CORPORATE RECORDS**

36. HOWARD falsified and fabricated after the fact several essential corporate documents, which he used to support DEEPGULF's lawsuit, in particular minutes of several Board of Directors meetings that never took place, and a number of alleged agreements;

37. HOWARD and JOHNSON accused MOSZKOWSKI of not having asked DEEPGULF's Board of Directors to authorize the foreign salary<sup>6</sup> he had received from DEEPGULF's third party client overseas, Toke Oil and Gas S.A., of which he was the President Director General<sup>7</sup>;

**COUNT IV-FRAUD.**

Plaintiff makes a claim for fraud based upon falsification of corporate records under Count IV. Count IV goes on to make allegations about matters that occurred at the trial held in federal court. Had Plaintiff wished to address these matters, he had ample opportunity to do so in the federal court case. Whatever is alleged to have occurred by the Defendants in the lower court proceeding cannot be brought as an action now because of the doctrine of “litigation privilege.” See Arko Plumbing v. Rudd, 230 So.3d 520 (Fla. 3d DCA 2017); Echevarria v. Cole, 950 So.3d 380 (Fla.

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<sup>6</sup> MOSZKOWSKI received a salary from foreign corporation Toke Oil and Gas S.A. for the demanding duties he discharged as President Director General for the foreign corporation in the extremely unsanitary and dangerous East Timorese environment, both onshore and offshore. Said salary was paid out of the distributions due to the 66.67% share of the foreign corporation that was by then held by one of the foreign founders, not out of the distributions to the 33.33% share held by MOSZKOWSKI, which 33.33% share returned to DeepGulf, Inc. 50.3% of all distributions. The foreign shareholder would have naturally kept the corresponding amounts in his own account, should he not have determined to pay that salary out of his own distributions.

<sup>7</sup> Furthermore, from his conferring with the Directors present on DEEPGULF's Board at the time, MOSZKOWSKI trusts that said authorization for such a legitimate salary could not, and would not, have been denied.

38. Meanwhile, HOWARD never requested Board authorization for his own domestic salaries, but fabricated such authorization and the minutes of the corresponding alleged Board of Directors meeting after the fact<sup>8</sup>;

39. HOWARD produced during trial on June 17, 2020, two alleged agreements between HOWARD and MOSZKOWSKI, to the effect that MOSZKOWSKI had, according to HOWARD, allegedly accepted to waive his past due salaries, although oddly without any consideration:

(a) an alleged agreement that HOWARD wrote himself, failed to authenticate, bore only his signature, and was never communicated to MOSZKOWSKI until discovery 7 years later, and

(b) an alleged agreement that HOWARD wrote himself, failed to authenticate, and bore only his

2007).

Furthermore, all claims asserted by Plaintiff in Count IV are not proper claims against the Defendants in this case. If they are proper at all, the claims would only be proper against DeepGulf, Inc., who was the Plaintiff in the federal court case.

In addition, these claims are barred by the doctrine of nonmutual collateral estoppel. Pierce v. Ritter, Chusid, Bivonia & Cohen, 133 F.Supp.2d 1344 (S.D. Fla. 2001). Nonmutual collateral estoppel applies when a party had a full and fair opportunity to litigate the issue in the earlier proceeding. Id. (citing to A.J. Taft Coal Co. v. Connors , 829 F.2d 1577, 1580 (11 th Cir. 1987)). In the present case, Plaintiff claims that he has been damaged by what he refers to as “several essential corporate documents” “which were falsified and fabricated after the fact” and which Defendant, Howard, “used

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<sup>8</sup> On a per hour basis, the salary HOWARD caused DEEPGULF to pay himself without ever requesting MOSZKOWSKI's authorization was between 10 and 20 times as much as the domestic salary DEEPGULF paid MOSZKOWSKI, who would not have agreed to such an undeserved and illegitimate salary, a fact that HOWARD could not have ignored. HOWARD was never involved personally in any of the East Timorese projects.



signature, the critical content of which was missing in the copy he had submitted to MOSZKOWSKI before discovery;

(c) HOWARD and JOHNSON did not provide an explanation as to what undisclosed reason would have caused MOSZKOWSKI to agree to such an onerous sacrifice without any consideration whatsoever;

40. HOWARD and JOHNSON based a number of their other accusations against MOSZKOWSKI on several other falsified corporate documents.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT V – FRAUD:**

**FRAUDULENT MISREPRESENTATION OF FINANCIAL RECORDS**

to support DEEPGULF’s lawsuit." In fact, in Paragraph 39 of the Complaint, Plaintiff asserts “HOWARD produced during trial on January 17, 2020, two alleged agreements between HOWARD and MOSZKOWSKI. .." Of course, Plaintiff had a full and fair opportunity to challenge those agreement at trial in the federal court case and so, Plaintiff’s claims in Count IV are barred by nonmutual collateral estoppel.

**COUNT V-FRAUD**

Similarly to Count IV, Plaintiff makes allegations that Howard “arguably provided false information under oath." As such,

41. After MOSZKOWSKI subpoenaed from HOWARD DEEPGULF's financial records, which proved to be not only incomplete but also chaotic and unprofessionally kept, MOSZKOWSKI discovered that HOWARD, who had put himself in charge of DEEPGULF's finances and administration since the founding of DEEPGULF in 2005, unarguably provided false information under oath regarding company cash receipts, and in particular the substantial revenue that had been secured by MOSZKOWSKI for DEEPGULF after 2012, in order to justify the claim that no back salary should be paid to MOSZKOWSKI, because of a purported lack of funds;

42. MOSZKOWSKI suffered considerable damage, moral, physical, and financial, as a consequence of the false evidence provided by HOWARD and JOHNSON.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

Plaintiff's claims in Count V must be dismissed for the same reason as those in Count IV-(1) the doctrine of litigation privilege; (2) the claim is not proper against these Defendants; and (3) nonmutual collateral estoppel.

**COUNT VI – FRAUD:**

**FRAUDULENT COLLECTION OF CORPORATE PROXIES**

43. HOWARD and JOHNSON wrongly reported DEEPGULF's shareholding and capital structures when they sought and then reportedly obtained the proxies that allowed them to:

- a. reorganize DEEPGULF's Board of Directors to their convenience in 2017 by having JOHNSON elected as Director, and then
- b. frivolously sue MOSZKOWSKI;

44. The wrongly reported shareholding structure must invalidate said proxies, which resulted in a lawsuit being wrongly filed against MOSZKOWSKI;

45. In June 2020, HOWARD and JOHNSON reiterated the fraudulent collection of proxies to reorganize the composition of the Board of Directors, and obtained proxies from shareholders whom they barred MOSZKOWSKI from contacting, by withholding the list of shareholders and their

**COUNT VI-FRAUD.**

In Count VI, Plaintiff asserts that it was fraudulent for Defendants to obtain proxies in the course of corporate dealings. There is nothing fraudulent or illegal at all about obtaining proxies in corporate settings. In fact, proxies are provided for in Section 607.0722, Florida Statutes and are perfectly legal. Plaintiff does not state with particularity how the proxies were “fraudulent.” Rule 1.120, Florida Rules of Civil Procedure states that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with such particularity as the circumstances may permit.” In this case, there are no ultimate facts stated at all, much less with particularity, in Plaintiffs Complaint. Plaintiff merely refers to “fraudulent collection of proxies” and expects Defendants to respond to this bombastic statement without alleging facts to support the claim.

addresses.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT VII – FRAUD:**

**FRAUDULENT CONCEALMENT OF CORPORATE RECORDS**

46. HOWARD consistently refused to provide to MOSZKOWSKI close to half the Corporation's Shareholders' addresses , which he kept, and still keeps, secret when he sought and obtained proxies unilaterally in order to change the composition of DEEPGULF's Board of Directors to his advantage and then frivolously sue MOSZKOWSKI;

47. HOWARD and JOHNSON obtained proxies from Shareholders who were barred by HOWARD and JOHNSON from hearing MOSZKOWSKI, thus creating utterly biased shareholder support for HOWARD and

**COUNT VII-FRAUD.**

In Count VII, Plaintiff baldly asserts that “HOWARD consistently refused to provide to MOSZKOWSKI close to half the Corporate Shareholders’ addresses, which he kept, and still keeps, secret when he sought and obtained proxies unilaterally in order to change the composition of DEEPGULF’s Board of Directors to his advantage and then frivolously sue MOSZKOWSKI.” Defendants deny this allegation, but the obligation to keep records falls on the corporate entity, not its directors. Section 607.1601 (4), Florida Statutes states “A **corporation** shall maintain a record of its current shareholders ... showing the address of ... each shareholder.” (emphasis added). In addition, like the other counts involving fraud, Count VII does not state any ultimate facts with particularity to support a claim of fraud.

JOHNSON.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT VIII – FRAUD:**

**FRAUDULENT MISREPRESENTATION OF CORPORATE**

**FACTS**

48. HOWARD and JOHNSON made unproven, inflated, and clearly implausible statements and promises about current Corporation activities during a Board of Directors meeting held on 6 November 2019;

49. HOWARD and JOHNSON only produced the minutes of said Board of Directors meeting on July 21, 2020, after MOSZKOWSKI had repeatedly requested them since November 2019. The minutes were produced 8 ½ months after the meeting, nearly 6 months after the summary judgement was rendered, and more than a month after the June 17, 2020, trial, thus preventing MOSZKOWSKI from

**COUNT VIII-FRAUD.**

In Count VIII, Plaintiff apparently asserts that there is some sort of fraud by these Defendants in not producing minutes of a Board meeting within a certain time frame. There is no statutory requirements as to how and when minutes of a Board meeting must be produced. As is a repeated theme in this Complaint, Plaintiff fails to state with particularity the facts which support its claim for fraud.

In addition, according to Paragraph 8 of Plaintiff s Complaint, the lawsuit which ended up in federal court was filed on April 3, 2018. The meeting that Plaintiff complains of occurred on November 6, 2019. Plaintiff would not have had standing to pursue a claim made after the filing of the Complaint on April 3, 2018. See Ham v. Nationstar Mortg.‘ LLC, 164 So.3d 714 (Fla. 1 st DCA 2015);

using the mendacious content of the minutes in his pleadings.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, fraudulent representation of corporate facts, court costs, and such other and further relief as this Court deems proper and just.

#### **COUNT IX – FRAUD:**

##### **FRAUDULENT INDUCEMENT OF WITNESS TO LIE UNDER**

##### **OATH**

50. HOWARD and JOHNSON and/or DEEPGULF's Attorney caused or encouraged foreign corporation Toke Oil and Gas S.A.'s original co-founder Gino Favaro<sup>9</sup> to lie under oath in an affidavit they had clearly prepared themselves, regarding MOSZKOWSKI's alleged past activities in East Timor, and/or used in their pleadings an affidavit that was clearly not only mendacious, but also absurd.

Lindsev v. Wells Fargo Bank' N.A., 139 So.3d 903 (F1a. 1st DCA 2013).

#### **COUNT IX-FRAUD.**

In Count IX, Plaintiff again makes a weak assertion of fraud with only conclusory allegations and does not and cannot state any facts with particularity that Gino Favaro's affidavit was false or that Defendants fraudulent induced Mr. Favaro to lie under oath.

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<sup>9</sup> As early as 2008, Mr. Favaro had been dismissed by Toke Oil and Gas S.A.'s other two Directors, MOSZKOWSKI being one of the two Directors, for illicit financial behavior.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT X – FRAUD:**

**VIOLATION OF AN OBLIGATION TOWARDS THE  
DEPARTMENT OF HOMELAND SECURITY**

51. HOWARD committed in writing to the U.S. Department of Homeland Security to provide a personal security in the form of his personal assets, to guarantee that MOSZKOWSKI's salaries due by DEEPGULF would continuously be paid;

52. MOSZKOWSKI is an alien citizen to whom the Department of Homeland Security provided several consecutive visas between 2005 and 2017, which enabled him to be employed by DEEPGULF, at the express condition that during the validity of his visas MOSZKOWSKI would consistently and continuously receive his visa mandated salaries from DEEPGULF, represented by visa petitioner,

**COUNT X-FRAUD.**

Count X is one of the more unusual allegations, in a Complaint that is full of unusual ones. In Count X the Plaintiff is attempting to assert a claim based upon an alleged commitment made by Defendant Howard to the U.S. Department of Homeland Security. Plaintiff does not have standing and is not a real party in interest in any alleged commitment by Defendant Howard to the U.S. Department of Homeland Security. In addition, to the extent the claims in this Count violate the Statute of Limitations, they must be dismissed as well. As such, this Count must be dismissed.

HOWARD;

53. HOWARD never implemented the personal guarantee he had committed to the Department of Homeland Security and he kept MOSZKOWSKI without the salary DEEPGULF still owes him, including at times when MOSZKOWSKI secured substantial revenue for DEEPGULF;

54. HOWARD kept the commitment to the Department of Homeland Security secret from MOSZKOWSKI until late in the discovery process;

55. An amount of close to one million dollars (\$1,000,000) is due by DEEPGULF to MOSZKOWSKI for past due salaries, which salaries HOWARD has personally guaranteed and therefore must pay MOSZKOWSKI personally;

56. By violating his financial commitment to a Federal Agency, HOWARD also violated repeatedly Federal Rules regarding the granting of visas for an alien citizen to be legally



employed by a U.S. corporation.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD for damages, court costs, and such other and further relief as this Court deems proper and just.

#### **COUNT XI – CIVIL CONSPIRACY:**

##### **CONSPIRACY TO FRAUDULENTLY SUBSTITUTE A THIRD PARTY LOAN FOR A SALARY**

57. Despite the guarantee and obligations described above, and substantial subsequent cash receipts returned to DEEPGULF by MOSZKOWSKI's activities, HOWARD attempted in June 2013 to cause a Shareholder and associate of his, David Rumsey, to substitute a personal high interest loan in lieu of the salary duly owed by DEEPGULF to MOSZKOWSKI;

58. Subsequently, the Shareholder unmeritoriously sued MOSZKOWSKI overseas in France in 2018 for the repayment of a loan that he had never paid MOSZKOWSKI in the first place, and lost the case in a Summary

#### **COUNT XI-CIVIL CONSPIRACY.**

Count XI states that Howard attempted in June 2013 to cause a David Rumsey to “substitute a personal high interest loan in lieu of the salary duly owned by DeepGulf to Moszkowski.” First, it is important to note that the Plaintiff admits that the court agreed with Mr. Rumsey’s position on the loan in Paragraph 59 of the Complaint. Second, conspiracy is an intentional tort, which is subject to a four-year statute of limitations, in accordance with Section 95.11(3)(0), Florida Statutes. As such, the claim is clearly barred by the statute of limitations, pursuant to Plaintiff’s allegation in Paragraph 57.

Judgement within a month of filing;

59. However, the Shareholder sued again in a different French Court of Law and this time won by default *in absentia*, since French Courts do not allow Pro Se representation, and, considering that MOSZKOWSKI could not afford an attorney at the time, MOSZKOWSKI was not even apprised of the Court date;

60. Nevertheless, because the judgement was by default and *in absentia*, MOSZKOWSKI was allowed to appeal after he had secured representation, and the appeal is currently being processed;

61. As a consequence of the conspiracy, a lien was put on MOSZKOWSKI's property by the Shareholder and MOSZKOWSKI suffered, and still suffers, considerable moral and financial damage.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD for damages, court costs, and such other and further

relief as this Court deems proper and just.

**COUNT XII – FRAUD:**

**FRAUDULENT FALSIFICATION OF CORPORATE STOCK  
STRUCTURE**

62. Financial documents subpoenaed by MOSZKOWSKI from HOWARD indicate that the capital paid up by the Shareholder described in Count XI above decreased after the conspiracy by an amount equal to the amount of the alleged loan;

63. The decrease of paid up capital shows in effect an attempt by both HOWARD and the Shareholder to fraudulently and artificially cause MOSZKOWSKI to personally pay for the Shareholder's shares at face value, without MOSZKOWSKI's number of shares increasing in the books, nor the Shareholder's number of shares decreasing;

64. HOWARD reported the capital wrongly, either in DEEPGULF's books or in the information he provided to MOSZKOWSKI, or in both, and artificially inflated it by as

**COUNT XII-FRAUD.**

The undersigned has read this Count multiple times and cannot make sense of the allegations, as the Plaintiff utilizes ambiguous phrasing such as “while reporting one large Shareholder, other than the one already mentioned, who proved not to exist.” This is not pleading fraud with particularity as is required by Rule 1.120, Florida Rules of Civil Procedure.

In addition, it appears as if Plaintiff is asserting a direct claim against Defendant Howard, but the nature of the claim may be derivative in nature, although it is difficult to tell because of the wording of the language in Count XII.

much as \$99,000, while reporting one large Shareholder, other than the one already mentioned, who proved not to exist;

65. As a consequence of the falsification of corporate stock, MOSZKOWSKI's relative shareholding has been artificially depreciated by HOWARD;

66. As a consequence of the falsification of corporate stock, the proxies obtained by HOWARD and JOHNSON, in order to reorganize the Board of Directors to their advantage and then frivolously sue MOSZKOWSKI, were fraudulently obtained and therefore must be invalidated.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT XIII – FRAUD:**

**FRAUD ON THE MINORITY**

67. As a consequence of Counts VI (fraudulent collection of corporate proxies), VII (fraudulent concealment of corporate records), and XII (fraudulent falsification of corporate stock structure), HOWARD and JOHNSON manipulated the composition of the Board of Directors to their own advantage, in order to gain a majority which they did not command until then;

68. After a previous Director had left the Board in 2017 when being personally threatened by HOWARD because of his strong disagreement with HOWARD's policy of harassing MOSZKOWSKI without cause or evidence and his demonstrated lack of interest for and commitment to DEEPGULF, HOWARD apparently falsified both stock and shareholder structures in order to have a close associate of his, Defendant JOHNSON, take the Board seat then vacated, and reverse the majority in their favor;

**COUNT XIII-FRAUD.**

Count XIII is another rambling, difficult to understand in a concise manner Count. It is apparently based upon Counts IV, VII, and XII, which are subject to being dismissed for the reasons discussed, supra. There are allegations that Defendant Howard “apparently falsified both stock and shareholder structures ....” The word apparently is important and evidences that Plaintiff can make no allegations that support the alleged falsifications, only that such are “apparent.” In Paragraph 71, Plaintiff asserts that “they conspired, without apparent legitimacy , to reduce the number of Directors from 3 to 2 ...” Again, the word apparently is used, further evidencing Plaintiff’s inability to allege any facts which might support such conspiracy or fraud.

69. The previous Director had attempted for several months to mediate the dispute that had existed since 2014 between MOSZKOWSKI and HOWARD regarding mostly the latter's lack of commitment for DEEPGULF, and his subsequent false accusations of wrongdoing and theft against MOSZKOWSKI, which HOWARD was making without a semblance of evidence;

70. As a consequence of the manipulation and falsifications that led to the act of fraud on the minority, the Board of Directors, which was by now controlled fraudulently by HOWARD and JOHNSON, caused MOSZKOWSKI to be frivolously and maliciously sued by DEEPGULF;

71. In June and July 2020, HOWARD and JOHNSON repeated a similar procedure, in an attempt to evict MOSZKOWSKI from his corporate positions. In addition, they conspired, without apparent legitimacy, to reduce the number of Directors from 3 to 2 immediately before the Shareholders' Meeting in which HOWARD and JOHNSON were reelected as Directors, so that MOSZKOWSKI could not be re-

electd, despite his having gathered 2,050,000 votes, since HOWARD and JOHNSON had just connived to eliminate the third Director position.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD and JOHNSON for damages, court costs, and such other and further relief as this Court deems proper and just.

**COUNT XIV – PERJURY:**

**DEFENDANT LIED UNDER OATH**

72. Defendant HOWARD stated on July 19, 2019, in a deposition under oath, a number of litigations in which he had been involved<sup>10</sup>;

73. HOWARD, when asked under oath whether he had been involved in any litigation other than those he had stated, replied that he had not, and thus failed to report a lawsuit he filed himself in 2011 against a former business partner, which lawsuit he brought in the very same United States District Court for the Northern District of Florida, Pensacola Division, in which DEEPGULF's case had been brought, and before the very same Judge, Judge M. Casey Rodgers<sup>11</sup>;

74. MOSZKOWSKI trusts that the failure by HOWARD to report

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<sup>10</sup> These were found to be a series of litigations against former business partners of HOWARD's, one of them being a close relative.

<sup>11</sup> The case (No. 3:11cv366/MCR/CJK) was dismissed, and a motion for relief from judgment was denied on August 25, 2012.

**COUNT XIV-PERJURY.**

Count XIV which is presented last by Plaintiff alleges that in a deposition, Mr. Howard committed perjury by not disclosing a 2011 litigation in a deposition in the federal case. This claim must be dismissed because a claim for perjury committed in the course of judicial proceedings is not actionable. Wright v. Yurko, 446 So.2d 1162 (Fla. 5th DCA 1984).



a relatively recent lawsuit which he had filed himself in the exact same venue where DEEPGULF was suing MOSZKOWSKI, and before the very same Judge, could hardly be attributed to a lapse of memory, in which case

HOWARD lied under oath.

WHEREFORE, MOSZKOWSKI demands judgement against HOWARD for damages, court costs, and such other and further relief as this Court deems proper and just.

WHEREFORE, the undersigned attorney for the Defendant hereby requests that this Court dismiss the above-referenced actions and requests such other and further relief as this court deems necessary and proper.