

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.

_____ /

NOTICE OF FILING AFFIDAVIT OF RUSTIN HOWARD

COMES NOW, Braden K. Ball, Jr., Esquire, and hereby gives notice that the Affidavit of Rustin Howard, attached hereto, is being filed via the Courts e-filing system.

DATED this 6th day of September, 2024.



BRADEN K. BALL, JR.

Florida Bar No. 89000

LITVAK BEASLEY WILSON & BALL, LLP

40 Palafox Place, Suite 300

Pensacola, Florida 32502

Telephone: (850) 432-9818

Facsimile: (850) 432-9830

Attorneys for Plaintiffs

Primary E-mail: braden@lawpensacola.com

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.

Florida Bar No. 89000

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Attorneys for Plaintiffs

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Secondary E-mail: mandrews@lawpensacola.com

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Defendant.

STATE OF FLORIDA

COUNTY OF ESCAMBIA

AFFIDAVIT OF RUSTIN HOWARD IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

PERSONALLY APPEARED before me, the undersigned authority,
Rustin Howard, who was duly sworn and states as follows:

1. I am Rustin Howard. I am over the age of eighteen (18) and otherwise competent to make this Affidavit and have personal knowledge of the matters and things set forth herein.

2. I am the Chairman of Deepgulf, Inc., who is a Plaintiff in the above-referenced action.

3. I am the Chairman of Toke Oil & Gas, S.A., who is a Plaintiff in the

above-referenced action.

4. Marc M. Moszkowski held all the rights, powers and authorities of DeepGulf Inc.'s Executive Officer by virtue of the CONSENT OF DIRECTORS AND SHAREHOLDERS IN LIEU OF FIRST MEETING OF DIRECTORS AND SHAREHOLDERS OF DEEPGULF, INC. on December 1, 2004 till those rights, powers and authorities were removed from him during the Board of Directors Meeting held on December 26, 2017.

5. Since the formation of DeepGulf, Inc. to the present date, Marc M. Moszkowski has been a director of Deep Gulf, Inc.

6. On September 15, 2005, Marc M. Moszkowski and DeepGulf, Inc. entered into a NONCOMPETITION, NONDISCLOSURE, AND DEVELOPMENTS AGREEMENT a true and correct copy of which is attached hereto as Exhibit "A."

7. In various board conversation in the presence of me and Bill Lott, Marc M. Moszkowski repeatedly expressed his intent to leave the company and establish a new company that would then compete with DeepGulf, Inc. to complete its projects using DeepGulf, Inc. technology.

8. In various board conversation in the presence of me and Bill Lott, Marc M. Moszkowski repeatedly expressed his intent to leave the company, and work for a competitor company to bring the projects to fruition not for the benefit of

DeepGulf, Inc.

9. In various board conversation in presence of me and Bill Lott, Marc M. Moszkowski repeatedly expressed his intent to leave the company, establish a new company that would then compete with DeepGulf, Inc. but would reward some DeepGulf, Inc. shareholders and exclude other DeepGulf, Inc. shareholders.

10. 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.

11. I on behalf of DeepGulf, Inc. passed this inquiry on to Marc M. Moszkowski.

12. 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.

13. 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.

14. 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.

15. In East Timor, Marc M. Moszkowski established Toke Oil and Gas, S.A. and made himself an owner rather than DeepGulf, Inc.

16. 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.

17. 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.

18. 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.

19. 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.

20. While Marc M. Moszkowski was in East Timor, I attempted to travel to East Timor; however, Marc M. Moszkowski told me that it was too dangerous for me to go to East Timor. No other DeepGulf, Inc. employee or Director ever traveled to East Timor.

21. 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.

22. DeepGulf, Inc. paid Marc M. Moszkowski \$132,000.00 in W-2 wages in 2008, \$132,000.00 in 2009, \$132,000.00 in 2010, \$132,000.00 in 2011 and \$110,000.00 in 2012.

23. DeepGulf, Inc. paid me \$19,425.00 in W-2 wages in 2008, \$77,881.00 in W-2 wages in 2009, 2010, 2011 and \$64,902.00 in 2012.

24. On January 5, 2016, I was at a Board of Directors meeting where Marc

M. Moszkowski agreed that he would not claim pre-revenue expenses if the company would give him backpay for unaccrued salary after the company secures revenue or investor capital. Furthermore, on or about September 28, 2012, I had a conversation with Marc M. Moszkowski regarding payroll accruing, but not paying it until DeepGulf, Inc. had funds. The conversation was memorialized in an Executive Order on salaries, attached hereto as Exhibit "B".

25. Toke Oil & Gas, S.A. paid \$345,000.00 to Marc M. Moszkowski. DeepGulf, Inc. had no knowledge of these payments until late 2017.

26. The opportunity to do business in East Timor described in Paragraph 11 was and has always been an opportunity for DeepGulf, Inc.

27. There would have been no opportunities in East Timor for Marc M. Moszkowski, but for the technologies that were owned by DeepGulf, Inc., as DeepGulf, Inc. owned the patents which would make any future projects possible.

28. 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.

29. 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.

30. 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.

31. 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 I agreed. Marc M. Moszkowski and I 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.

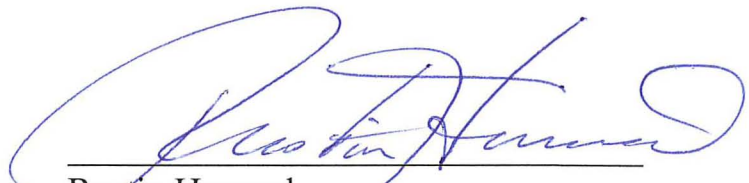
32. I recently contacted www.hostgators.com and their in-house attorneys told me that a court order showing DeepGulf, Inc. as the owner of the account would be the only acceptable documentation to forcefully change the ownership of the account.

33. When Marc M. Moszkowski left for France he took a computer purchased by DeepGulf, Inc., which contained all of the intellectual property and electronic data owned by DeepGulf, Inc. He has not allowed the Board or Directors or me access to such intellectual property and electronic data, in spite of our request that he turn the same over to us.

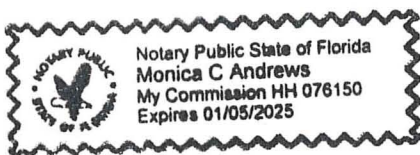
34. DeepGulf, Inc. has not generated any revenue or investor capital since 2012, which would be available to pay W-2 wages.

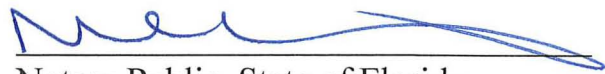
35. On or around August, 2008, DeepGulf, Inc. hired attorney, Jeffrey Goldman, to apply to obtain a permanent resident visa for Marc M. Moszkowski. Despite our best efforts to obtain the permanent resident visa, the application was denied.

FURTHER AFFIANT SAYEHT NAUGHT.


Rustin Howard

SWORN TO AND SUBSCRIBED before me by means of ☒ physical presence
or ☐ online notarization, by Rustin Howard, who is ☒ personally known to me or
who ☐ produced _____ as identification this 5th day of
September, 2024.




Notary Public, State of Florida
Printed Name: Monica C. Andrews
My Commission Expires: 1/5/2025
My Commission ID: HH078150

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:

No Developments

See Below

Developments and purpose:

EXHIBIT

B

Executive Order on Salaries

Sept 28, 2012

Skype conversation
Rus and Marc

After lengthy discussion on how Israel must defend itself against Libya and the bomb and a few updates on status in Timor, I raised the issue of payroll and the lack of funds.

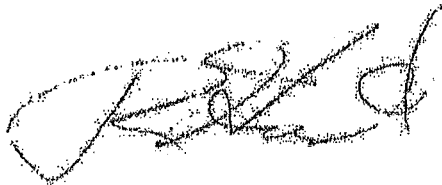
I told marc we are getting very low on funds. I told him that we can make the next payroll but I thought we should cease to pay payroll. He said he needed the money.

I explained to him that if we accrue payroll and not pay it, but book the amount due as a debt we still must pay the taxes and it would soon consume all of our remaining funds.

I told him that we could pay him some of the money that the company owed him since there are no payroll taxes on repayment of debt. He was very happy to hear that.

We agreed to not accrue any further executive officer payroll till the company had funds to pay.

Also discussed travel plans to Dili on First of October.

A handwritten signature, possibly reading "Rus", is written in dark ink. The signature is stylized with a large, sweeping initial 'R' and a trailing flourish.