

**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' TRIAL MEMORANDUM**

Comes Now, Plaintiffs, by and through their undersigned attorney and submits this Trial Memorandum of Law and states as follows:

**I. PLAINTIFFS' CLAIM FOR INJUNCTIVE RELIEF**

In Counts II and XI Plaintiffs make a claim for injunctive relief. Plaintiffs seek to enjoin Defendant from using and withholding access to DeepGulf's intellectual property and web assets, conduct that violates fiduciary duties and contractual obligations. Injunctive relief is appropriate where there is a clear legal right, inadequate remedy at law, and the threat of irreparable harm. See Florida Department of Transportation v. Tropical Trailer Leasing, LLC., 308 So. 3d 242 (Fla. 1st DCA 2020).

**II. PLAINTIFFS' CLAIM FOR CONVERSION**

In Counts V and VI, Plaintiff's make a claim for conversion. Conversion under Florida law occurs when a party exercises wrongful dominion over property belonging to another. See Seymour v. Adams, 638 So. 2d 1044 (Fla. 5th DCA 1994). Defendant's diversion of funds while purporting to act on behalf of DeepGulf constitutes conversion of corporate assets. Under Florida law, actions for conversion may properly be brought for a wrongful taking of intangible interests

in a business venture. Portionpac Chemical Corp v. Sanitech Systems, Inc., 217 F.Supp.2d 1238 at 1252 (M.D. Fla. 2002); In re Corbin's Estate, 391 So.2d 731 (Fla. 3d DCA 1980); In re Aqua Clear Technologies, Inc., 361 B.R. 567 (Bankr. S.D. Fla. 2007).

### **III. PLAINTIFFS' CLAIM FOR CIVIL THEFT**

In Counts III and IV , Plaintiff makes claims for civil theft. Civil theft is actionable under Section 772.11, Florida Statutes, which provides a civil remedy for victims of theft, including treble damages and attorney's fees. To establish a claim for civil theft, a plaintiff must prove, by clear and convincing evidence, that the defendant knowingly obtained or used, or endeavored to obtain or use, the plaintiff's property with felonious intent to either temporarily or permanently deprive the plaintiff of the property or appropriate it for the defendant's own use or the use of another person not entitled to the property. See Batista v. Rodriguez., 388 So. 2d 1098 (Fla. 3rd DCA 2024).

Defendant misappropriated corporate opportunities and funds while acting as a director and officer of DeepGulf, Inc. Specifically, Defendant formed Toke Oil and Gas, S.A. using intellectual property and business opportunities developed by DeepGulf, and he directed the payment of \$345,000 to himself and payment of \$959,764.22 to other directors, without disclosure to or authorization from DeepGulf's Board of Directors. This conduct constitutes conversion and also meets the heightened standard required for civil theft, as it demonstrates a knowing and intentional exercise of dominion over Plaintiffs' property with felonious intent.

### **IV. PLAINTIFF'S CLAIM FOR DECLARATORY RELIEF**

In Count VIII, Plaintiff makes a claim for Declaratory Relief. Pursuant to Chapter 86, Florida Statutes, courts may declare rights and legal relations when a party shows doubt or

uncertainty. Where the undisputed evidence shows full ownership of something, declaratory relief is appropriate. See Roth v. The Charter Club, Inc., 952 So. 2d 1206 (Fla. 3d DCA 2007).

#### **V. PLAINTIFF'S CLAIM FOR ACCOUNTING**

In Count IX, Plaintiff makes a claim for an accounting. A fiduciary duty or complex transaction coupled with inadequate legal remedy supports an equitable claim for accounting. See Zaki Kulaibee Establishment v. McFlicker, 788 F. Supp. 2d 1363 (S.D. Fla. 2011). Defendant's unilateral control over foreign operations and failure to provide information justifies Plaintiffs' demand for a judicial accounting.

#### **VI. PLAINTIFFS CLAIM FOR BREACH OF NON-COMPETE AGREEMENT**

In Count X, Plaintiffs make a claim for breach of a non-compete agreement. A party breaches a non-compete agreement by engaging in competitive conduct or soliciting clients in violation of express covenants. See Proudfoot Consulting Co. v. Gordon, 576 F.3d 1223 (11th Cir. 2009). Defendant's formation and operation of a competing business while employed by Plaintiff and bound by a non-compete provision constitutes a breach.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 6<sup>th</sup> day of June, 2025, a copy of the foregoing has been furnished to the Defendant, Marc M. Moszkowski, Le Verdos, 83300 Chateaudouble, France ([m.moszkowski@deepgulf.net](mailto:m.moszkowski@deepgulf.net)) via the Court's E-filing system.



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