

**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 AMENDED COUNTERCLAIM**

**PARTIES AND BACKGROUND**

1. Defendant, Marc Moszkowski, is a nearly 50% shareholder and reportedly a director of Plaintiff corporation DeepGulf, Inc., and has been personally responsible for securing contracts and technical expertise on which the corporation has relied.
2. Defendant is and was one of three Directors of DeepGulf, Inc., and had continuously served as such since the corporation's formation. Under Article IV, Section 6 of the Bylaws, a quorum of the Board consists of a majority of directors, and the act of a majority of those present constitutes the act of the Board. No such meeting was ever called or held for the purpose of authorizing this litigation.

Furthermore, Article IV, Section 5 provides that any action taken without a meeting must be by unanimous written consent of the Board. Defendant has never consented in writing to the initiation or continuation of this lawsuit. Accordingly, the filing of this action was ultra vires and without valid corporate authority. Plaintiff's counsel has never produced any contemporaneous corporate record, resolution, or written consent that would satisfy these bylaw requirements, and Defendant affirmatively alleges that none exists. The lawsuit therefore constitutes an abuse of process and a breach of fiduciary duty by those who initiated it without Board authorization.

3. As a direct and foreseeable result of this unauthorized and ultra vires litigation, Defendant has suffered grave and multifaceted harm. He expended nearly \$90,000 in legal costs—effectively all of his available resources—in defending against claims that lacked valid corporate authorization, ultimately prevailing in federal court, only to have judgment nullified by a remand based on false procedural grounds. This depletion left Defendant destitute and unable to seek urgent surgery for two progressively worsening abdominal hernias, despite certified medical recommendations. Simultaneously, he became socially and professionally isolated: longstanding friends

distanced themselves under fear of being targeted by similar lawsuits, a fear deliberately cultivated by Plaintiff Rus Howard, who has previously issued or implied such threats. Defendant's own son—falsely designated as a co-conspirator—cut off all contact six years ago. As Defendant stood financially and emotionally depleted, a close associate of Rus Howard, acting in coordination with him, secured a lien and judgment on Defendant's only remaining asset—his home in France—by initiating a second lawsuit on a fictitious claim. Although Defendant had already been vindicated on the same matter in a prior action, he was unable to retain counsel in the second suit due to his indigence, and was barred from defending himself under French procedural rules. These cascading injuries—financial ruin, physical suffering, familial estrangement, and loss of shelter—are not incidental. They are the proximate consequence of Plaintiff's knowing and abusive misuse of legal process, compounded by coordinated misconduct among his confederates, in violation of the bylaws, fiduciary duties, and Defendant's fundamental rights to due process, bodily integrity, and property.

4. Plaintiff's conduct constitutes not only a breach of the Bylaws and fiduciary duties owed to Defendant as a fellow Director and

shareholder, but also gives rise to independent causes of action sounding in abuse of process, malicious prosecution, and civil conspiracy. The initiation and continuation of this lawsuit without lawful corporate authorization, with knowledge of its factual and legal baselessness, and in calculated retaliation for Defendant's efforts to expose mismanagement and protect corporate integrity, demonstrate an ulterior motive and a gross perversion of judicial procedure. The coordinated actions of Plaintiff and his known associates—both in the United States and abroad—reflect a pattern of concerted legal harassment intended to isolate, bankrupt, and silence Defendant by weaponizing corporate and judicial mechanisms for personal ends. These acts were taken willfully, maliciously, and with reckless disregard for the truth, for Defendant's rights, and for the long-term viability of the corporation itself. Defendant therefore seeks full compensatory damages, punitive damages, and declaratory relief recognizing the ultra vires nature of this proceeding and the unlawful conduct underlying it.

### **FACTUAL BASIS FOR COUNTERCLAIM**

5. Between 2005 and 2008, Defendant personally advanced in excess of \$100,000 to fund the operations of DeepGulf, Inc., at a time when

the corporation had no capital and Plaintiff had failed to pay Defendant any salary. These advances were made in reliance upon formal written commitments—including sworn statements submitted to the U.S. Government—obligating DeepGulf and its Chairman to remunerate Defendant for his work, and to guarantee his compensation personally if corporate funds were lacking.

6. In furtherance of their scheme to retroactively justify unauthorized claims, Plaintiffs falsified or backdated key corporate documents, including meeting minutes purportedly authorizing overseas initiatives, and misrepresented the ownership and corporate history of a foreign entity—Toke Oil & Gas S.A.—which was neither founded nor owned by DeepGulf, but by Timorese nationals. These fabrications formed the evidentiary backbone of knowingly false litigation narratives advanced in both federal and state forums.
7. Defendant was personally invited by the founding shareholders in East Timor to accept a one-third equity stake in Toke Oil & Gas S.A., an opportunity extended solely to him based on his individual qualifications and professional experience. Defendant voluntarily held this interest in fiduciary trust for the benefit of DeepGulf, despite DeepGulf's inability to provide any financial or logistical support. Over

the life of the venture, Defendant remitted to DeepGulf more than 50% of all net proceeds received—substantially exceeding the corporation's rightful share under any interpretation of the parties' relationship.

8. Plaintiffs, acting through Rus Howard and aligned associates, have systematically used litigation not to seek redress for legitimate corporate grievances, but to retaliate against Defendant for his resistance to internal misconduct, and to mischaracterize his lawful and self-sacrificing actions as tortious or criminal—for relevant information about East Timor's dangerous environment, refer in particular to *Defendant's First Affidavit filed on January 21, 2025*. This campaign has been marked by vexatious filings, procedural manipulation, and intentional omission or distortion of dispositive facts known to Plaintiff.
9. Plaintiff's misappropriation of funds, repeated submission of false and misleading statements in both federal and state court proceedings, and initiation of this lawsuit without valid board authorization constitute abuse of process, breach of fiduciary duty, and defamation by implication. These actions were taken with actual malice, in knowing disregard of Defendant's contributions, legal rights, and

fiduciary standing, and have caused lasting personal, financial, and reputational harm.

## **CAUSES OF ACTION**

### **Count I – Abuse of Process**

- 10.** Defendant realleges and incorporates Paragraphs 1 through 9 as if fully set forth herein.
- 11.** Plaintiff, without valid corporate authorization and in the absence of any Board resolution or unanimous written consent as required by Article IV, Section 5 of DeepGulf's Bylaws, initiated this litigation against Defendant with ulterior motives unrelated to any legitimate corporate purpose.
- 12.** The legal process has been used not to vindicate rights, but to punish Defendant, silence dissent, and obfuscate Plaintiff's own breaches of fiduciary duty and personal misconduct. The use of the judicial system to carry out such retaliatory ends constitutes a willful abuse of process.
- 13.** As a result, Defendant has suffered quantifiable damages, including the loss of his savings, his ability to obtain surgery, his

home, his professional and personal relationships, and his constitutional rights to due process and property.

## **Count II – Breach of Fiduciary Duty**

14. Defendant realleges and incorporates Paragraphs 1 through 13 as if fully set forth herein.

15. As Chairman of DeepGulf and shareholder, Plaintiff owed fiduciary duties to Defendant as a fellow director, shareholder, and designated fiduciary trustee of corporate interests abroad.

16. Plaintiff's actions—including misappropriation of funds, initiation of litigation without authorization, suppression of indemnification, and submission of knowingly false or backdated documents—constitute a flagrant breach of those fiduciary obligations.

17. These breaches were committed with actual malice and reckless disregard for the truth, and have directly caused Defendant irreparable injury.

## **Count III – Civil Conspiracy to Commit Fraud and Misuse of Process**

18. Defendant realleges and incorporates Paragraphs 1 through 17 as if fully set forth herein.



- 19.** Plaintiff Rus Howard acted in concert with others, including David Rumsey and unnamed associates, to orchestrate a cross-border scheme to dispossess Defendant of his assets, disrupt his legal defenses, and defame his character through coordinated misuse of legal proceedings in both Florida and France.
- 20.** These acts were not independent or isolated but reflected a shared objective and substantial assistance among co-conspirators, undertaken with knowledge of falsity and improper motive.
- 21.** Defendant's inability to defend himself under French procedural constraints, following earlier vindication on identical claims, was the predictable outcome of this conspiracy, culminating in the imminent forced sale of his only residence.

#### **Count IV – Declaratory Relief (Ultra Vires Corporate Action)**

- 22.** Defendant realleges and incorporates Paragraphs 1 through 21 as if fully set forth herein.
- 23.** This lawsuit was never approved by a majority vote at a properly noticed meeting of the Board of Directors, nor by unanimous written consent, as required by DeepGulf's governing documents.

24. The initiation and continued prosecution of this action is therefore **ultra vires**, null, and void ab initio, and constitutes an improper expenditure of corporate resources for a personal agenda.

25. Defendant seeks declaratory judgment that: (a) the lawsuit was initiated without lawful corporate authority; (b) Plaintiff's use of corporate funds for litigation is unlawful; and (c) any resulting judgments or claims are unenforceable for lack of standing.

#### **Count V – Fraud, Breach of Contract, and Constructive Trust Arising from Unpaid Salaries and Fictitious Loan**

26. Defendant realleges and incorporates Paragraphs 1 through 25 as if fully set forth herein.

27. As a condition of Defendant's H-1B visa status, Plaintiff DeepGulf, Inc.'s Chairman Rus Howard, made sworn declarations to the U.S. Government that Defendant would be paid an annual salary of \$120,000 (later \$132,000). This obligation was further backed by a **personal, irrevocable guarantee** from Howard, pledging his own real estate assets to ensure salary payments in the event of corporate shortfall.

28. Despite this sworn commitment, Plaintiff failed to pay

Defendant any salary during critical years of service, including 2005, 2006, 2007, and again in 2013, 2014, 2015, 2016, and part of 2017, even as Defendant worked full-time and was essential to the company's operations and international expansion. During these periods, DeepGulf had no other source of technical leadership or revenue.

**29.** In an act of extreme good faith, Defendant personally donated approximately \$140,000 of his own consulting income—earned independently from a French oil and gas entity—to Plaintiff DeepGulf, for the express purpose of covering the company's salary obligations to him. Rather than apply these funds appropriately, Plaintiff and Howard **mischaracterized a \$50,000 portion of the return flow** as a “loan” from David Rumsey, bearing 17% interest, despite Howard himself having arranged the transaction and described it internally as an “accounting gimmick.”

**30.** Nearly five years later, David Rumsey, acting in coordination with Howard, filed a lawsuit in France falsely claiming he had made a personal loan to Defendant. Although Defendant had previously prevailed in an earlier suit on the same matter, he was unable to retain counsel for the second action and, under French procedural

law, barred from representing himself. Rumsey obtained a default judgment based on fraudulent pretenses and secured a lien on Defendant's only remaining asset—his home—which is now slated for forced judicial sale.

31. This scheme constitutes **fraud, unjust enrichment, breach of contract, and constructive fraud**, and was carried out with full knowledge and cooperation between Howard and Rumsey. Defendant not only never received the salaries to which he was entitled, but was expropriated for having **funded** his own unpaid salary—thereby converting his own goodwill and earnings into a weapon against him.

32. Defendant seeks (a) a judicial declaration of Plaintiff's breach of contractual salary obligations, (b) imposition of a **constructive trust** over any proceeds or legal advantage obtained through the fictitious Rumsey loan or resulting foreclosure, and (c) compensatory and punitive damages for the fraudulent scheme that culminated in the wrongful seizure of his home.

**WHEREFORE**, Defendant respectfully requests that this Court:

**1. As to Count I (Abuse of Process):**

Award compensatory and punitive damages for Plaintiff's deliberate misuse of judicial process and retaliatory litigation intended to harass and financially cripple Defendant;

**2. As to Count II (Breach of Fiduciary Duty):**

Order that Plaintiff, and specifically Plaintiff's Chairman, be held liable for repeated breaches of fiduciary duty, including refusal to advance litigation costs and acting without corporate authority, and award Defendant compensatory damages, attorneys' fees, and full indemnification of all litigation expenses already incurred and to be incurred in the defense of this action, as required under the corporation's By-Laws;

**3. As to Count III (Civil Conspiracy to Commit Fraud and Misuse of Process):**

Award damages and sanctions against all individuals acting in concert with Plaintiff in submitting fabricated evidence, asserting knowingly false claims, and using litigation as a tool of extortion and defamation;

**4. As to Count IV (Declaratory Relief – Ultra Vires Corporate Action):**

Declare that the initiation and continuation of this lawsuit by Plaintiff DeepGulf, Inc., absent any valid vote or resolution of the Board of Directors or shareholders, constitutes an ultra vires corporate act, and is therefore null, void, and legally improper;

**5. As to Count V (Fraud, Breach of Contract, and Constructive Trust Arising from Unpaid Salaries and Fictitious Loan):**

(a) Award Defendant the full amount of unpaid salary and contractual compensation owed, as established by written commitments, sworn declarations, and contemporaneous evidence;

(b) Declare that the \$50,000 loan falsely attributed to a third party was in fact a salary advance issued by Plaintiff's Chairman at a time when Defendant was voluntarily assigning his third-party emoluments to DeepGulf in order to help cover his own unpaid salary;

(c) Impose a constructive trust over any proceeds or liens obtained through said false loan claim;

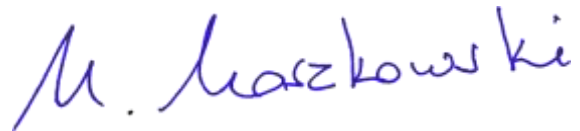
(d) Award restitution for all resulting losses, including wrongful liens, property damage, and reputational harm.

**6. As to All Counts:**

Grant such further relief as the Court deems just and proper, including sanctions for bad faith litigation, findings of frivolity, and any necessary injunctive relief to prevent further abuse.

Respectfully submitted on this 8<sup>th</sup> day of June, 2025.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 8<sup>th</sup> day of June, 2025, a copy of this Amended Counterclaim has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, via the Florida Courts E-Filing Portal, as required by Florida Rule of Judicial Administration 2.516.

