

**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 REGARDING JURISDICTIONAL  
MANIPULATION AND THE DESTRUCTION OF DIVERSITY**

COMES NOW the Defendant, Marc Moszkowski, pro se, and respectfully provides this Notice for the record:

1. The Complaint in this case, filed in Florida State Court, listed two Plaintiffs: DeepGulf, Inc., a Florida corporation, and “Toke Oil and Gas, Inc.,” an alleged foreign corporation.
2. At the time of removal to U.S. District Court in 2018, Defendant asserted — and Plaintiff did not dispute — that Toke Oil and Gas, Inc. was fraudulently joined, fictitious, and legally nonexistent. Defendant’s filing stated, verbatim:

“The Complaint in the state court action also names as a plaintiff Toke Oil and Gas, Inc., which was fraudulently joined and should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §1332 and 28 U.S.C. §1441(b)...”

3. Two years later, in its own Brief of Appellant, Plaintiff expressly affirmed the existence of diversity jurisdiction, writing:

“DeepGulf is incorporated in Florida and has its principal place of business in Florida. Toke is a company domiciled in Timor Leste. Appellee is a resident of France. As such, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332.”

4. Plaintiff raised no jurisdictional objection in the District Court or in the early stages of appeal. Only after the Court of Appeals raised the issue sua sponte did Plaintiff abruptly reverse its position — abandoning its prior claim of diversity and joining the Court in treating its own co-plaintiff as jurisdictionally fatal.
5. Defendant submits that this retroactive invocation of a 'jurisdictional defect' — one the Plaintiff previously disclaimed — constitutes a deliberate manipulation of forum, designed to relitigate a case already decided against it.

6. Defendant further notes the paradox: two foreign parties with no U.S. citizenship cannot access federal court at all. But here, a Florida Plaintiff and a foreign Defendant were denied access to federal court only because Plaintiff, after affirming complete diversity in its own appellate brief, reversed course and accepted the Court's suggestion that the same co-plaintiff was jurisdictionally fatal. Moreover, to reinforce the sleight, Plaintiff never objected to Defendant's original assertion — made in the 2018 notice of removal — that 'Toke Oil and Gas, Inc. was fraudulently joined and should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §1332 and 28 U.S.C. §1441(b).'
7. The result is a procedural trap: jurisdiction exists, is exercised, then reversed years later not due to error, but due to opportunistic contradiction.
8. This Notice is submitted to preserve the record and respectfully object to the destruction of diversity by inconsistent and disingenuous litigation conduct.
9. To further illustrate the institutional ambiguity and procedural laxity surrounding this case, the original Complaint filed in 2018

identified “TOKE OIL AND GAS, INC.” as a co-plaintiff. That designation was fictitious. No such entity exists in Timor-Leste, where the correct designation for a corporate entity is “S.A.” (Sociedade Anónima), not “Inc.” The Complaint’s heading has since been corrected in filings to reflect “TOKE OIL AND GAS S.A.” — yet as of this writing, the official Court docket still lists “TOKE OIL AND GAS, INC.” as a plaintiff, seven years later. This is not a trivial clerical error. It reflects a fundamental misidentification of a named party, one that has never been properly adjudicated or amended on the record. The fact that such a misnamed plaintiff was relied upon to destroy federal jurisdiction only further highlights the procedural incoherence of this case.

Respectfully submitted this 5<sup>th</sup> day of May, 2025

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 5<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.

*M. Marzowski*