

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and

TOKE OIL AND GAS, S.A.,

Plaintiffs,

Case No.: 2018 CA 000543

vs.

Division:

MARC M. MOSZKOWSKI,

Defendant.

/

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT**

COMES NOW, Plaintiffs, DeepGulf, Inc. and Toke Oil and Gas, S.A., by and through their undersigned counsel, pursuant to Rule 1.510, Florida Rules of Civil Procedure, and request the Court for entry of an Order granting summary judgment in favor of the Plaintiffs and against the Defendant as to the Counts described herein as there is no genuine dispute as to any material fact and Plaintiffs are entitled to judgment as a matter of law, and in support would show:

LAW AND ARGUMENT

In the matter of In Re: Amendments to Florida Rule of Civil Procedure 1.510, 2020 WL 7778179 (Fla. Dec. 31, 2020), the Supreme Court of Florida announced that Florida was adopting the federal motion for summary judgment standard effective May 1, 2021.

More particularly, the Supreme Court of Florida stated that the new summary judgment standard that was adopted is that standard that is set forth in these cases:

- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)

In re: Amendments to Rule 1.510 at *1 (discussing the “federal summary judgment standard”).

In that case, the Supreme Court of Florida explained that, prior to the adoption of the federal summary judgment standard, “Florida courts have required the moving party conclusively ‘to disprove the nonmovant’s theory of the case in order to eliminate any issue of fact.’” Id., (quoting Thomas Logue & Javier Alberto Soto, Florida Should Adopt the Celotex Standard for Summary Judgment, 76 Fla. Bar J. Feb. 2002, at 24). It further stated that: “By contrast, the [U.S.] Supreme Court has held that there is ‘no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent’s claim.’” Id., (quoting Celotex, 477 U.S. at 323) (emphasis not added).

Further explaining the newly adopted federal summary judgment standard, the Supreme Court of Florida stated that:

Upon motion and provided there had been an “adequate time for discovery,” the [U.S.] Supreme Court had held that summary judgment should be entered “against a party who fails to make a showing sufficient to establish the existence of an element to that party’s case, and on which that party will bear the burden of proof at trial.”

In Re: Amendments to Rule 1.510 at *1 (quoting Celotex, 477 U.S. at 322.) “In other words, under the federal summary judgment standard, ‘the extent of the moving party’s burden varies depending on who bears the burden of persuasion at trial.’” Id. (quoting Salo v. Tyler, 417 P. 3d 581, 587 (Utah 2018)).

Examining that burden of proof where there is no sufficient summary judgment showing that establishes an essential element of a claim, the Supreme Court of the United States reasoned that:

In such a situation, there can be “no genuine issue as to any material fact,” since a **complete failure of proof** concerning an essential element of the nonmoving party’s case **necessarily renders all other facts immaterial.**”

Celotex, 477 U.S. at 322-23 (emphasis added).

Another distinction between the federal summary judgment standard and Florida’s previous standard is that Florida courts had adopted an “expansive understanding of what constitutes a “genuine (i.e., triable) issue of material of fact.””

In Re: Amendments to Rule 1.510 at *2. In other words, under the prior Florida standard, “[T]he existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the ‘slightest doubt’ is raised.” Id., (quoting Bruce J. Berman & Peter D. Webster, Berman’s Florida Civil Procedure § 1.510:5 (2020 ed.) (emphasis not added)). However, under the federal standard, the nonmovant “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586.

With respect to what constitutes the material facts in a particular case, “the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Anderson, 477 U.S. at 248.

PROCEDURAL POSTURE OF CASE

This case was originally filed in this court on April 3, 2018. The Defendant filed a Notice of Removal in this case and the case was removed to the United States District Court Northern District of Florida. The case proceeds through disposition of multiple issues between the parties on Summary Judgment and even a bench trial on one issue. An appeal was taken and on appeal, the 11th Circuit remanded the case to the District Court on a jurisdictional issue. The District Court determined that

neither the District Court nor the 11th Circuit had subject matter jurisdiction over the case because of diversity issues. The case was remanded back to this Court on May 5, 2021. All of the orders in federal court case were and are void because of the court's lack of subject matter jurisdiction. Ricci v. Ventures Trust, 276 So.3d 5 (Fla. 4th DCA 2019).

STATEMENT OF UNDISPUTED FACTS

In 2004, DeepGulf, Inc. was founded [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 32, Line 15 – Page 35, Line 11]. Its initial sole shareholders were Rustin Howard and Marc Moszkowski [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 34, Line 22 – Page 35, Line 2]. Marc Moszkowski has been a director and the executive officer for DeepGulf, Inc. [Affidavit of Rustin Howard, ¶ 4 and 5]. Marc Moszkowski entered into a Noncompetition, Nondisclosure, and Developments Agreements with DeepGulf on September 15, 2005 [Affidavit of Rustin Howard, ¶ 6].

On or around August, 2008, DeepGulf, Inc. hired attorney, Jeffrey Goldman, to apply to obtain a permanent resident visa for Marc M. Moszkowski. Despite DeepGulf's best efforts to obtain the permanent resident visa, the application was denied. [Affidavit of Rustin Howard, ¶ 35].

On or about September 10, 2007, DeepGulf, Inc., Inc. received an inquiry from a potential customer about DeepGulf, Inc.'s Patented Ultra-deepwater J-Flex

Pipelay system and the possibility of using it to lay pipe between Sunrise gas field and East Timor. [Affidavit of Rustin Howard, ¶ 10].

Rustin Howard on behalf of DeepGulf, Inc. passed this inquiry on to Marc M. Moszkowski. [Affidavit of Rustin Howard, ¶ 11].

In addition, the potential customer had clicked the “contact us” button on the DeepGulf, Inc. website that sent an email to deepgulf@deep-gulf.com which was received by Marc M. Moszkowski. [Affidavit of Rustin Howard, ¶ 12].

On or around October 15, 2007, Marc M. Moszkowski went to East Timor to investigate the opportunity, in his capacity as Director and Officer of DeepGulf, Inc. [Affidavit of Rustin Howard, ¶ 13].

On February 2, 2008, at a DeepGulf, Inc. Board Meeting, Marc M. 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 East Timor as a US corporation. Based upon these representations, the Board discussed solutions including the creation of a DeepGulf, Inc. subsidiary company in East Timor. [Affidavit of Rustin Howard, ¶ 14].

In East Timor, Marc M. Moszkowski established Toke Oil and Gas, S.A. and made himself an owner rather than DeepGulf, Inc. [Affidavit of Rustin Howard, ¶ 15].

Based on documents provided and represented by Marc M. Moszkowski to be the Founding Documents of Toke Oil and Gas, S.A., the earliest of them dated December 8, 2007 the three Founders of Toke Oil and Gas, S.A. are VoGue Lda. Company, Hali Group S.A. Company, and Marc M. Moszkowski an individual. [Affidavit of Rustin Howard, ¶ 16].

Based on documents provided and represented by Marc M. Moszkowski to be the Founding Documents of Toke Oil and Gas, S.A., Marc M. Moszkowski, an individual, received 30,000 shares or 33% of Toke Oil and Gas, S.A. [Affidavit of Rustin Howard, ¶ 17].

Based on documents provided and represented by Marc M. Moszkowski to be the Founding Documents of Toke Oil and Gas, S.A., the initial meeting of Shareholders was dated January 2008 wherein Directors were appointed and Marc M. Moszkowski was appointed President-Director General. [Affidavit of Rustin Howard, ¶ 18].

Marc M. Moszkowski led the Board of DeepGulf, Inc. to believe that he established and was holding Toke Oil and Gas, S.A. in his name for the benefit of DeepGulf, Inc., and that it would have been reckless to hold that interest in DeepGulf, Inc.'s name. [Affidavit of Rustin Howard, ¶ 19].

While Marc M. Moszkowski was in East Timor, Rustin Howard attempted to travel to East Timor; however, Marc M. Moszkowski told Rustin Howard that it was

too dangerous for Rustin Howard to go to East Timor. No other DeepGulf, Inc. employee or Director ever traveled to East Timor. [Affidavit of Rustin Howard, ¶ 20].

Toke Oil and Gas, S.A. completed three contracts with total revenue of \$14.9 million US dollars. The last project was completed in May, 2012. During those projects, Toke Oil and Gas, S.A. distributed \$1.304 million purportedly as “Director Salaries”. At the same time, Marc M. Moszkowski was also receiving his full-time DeepGulf, Inc. salary. While Marc M. Moszkowski was the President Director General, Toke Oil & Gas, S.A. paid the funds referred to in this Paragraph without the knowledge and approval of the DeepGulf, Inc. Board. [Affidavit of Rustin Howard, ¶ 21].

Marc Moszkowski was paid \$345,000 from Toke Oil and Gas, S.A. while he was making a salary from DeepGulf, Inc. [Affidavit of Rustin Howard, ¶ 24 and 22].

Marc M. Moszkowski negotiated DeepGulf, Inc.’s purchase of 30,000 shares or 33% of Toke Oil and Gas from Vincente Ximenes on or about August 12, 2010. [Affidavit of Rustin Howard, ¶ 28].

Marc M. Moszkowski negotiated DeepGulf, Inc.’s purchase of an additional 30,000 shares or 33% of Toke Oil and Gas, S.A. from Vincente Ximenes on or about May 25, 2012. [Affidavit of Rustin Howard, ¶ 29].

DeepGulf, Inc. purchased an additional 30,000 shares or 33% of Toke Oil and Gas, S.A. from Marc M. Moszkowski on or about May 25, 2012, making DeepGulf, Inc. the sole owner of Toke Oil and Gas, S.A. [Affidavit of Rustin Howard, ¶ 30].

Since the inception of DeepGulf, Inc., there have been multiple patents applied for by Marc M. Moszkowski on behalf of the entity, some of which Marc M. Moszkowski has questioned whether the patents were owned by himself or by DeepGulf, Inc. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 52, Line 19 – Page 57, Line 19] Defendant has conceded that the patents described in Paragraph 16(b) through 16(e) of Plaintiffs' Complaint [Doc. 1 at Pages 25 – 26] are owned by DeepGulf, Inc. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 57, Lines 1 – 19].

Defendant testified that the patent described in Paragraph 16(a) of the Plaintiffs' Complaint "is questionable" as to whether or not it is owned by DeepGulf, Inc. and his sole reasoning is that he had not been paid a salary during the time when the patent was filed. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 53, Line 7 – Page 56, Line 25].

Additionally, Defendant testified in his Deposition regarding further inventions that he had not disclosed to DeepGulf, Inc. until the present. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 108, Line 1 – Page 111, Line 3].

DeepGulf, Inc. is the owner of the websites referred to as www.deepgulf.net and www.deep.gulf.com. When the websites were created, Marc M. Moszkowski already had an ISP provider and wanted to use the same provider for the DeepGulf, Inc. website to which Rustin Howard agreed. Marc M. Moszkowski and Rustin Howard worked together to create and organize the DeepGulf, Inc. website and content. We also selected the domain names for the websites together. I wrote the press releases, the “Case Story” and edited parts of the “Going Deep” page. Marc M. Moszkowski wrote the pipe-predictor pages and provided all the technical data on all our websites. He created the graphics and provided images. [Affidavit of Rustin Howard ¶ 31].

I- PLAINTIFFS' CLAIM FOR AN INJUNCTION IN COUNT I THAT VARIOUS PATENTS ARE OWNED BY PLAINTIFF, DEEPGULF, INC. SHOULD BE GRANTED.

In Defendant's Deposition conducted on July 17, 2019, Defendant unequivocably admitted that the patents described in Paragraph 16(b) through 16(e) of Plaintiff's Complaint are owned by Plaintiff, DeepGulf, Inc. as alleged by Plaintiffs. [Deposition of Marc Moszkowski dated July 17, 2019, Page 57, Line 1 – Page 57, Line 19].

In Defendant's Deposition, he further testified that the patent described in Paragraph 16(a) of Plaintiffs' Complaint “is questionable” as to whether or not it is owned by DeepGulf and his sole reasoning is that he had not been paid salary during

the time when the patent was filed [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 53, Line 7 – Page 56, Line 25]. Also, he admitted in his testimony that he did not have any formalized security arrangement with DeepGulf regarding this patent [Deposition of Marc Moszkowski dated July 17, 2019, Page 55, Line 16 – Page 55, Line 20].

On September 15, 2005, Defendant executed a NONCOMPETITION, nondisclosure and developments agreement with Plaintiff. [Affidavit of Rustin Howard ¶ 6; Deposition of Marc M. Moszkowski dated July 17, 2019, Page 47, Line 13-15 and Exhibit “A”]. The first paragraph states:

“In consideration of my services or continued services as an employee, officer, director, or consultant (such services 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: ”

During all times pertinent to this case Defendant has been and still is a director and has thus maintained this Business Relationship keeping the agreement in force. The agreement is not contingent upon the independent agreement that Marc M. Moszkowski be paid a salary.

This claim by Defendant is analogous to one party breaching a contract and that breach excusing an independent covenant in a contract.¹ A material breach to excuse performance only occurs when a party breaches “mutually dependent

¹ To be clear, Plaintiffs are not admitting that they breached any contract with Defendant.

covenant[s] in a contract, and does not occur when a contract is composed of independent covenants.” Gilbert & Caddy, P.A. v. JP Morgan Chase Bank, N.A., 193 F.Supp.3d 1294 (S.D. Fla. 2016) (citing to Mizner Land Corp. v. Abbott, 175 So. 507 (1937)). A dependent covenant “is one that depends on the prior performance of some act or condition.” *Id.* (citing to Seybold v. Nicholson USA Properties, LTD., 890 So.2d 351 (Fla. 5th DCA 2004)). In the present case, Defendant executed a Non-Compete Agreement which stated that all Developments were owned by DeepGulf, Inc. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 47, Line 13 - 15 and Exhibit “A”]. His claim that he was owed salary is completely independent of the Non-Compete Agreement and cannot be a basis for Defendant’s claim that the patent described in Paragraph 16(a) is somehow not owned by DeepGulf, Inc.

Paragraph 16(f) of Plaintiff’s Complaint [Doc. 1 at Page 26] states “It is believed that there are other inventions and / or patentable ideas or methods which have not been disclosed yet to DeepGulf.” In Defendant’s Deposition, Defendant at first refused to respond to the questions regarding other patents [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 60, Line 2 – Page 62, Line 11]. Later in the Deposition, Defendant testified regarding further inventions that he had not disclosed to DeepGulf until that point [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 108, Line 1 – Page 111, Line 3].

Pursuant to Rule 1.510(c)(1), Florida Rules of Civil Procedure, “a party asserting that a fact cannot be...disputed...must support the assertion by...citing to particular parts of materials in the record, including depositions...” (emphasis added). Defendant admitted under oath that the patents described in Paragraph 16(b) through 16(e) of Plaintiffs Complaint are owned by DeepGulf. He further admitted that there were other inventions which existed which were owned by DeepGulf, as Plaintiffs alleged in Paragraph 16(f) of its Complaint. It is obvious that summary judgment should be granted when Defendant readily admits under oath the factual allegations of the Complaint that support the claim being made by Plaintiffs.

All of the patents are subject to the provisions of the Non-Compete Agreement. [Deposition of Marc M. Moszkowski dated July 17, 2019, Exhibit “A”]. Therefore, summary judgment should be granted in favor of Plaintiffs for Count I and all of the patents and/or inventions should be declared to be owned by DeepGulf, Inc.

**II - PLAINTIFFS' CLAIM THAT DEFENDANT BE ENJOINED BY
UTILITILIZING INTELLECTUAL PROPERTY OWNED BY
PLAINTIFF DEEPGULF, INC. AND OTHER RELIEF ASSERTED IN
COUNT II SHOULD BE GRANTED.**

On September 15, 2005, Defendant executed the non-competition agreement with Plaintiff. [Affidavit of Rustin Howard ¶ 6; Deposition of Marc M. Moszkowski dated July 17, 2019, Page 47, Line 13-15 and Exhibit “A”]. Paragraph 5 of The

Noncompetition, Nondisclosure and Developments Agreement entered into by

Defendant states:

“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...software programs, software code, data, computers...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.”

Furthermore, Paragraph 6 of the Noncompetition, Nondisclosure and Developments Agreement states:

“If at any time 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 thereto; (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.”

In addition, Defendant has information that is essential to the ongoing business of DeepGulf, Inc.—namely, the exclusive control of the username and passwords for the DeepGulf, Inc. websites. He has refused to turn these over to DeepGulf, even when asked under oath to do so [Deposition of Marc M. Moszkowski dated October 10, 2019, Page 79, Line 10 – Page 80, Line 11]. DeepGulf is the owner of the websites www.deepgulf.net and www.deep-gulf.com and those websites were only developed by Defendant with permission and in conjunction with DeepGulf, Inc. [Affidavit of Rustin Howard ¶ 31]

By not disclosing the usernames and passwords, Defendant has permitted such websites to be used for purposes otherwise than for the benefit of DeepGulf. These assets are the sole and absolute property of DeepGulf. As such, Defendant has an obligation to ensure that the Board of Director of DeepGulf has this information, so that the websites may be properly used for the benefit of DeepGulf.

Section 607.08411(3)(a), Florida Statutes states that “[t]he duty of an officer includes the obligation to [i]nform the superior officer to whom, or the board of directors or the committee to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer’s

functions, and known or as should be known to the officer to be material to such superior officer, board or committee..." A corporate officer has a duty to inform a corporation of transactions that they conduct or are aware of that are occurring on behalf of the corporation. United Homes v. Moss, 154 So.2d 351 (Fla. 2d DCA 1963). Failing to so inform a corporation is a breach of an officer's fiduciary duty to the corporation. Rehabilitation Advisors, Inc. v. Floyd, 601 So.2d 1286 (Fla. 5th DCA 1992).

Rustin Howard, Chairman of the Board of the DeepGulf, Inc. has been told by the host of the websites, www.hostgator.com that a court order showing DeepGulf, Inc. as the owner of the account would be the only acceptable documentation to properly recognize owner of an account. [Affidavit of Rustin Howard ¶ 32]

Therefore, summary judgment should be entered in favor of Plaintiffs and an Order be entered ordering Defendant not to utilize intellectual property owned by DeepGulf, Inc., including the username and password to the websites. In addition, Plaintiffs request an Order be entered ordering www.hostgator.com to change the ownership of the website accounts to be DeepGulf, Inc. c/o Rustin Howard, Chairman.

III – PLAINTIFFS' CLAIM THAT DEFENDANT CONVERTED THE PROPERTY OF DEEPGULF, INC. IN COUNT V SHOULD BE GRANTED.

At all pertinent times, Defendant was subject to the provision of the Non-Compete Agreement he executed on September 15, 2005 [Affidavit of Rustin Howard ¶ 6; Deposition of Marc M. Moszkowski dated July 17, 2019, Page 47, Line 13-15 and Exhibit "A"]. Paragraph 1 of that agreement states that:

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.

Paragraph 2 of that agreement states that:

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.

Paragraph 5 of that agreement states that:

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.

On or around October 15, 2007, Marc M. Moszkowski went to East Timor to investigate an opportunity, in his capacity as Director and Officer of DeepGulf, Inc. [Affidavit of Rustin Howard ¶ 13]. During that time period, Defendant earned \$132,000 in W-2 wages from DeepGulf, Inc. in 2008, 2009, 2010 and 2011 per year salary from DeepGulf, Inc. and \$110,000 in W-2 wages from DeepGulf, Inc. in 2012. [Affidavit of Rustin Howard ¶ 22]. Defendant led DeepGulf, Inc. to believe that DeepGulf, Inc. as a foreign entity could not have done business with the government of East Timor. He also set up a corporation known as Toke Oil and Gas, S.A. and he set up the corporation without previously disclosing Toke Oil and Gas, S.A. to DeepGulf, Inc. He received multiple payments from Toke Oil and Gas, S.A. in his

role as President Director General. These payments totaled \$345,000.00. [Affidavit of Rustin Howard ¶ 25]. These transactions show a clear conflict of interest on the part of the Defendant. The First District Court of Appeal in Florida has expressed the universally accepted rule that:

“A director's duties being trust duties or in the nature of the duties of a trustee toward his cestui que trust, his acts are subject to be tested by the rules governing the relation of a trustee to his cestui que trust. The duties result from the nature of the employment, and without any stipulation to that effect. He is bound to act with fidelity, the utmost good faith, and with his private and personal interests subordinated to his trust duty whenever the two come in conflict. Courts of equity must enforce strict compliance with these rules.

A director cannot place himself in a position where his individual interest clashes with his duty to his corporation, and there is authority that equity will grant relief where it appears that directors have made in behalf of the corporation contracts which favor their personal interests.”

Snead v. U.S. Trucking Corp., 380 So.2d 1075 (Fla. 1st DCA 1980).

Defendant had an obligation to not have a conflict of interest as a Director of DeepGulf, Inc. under Florida law. Defendant also had an obligation under the Non-Compete Agreement. Defendant violated those obligations and he converted the sum of \$345,000.00 from DeepGulf, Inc. to his own use.

Pursuant to 607.0830(1)(c), Florida Statutes, Defendant owed a duty to act in a manner he believes to be in the best interests of DeepGulf, Inc. He also owed a fiduciary duty to DeepGulf, Inc. while working in East Timor. A director or officer of a corporation, acting as its agent, occupies a position of trust and confidence with

respect to the corporation and owes the corporation a fiduciary duty to exercise utmost good faith and to make full disclosure of all facts, within his knowledge pertaining to the transaction. Tinwood N.V. v. Sun Banks, Inc., 570 So.2d 955 (Fla. 5th DCA 1990) and Pryor v. Oak Ridge, 119 So. 326 (Fla. 1965). Defendant also was bound by the terms of the Non-Compete Agreement. Defendant's actions in taking \$345,000 from Toke Oil and Gas, S.A. constituted a conversion of monies that were to be paid to DeepGulf, Inc. under the express terms of the Non-Compete Agreement.

It was DeepGulf, Inc.'s understanding that the entity to be formed in East Timor was to be formed as a subsidiary of DeepGulf, Inc. [Affidavit of Rustin Howard ¶ 14].

Defendant went to East Timor on behalf of DeepGulf, Inc. to find projects on behalf of DeepGulf, which could utilize DeepGulf's technology and intellectual property. [Affidavit of Rustin Howard ¶ 13].

Conversion is the act of dominion wrongfully asserted over another's property inconsistent with his or her ownership. Yellowfin Yachts, Inc. v. Barker Boatworks, LLC, 898 F.3dc 1279 (11th Cir. 2018) (applying Florida law). In addition, in Florida, an entity which retains improperly disbursed escrow funds can be liable for conversion under Florida law. IberiaBank v. Coconut 41, LLC, 984 F.Supp.2d 1283 (M.D. Fla. 2013), aff'd 589 Fed. Appx. 479 (11th Cir. 2014) (construing Florida law).

Moreover, under Florida law, a person may be found liable for conversion if he obtains possession of another party's funds to set up an escrow fund and thereafter converts the funds for his own use. Masvidal v. Ochoa, 505 So.2d 555 (Fla. 3d DCA 1987).

In the present case, the Defendant was President of DeepGulf, Inc. at the time that he went to East Timor. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 26, Line 10, Page 72, Line 16 - 21]. The Defendant was charged with finding opportunities for DeepGulf, Inc. in East Timor. [Affidavit of Rustin Howard ¶ 13]. Instead of DeepGulf entering into contract for projects, Defendant formed the entity Toke Oil and Gas, S.A. with Marc M. Moszkowski individually owning 33% of that entity, which he stated he was holding in trust for the benefit of DeepGulf, Inc. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 158, Lines 18 – 23]. Instead of distributing all profits to DeepGulf, Toke Oil and Gas, S.A. paid \$345,000 to Defendant. Those funds should have been distributed to DeepGulf, Inc. Therefore, Defendant is liable to Plaintiff, DeepGulf, Inc. for conversion of these funds. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 95, Lines 11 – 19].

Therefore, summary judgment should be entered in favor of Plaintiff, DeepGulf, Inc. and against Defendant pursuant to Count V of the Complaint.

**IV – PLAINTIFFS' CLAIM FOR DECLARATORY RELIEF UNDER
COUNT VIII SHOULD BE GRANTED.**

On or around December 8, 2007, the founding documents of Toke Oil and Gas, S.A. were executed with three shareholders. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 26, Line 24, Page 78, Line 11; Affidavit of Rustin Howard ¶ 16].

Marc M. Moszkowski negotiated DeepGulf, Inc.'s purchase of 30,000 shares or 33% of Toke Oil and Gas from Vincente Ximenes on or about August 12, 2010. [Affidavit of Rustin Howard ¶ 28].

Marc M. Moszkowski negotiated DeepGulf, Inc.'s purchase of an additional 30,000 shares or 33% of Toke Oil and Gas, S.A. from Vincente Ximenes on or about May 25, 2012. [Affidavit of Rustin Howard ¶ 29].

DeepGulf, Inc. purchased an additional 30,000 shares or 33% of Toke Oil and Gas, S.A. from Marc M. Moszkowski on or about May 25, 2012, making DeepGulf, Inc. the sole owner of Toke Oil and Gas, S.A. [Affidavit of Rustin Howard ¶ 30].

The Florida Declaratory Judgments statute purpose is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations. Sehringer v. Big Lots, Inc., 532 F.Supp.2d 1335 (M.D. Fla. 2007); Roth v. The Charter Club, Inc., 952 So.2d 1206 (Fla. 3d DCA 2007).

Defendant has alleged that Vicente Ximines is still an owner of 1/3rd of Toke Oil and Gas, S.A. in defense of Count VIII. [Deposition of Marc M. Moszkowski dated July 17, 2019, Page 114; Page 160]. He further states that this is because of

an “incomplete purchase” [Deposition of Marc M. Moszkowski dated July 17, 2019,

Page 160].

Defendant does not have standing to assert the rights of Vicente Ximines, if any. Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest that would be affected by the outcome of the litigation and is not conjectural or merely hypothetical. Nedeau v. Gallagher, 851 So.2d 214 (Fla. 1st DCA 2003). A party has standing when it has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Elston/Leetsdale, LLC v. CW/Capital Management LLC, 87 So.3d 14 (Fla. 4th DCA 2012). Clearly, Defendant does not have standing to assert that Vicente Ximines was or was not paid in full as a defense to Plaintiffs claim that it is the owner of Mr. Ximines’ shares of stock in Toke Oil and Gas, S.A.

Therefore, Plaintiffs request that summary judgment be entered in their favor under Count VIII and DeepGulf, Inc. be declared the sole owner of Toke Oil and Gas, S.A.

**V – PLAINTIFFS’ CLAIM THAT DEFENDANT SHOULD ACCOUNT
TO PLAINTIFFS FOR THE USE OF ITS ASSETS UNDER COUNT IX
SHOULD BE GRANTED.**

According to the Affidavit of Rustin Howard, Defendant was the only shareholder, officer, or director of DeepGulf, Inc. that was directly involved in business and financial transactions in East Timor from 2008 through 2012.

[Affidavit of Rustin Howard ¶ 20]. The Board of Directors of DeepGulf, Inc. relied solely upon information received from Defendant in managing the company's business in East Timor. According to an email provided to Plaintiffs during discovery, Defendant has for years intentionally withheld information from Plaintiffs, including spreadsheets containing financial information. A copy of an email, produced by Defendant in discovery, between Defendant and Rodney Lewis dated January 5, 2018 is attached hereto as Exhibit "B".

Under Florida law, a party that seeks an equitable accounting must show that: (1) a fiduciary relationship exists between the parties or the transaction at issue is complex; and (2) the remedy at law is inadequate. Zaki Kulaihee Establishment v. McFlicker, 788 F. Supp. 2d 1363 (S.D. Fla. 2011), rev'd and remanded on other grounds, 771 F.3d 1301 (11th Cir. 2014); Chen v. Cayman Arts, Inc., 757 F. Supp. 2d 1294 (S.D. Fla. 2010). In the present case, Defendant was and is the President and a Director of DeepGulf, Inc. Clearly, a fiduciary relationship exists between the parties. In addition, the transaction at issue is complex. There is a complex series of financial and business transactions according to the spreadsheets referred to in Defendant's second Deposition. [Deposition of Marc M. Moszkowski dated October 21, 2019, Pages 9 - 10]. There is no remedy at law that will suffice other than Defendant accounting for the expenditures made by him on behalf of DeepGulf, Inc. while he was supposed to be managing projects for DeepGulf, Inc. in East

Timor. Unlike Defendant's claim for accounting, asserted in his Counterclaim, Plaintiffs have alleged a wrongdoing by Defendant (i.e. Mark Moszkowski converted funds that DeepGulf, Inc. was entitled to).

In suits for accounting under Florida law, when a party does not admit the allegations of the complaint and there is no consent to the entry of a decree, the proper practice is for the court to determine the initial question of plaintiff's right to an accounting, and an accounting may then be decreed if the finding is in favor of the Plaintiff upon the preliminary issue. Charles Sales Corp. v. Rovenger, 88 So.2d 551 (Fla. 1956).

In this case, the evidence supports a preliminary finding that DeepGulf, Inc. is entitled to an accounting from Defendant, describing in detail the revenue received and the expenditures spent by Toke Oil and Gas, S.A. in East Timor and the basis for those receipts or expenditures.

Therefore, Plaintiffs are entitled to summary judgment on the issue of Defendant providing an accounting to Plaintiffs.

**VI – PLAINTIFF'S CLAIM THAT DEFENDANT BREACHED THE
NONCOMPETE CONTRACT PURSUANT TO COUNT X WITH
PLAINTIFF SHOULD BE GRANTED.**

At all pertinent times, Defendant was subject to the provision of the Non-Compete Agreement he executed on September 15, 2005 [Affidavit of Rustin

Howard ¶ 6; Deposition of Marc M. Moszkowski dated July 17, 2019, Page 47, Line 13-15 and Exhibit "A"]. Paragraph 1 of that agreement states that:

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.

Defendant clearly breached the contract between Plaintiff and Defendant when he went to East Timor ostensibly to seek projects for the benefit of Plaintiff and he, instead, formed Toke Oil and Gas, S.A. named himself and two entities the owners of Toke Oil and Gas, S.A. and caused Toke Oil and Gas, S.A. to pay Defendant \$345,000, when during the same time period, Plaintiff was being paid a substantial salary by Deepgulf.

Therefore, Plaintiff, DeepGulf, Inc., is entitled to summary judgment under Count X for Breach of Contract against Defendant.

VII—PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF AGAINST DEFENDANT SHOULD BE GRANTED PURSUANT TO COUNT XI

DeepGulf is the owner of the websites www.deepgulf.net and www.deep-gulf.com and those websites were only developed by Defendant with permission and

in conjunction with DeepGulf, Inc. [Affidavit of Rustin Howard ¶ 31]. As stated previously, Defendant has information that is essential to the ongoing business of DeepGulf, Inc.—namely, the exclusive control of the username and passwords for the DeepGulf, Inc. websites. He has refused to turn these over to DeepGulf, even when asked under oath to do so [Deposition of Marc M. Moszkowski dated October 10, 2019, Page 79, Line 10 – Page 80, Line 11]. He also has other intellectual property and electronic data which is owned by DeepGulf, Inc. [Affidavit of Rustin Howard ¶ 33].

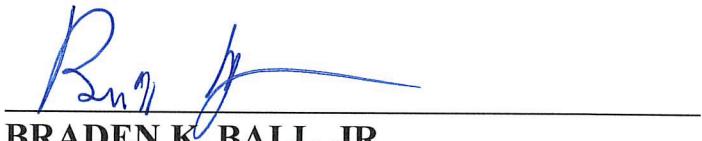
Therefore, Plaintiff is entitled to summary judgment under Count XI and an entry of injunctive relief requiring Defendant to turn over all access information to the websites that DeepGulf, Inc. owns and the computer, all intellectual property, and all electronic data which is owned by DeepGulf, Inc.

RESPECTFULLY SUBMITTED,


BRADEN K. BALL, JR.
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Secondary E-mail: mandrews@lawpensacola.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 6th day of September, 2024, a copy of the foregoing has been furnished to the Defendant, Marc M. Moszkowski, Le Verdos, 83300 Chateaudouble, France (m.moszkowski@deepgulf.net) via the Court's E-filing system.



BRADEN K. BALL, JR.
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LITVAK BEASLEY WILSON & BALL, LLP
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Secondary E-mail: 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.

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:

Mr. No Developments

See Below

Developments and purpose:

Braden Ball

Subject: FW: Toke accounts

EXHIBIT

B

From: m.moszkowski@deepgulf.net [mailto:m.moszkowski@deepgulf.net]
Sent: Friday, January 05, 2018 9:59 AM
To: RODNEY LEWIS (rod@rodlewis.com.au) <rod@rodlewis.com.au>
Subject: Toke accounts

I've been working on the Toke accounts again.

1. I don't think that despite their loud demands (which they make as unacceptable as possible) Rus and Tom want me to send them the Toke documents, for a simple reason: I doubt they are dumb enough to believe that I could have received \$1,000,000 from Toke, but for as long as I don't send them the documentation they can pretend they think I received the money, which buys time for Rus, who makes it very difficult for anyone to study the DeepGulf accounts and doesn't seem to be prepared to explain his expenses. You could say that I could send them the documentation, but I don't think it can prove anything, since it can be doctored any way you want and they would not fail to say so. The documentation consists exclusively of Excel spreadsheets.
2. Despite the contractual 10% of EGS' invoices that DeepGulf was to be paid by Toke, I find that I sent DeepGulf between 13.10% and 14.35% of the amounts paid to EGS, depending on the actual funds received by DeepGulf, which Rus refuses to confirm. That's between \$307,000 and \$428,000 more than the contractual obligation Toke had toward DeepGulf.

M