

CAUSE NO. _____

RAIDEN COMMODITIES, LP & ASPIRE COMMODITIES, LP	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiffs,	§	HARRIS COUNTY, TEXAS
	§	
vs.	§	
	§	
PATRICK de MAN	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Raiden Commodities, LP (“Raiden”) and Aspire Commodities, LP (“Aspire,” and collectively “Plaintiffs”) file this original petition against Patrick de Man (“Defendant”), seeking declaratory judgment that Defendant is not a partner in Raiden or Aspire and that Plaintiff is not owed certain bonus payments, and damages and injunctive relief related to Defendant’s conversion and misappropriation of Plaintiffs’ equipment, confidential information, and trade secrets. If this Court should find that Defendant is a partner, then Plaintiffs also seek damages from his breach of partnership obligations.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery pursuant to Rule 190.3(a) (Level 2) of the Texas Rules of Civil Procedure, and seek declaratory judgment, injunctive relief, and monetary relief with a value in excess of \$1 million. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because it seeks relief other than monetary relief.

PARTIES

2. Plaintiff Aspire is a Texas limited partnership with an office located at 3333 Allen Parkway, Suite 610, Houston Texas 77019.

3. Plaintiff Raiden is a limited partnership incorporated under the laws of the Virgin Islands with its principal office in San Juan, Puerto Rico, and a registered agent at 2500 Dallas Pkwy, Suite 501, Plano, TX 75093.

4. Defendant Patrick de Man is an individual residing at 544 Corredor del Bosque, Dorado, Puerto Rico, 00646.

JURISDICTION AND VENUE

5. This Court has specific jurisdiction because Defendant's liability arises out of or is related to an employment relationship that was formed in Texas, and the events that Defendant alleges gave rise to a partnership interest occurred in substantial part in Texas. Additionally, Section 7.10 of the Raiden Commodities, LP Partnership Agreement, the principal partnership in which Defendant claims to be a partner, provides that that any dispute among partners shall be resolved in the courts of Harris County, Texas, and that "all parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any Texas state district court sitting in Harris County, Texas, United States of America in any action or proceeding arising out of or relating to this agreement or any other ancillary agreement...."

6. This Court also has general personal jurisdiction over Defendant as a non-resident who does business in Texas. TEX. CIV. PRAC. & REM. C. §17.042. The commodities trading strategy that Defendant assisted with while working for Raiden involved power contracts traded in the market administered by the Energy Reliability Council of Texas ("ERCOT"). Defendant registered as a User Security Administrator with ERCOT, and was the principal person involved

in executing Raiden's ERCOT-related trades. Thus, Defendant purposefully availed himself of the privilege of conducting activities within Texas, thus invoking the benefits and protections of its laws. Defendant made continuous and systematic contacts with the forum Texas, thereby establishing general jurisdiction.

7. Venue in Harris County, Texas, is proper pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County. Venue is also proper because Section 7.10 of the Raiden Commodities, LP Partnership Agreement provides for venue in Harris County.

FACTS

8. Adam Sinn is an entrepreneur who specializes in trading commodities related to electrical power. Mr. Sinn began his career as a commodities trader in 2002. After several years of trading for established trading houses, Mr. Sinn accumulated sufficient capital to begin his own trading operations. In 2009, Mr. Sinn formed Aspire Capital Management, LLC, based in Houston, Texas, to engage in commodities trading. Mr. Sinn subsequently reformed that company as Plaintiff Aspire, which he manages as the sole manager of its general partner (Aspire Commodities 1, LLC). As explained further below, Mr. Sinn also subsequently formed Plaintiff Raiden in 2011.

9. Mr. Sinn met the Defendant in or around 2005, when they were both employees at Lehman Brothers. At the time, Defendant was a Dutch citizen living in Connecticut. Defendant had experience trading power commodities. The two became friends, and after Lehman's bankruptcy, Mr. Sinn helped Defendant find a job as a trader for another company. Later, when that company also became insolvent, the Defendant and Mr. Sinn began discussions regarding an arrangement under which to trade commodities together. The Defendant had a relatively good

trading acumen, but the Defendant did not have the capital required to fund his trading (which required at least several million dollars). Consequently, the parties were unable to form a partnership at that time.

10. As a result of these circumstances, Mr. Sinn agreed to form a trading company through which the Defendant could trade commodities as an employee. Mr. Sinn elected not to conduct this trading operation within his existing business (Aspire) solely to separate risk between the two trading books, which involved different commodities and trading strategies. Instead, in 2011, Mr. Sinn established Plaintiff Raiden Commodities, LP, which he owned and oversaw as the sole voting member and manager of its general partner (initially Poseidon Commodities, LLC and subsequently Raiden Commodities 1, LLC). Mr. Sinn provided approximately several million dollars in initial capital to Raiden, which was the entirety of Raiden's capital at that time. At various times he has also provided additional capital. On no occasion has Defendant ever contributed his own capital.

11. In turn, Mr. Sinn (through his primary company, Aspire) engaged the Defendant as an employee to execute trades in Raiden's trading book and assist with some of the administrative functions necessary to Raiden's operations. As compensation, Aspire agreed orally to pay the Defendant a salary plus a percentage of the profits (net of losses and expenses) from successful trades specifically executed by the Defendant. The profit agreement did not include trades which were not specifically executed by the Defendant. The salary and profit bonus paid to Defendant were higher than the customary compensation in the industry for an employee trader because of their friendship, and in recognition of the fact that Defendant would have responsibility (in addition to trading) for certain administrative tasks such as accounting,

payroll, maintaining computer systems, compliance functions, etc. The Defendant began his employment with Aspire under these terms in April 2011.

12. At the time Mr. Sinn formed Raiden and agreed to hire the Defendant, the parties also discussed the possibility that Defendant might become a partner in Raiden in the future. Mr. Sinn agreed that if Defendant left his profit bonus in Raiden's trading book, at such a time when the Defendant's accumulated capital was 50% of Raiden's total capitalization, the Defendant would have an option to buy into Raiden as a 50% partner, with the expectation of then hiring employees and expanding the trading operation.

13. In or around early 2012, Mr. Sinn decided to expand the operations of Raiden beyond the trading strategy that he and the Defendant had initially envisioned. Mr. Sinn had accumulated additional capital from the successful operations of Aspire, and wished to put that capital to work through trades that fit the profile of Raiden, but that he or other employees of Aspire (apart from the Defendant) would manage. Thus, Mr. Sinn contributed millions of dollars in additional capital to Raiden. Mr. Sinn and the Defendant never discussed, and Mr. Sinn never agreed, that the Defendant would have any interest in the profits of trades executed in Raiden outside of the trading book the Defendant managed.

14. As time progressed, the Defendant generally did not leave his profit bonus in Raiden's trading book, except for a minimum amount that the Defendant and Mr. Sinn agreed would remain in proportion to the value of the positions that the Defendant managed. Defendant determined when to receive payment of his bonuses, and sometimes elected to defer bonus payments (purportedly for tax reasons). Defendant's capital in the Raiden trading book never amounted to or came close to the 50% of Raiden's capitalization. Moreover, to the extent that any orally-agreed option to acquire 50% of Raiden still was valid following the substantial

expansion of Raiden's operations beyond the trading strategy originally envisioned by Mr. Sinn and the Defendant, the Defendant never asked to exercise such option (presumably because he did not have 50% of Raiden's capitalization to contribute). For the avoidance of doubt, any offer to the Defendant of an option to acquire a partnership interest in Raiden or any affiliate of Raiden is rescinded.

15. Consequently, at all times since Raiden's formation, substantially all of the capital employed by Raiden in its trading and ancillary operations was provided by Mr. Sinn.

16. In addition to Defendant, other traders execute trades on behalf of Aspire and Raiden. Each of those traders has executed Aspire's limited partnership agreement (the "Aspire LPA"). The Aspire LPA creates a separate class of limited partnership interests for traders (called "Trading Partners"). The Aspire LPA contains numerous provisions that govern the relationship between Trading Partners and the partnership, including, *inter alia*:

- A requirement to devote full-time efforts to the partnership (§ 1.9);
- Restrictions on self-dealing, usurpation of corporate opportunities, and competition (§ 1.10);
- Prohibition against disparagement (§1.12);
- Restrictions on the admission of new Trading Partners, which require them to comply with the provisions of the Aspire LPA and terms set by the general partner (§ 3.1);
- Restrictions on transfer of partnership interests (§ 3.3.4);
- Confidentiality obligations (§ 3.10);
- Restrictions on withdrawal (§ 3.12)
- Restrictions on voting rights (§ 3.15);

- Restrictions on management authority and the rights to Profits and Losses to limited partnership property (e.g., the trading book managed by that Trading Partner) (§ 3.15);
- A reduction in the price that the partnership must pay to repurchase the partnership interest if the Trading Partner is terminated for Cause or leaves without Good Reason (as defined therein) (§ 3.15);
- A fiduciary duty of loyalty, to act in the best interests of the partnership, and to devote best efforts to the business of the partnership (§§ 1.9 and 3.15, and also required as a standard condition to admission of a new Trading Partner);
- A requirement to execute a Confidentiality, Non-Solicitation, and Non-Competition Agreement as a condition of being admitted as a Trading Partner.

17. The Raiden Limited Partnership Agreement (“Raiden LPA”) contains comparable terms, but refers to “QA Partners” (for “quantitative analyst”) in lieu of “Trading Partner” in comparable provisions.

18. Defendant has not executed the Aspire LPA or Raiden LPA, or otherwise agreed to be bound by their terms. The Defendant also has not satisfied the conditions set by the general partners of Aspire and Raiden to be admitted as a partner (whether as a Trading Partner, QA Partner, or otherwise).

19. In 2015, in response to complaints by the Defendant about the volume of his non-trading responsibilities, Aspire increased Defendant’s profit bonus percentage on the trades he managed. Ironically, despite being paid more, the Defendant began working less and less.

20. Defendant worked as an employee from 2011 until July 2016. In that time, he received several million dollars in salary and profit bonuses, while contributing none of his own

capital to the business. In the course of his employment, Defendant also received access to valuable confidential and proprietary information, including, *inter alia*, trading strategies and models, trading opportunities, market analysis, partnership financial information, specialized software, and internal emails.

21. In 2016, Mr. Sinn again wished to expand his successful businesses, and engaged a talent recruiter to identify traders for possible hire. The recruiter identified a promising prospect, and Mr. Sinn approached Defendant about the possibility of hiring that prospect to work underneath Defendant managing his Raiden book, or of establishing a new company owned 50/50 by Mr. Sinn and the Defendant, which the Defendant and the new prospect would operate (*i.e.*, implementing the original partnership idea contemplated in 2011). Before either idea could progress, however, Mr. Sinn learned that Defendant was attempting to raise capital in the market to start a new trading company on his own.

22. Shortly thereafter, on or about July 1, 2016, Defendant informed Mr. Sinn that he was terminating his employment. He also informed Mr. Sinn that he intends to establish and/or has established a competing trading company. In addition, he has hired or is working with the individual that Mr. Sinn sought to hire, using the trading strategies and other confidential and proprietary information of Raiden and Aspire.

23. On July 1, 2016, Aspire's general counsel informed Defendant that his access to company information systems, including the DropBox account that the companies use as a shared drive and which Defendant managed, would be terminated. On July 2, 2016, Aspire's general counsel learned that Defendant had changed the access credentials to the DropBox account and deleted the local copies of the DropBox files from other users' computers. This action effectively "locked out" Mr. Sinn and the other Aspire personnel, preventing them from

accessing files necessary to conduct Aspire's and Raiden's trading operations. Moreover, this action occurred in the midst of the July 4 holiday weekend, which Defendant knew is a critical trading period in U.S. power markets.

24. Aspire was understandably alarmed that someone was hijacking its files. When Aspire's general counsel confronted Defendant, the Defendant initially prevaricated, claiming that he had changed the access credentials because he believed someone had attempted an unauthorized access. He then refused to restore access to the account because he was not working over the holiday weekend, despite knowing that the other traders had positions and trades at risk over that important weekend. Finally, Defendant revealed his true intentions, offering to restore Aspire's access to the data on condition of immediate payment of more than \$1 million in past and future profit bonuses that he claimed to be owed. Only under threat of litigation did Defendant restore access to the files on July 3. The markets in which Plaintiff operates are among the most volatile in global markets and even a single minute can be ruinous. Defendant knew this was the case and knew this was an accelerated point of risk. Despite this, Defendant was intentionally slow in restoring access. Even today, Defendant has not restored full access; instead, one critical folder remains inaccessible to Plaintiffs.

25. Additionally, Defendant has failed to return computer equipment, proprietary software, and confidential and proprietary data files belonging to Aspire and Raiden, despite repeated requests. On information and belief, Defendant plans to use the intellectual property, confidential information, and trade secrets that he converted and misappropriated in his new trading business.

26. After Defendant's dramatic departure, Defendant asserted that he was not merely an employee of Aspire, but in fact was a limited partner in Raiden *and* Aspire – apparently in

their entirety, and not merely with respect to the trading book that he managed. Defendant claims that he is entitled to payment of millions of dollars for the “re-purchase” of his alleged partnership interests. Additionally, Defendant has asserted that he is entitled to payment of more than a million dollars (in excess of salary and profit bonuses) for the “additional services” (*i.e.*, the administrative responsibilities in addition to trading) that he provided for Raiden and Aspire. Defendant has conditioned the return of Plaintiffs’ equipment and proprietary information on receipt of millions of dollars, which Plaintiffs dispute to be owed.

COUNT I – SUIT FOR DECLARATORY RELIEF

27. Plaintiffs request that this Court issue a declaratory judgement under Chapter 37 of the Texas Civil Practices and Remedies Code Sections 37.004(a),(b) (contract construction) and 37.003(c) (“The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.”).

28. First, Plaintiffs request a declaratory judgment that Defendant was never and is not now a limited or general partner of Raiden or Aspire. Defendant has not executed or otherwise agreed to the terms of the Raiden LPA or Aspire LPA, has not contributed any capital to Raiden or Aspire, and has not executed any option to acquire a partnership interest in Raiden or Aspire.

29. Additionally, Plaintiffs seek declaratory judgment that Defendant is not entitled to any compensation for “additional services” that he performed as an employee of Aspire and/or Raiden because those services were performed in consideration of his salary and/or profit bonuses.

30. Additionally, Plaintiffs seek declaratory judgment that Defendants' misconduct and bad faith, including but not limited to locking traders out of their files, failing to return company property, undermining the hiring of a prospective trader, and seeking to form or forming a competing trading company with that prospective trader, excuse any obligation on Plaintiffs to pay any bonuses to Defendant.

31. In the alternative, if the Court determines that Defendant does have a partnership interest in Aspire and/or Raiden, then Plaintiffs request that this Court issue a declaratory judgment that: (a) Defendant willfully and knowingly violated his duties as a partner; (b) Defendant's partnership interest is subject to all of the terms of the applicable written partnership agreement, including all of the terms and conditions applicable to, and customarily required for the admission of, Trading or QA Partners (specifically including, but not limited to, the provisions regarding the price of repurchasing Defendant's alleged partnership interest); and (c) Defendant is entitled to no payment for the repurchase of his alleged partnership interest.

32. This is a live, justiciable controversy between the parties, which directly impacts negotiations over the proper separation payment, if any, owed to Defendant as well as the Plaintiffs' right to return of partnership property, and the declaration will resolve the controversy.

COUNT II - CONVERSION

33. Plaintiffs owned and had the right to immediate possession of the Raiden computer equipment that Defendant has wrongfully kept in his possession since he left Aspire. Plaintiffs purchased the equipment using their funds. Defendant was in possession of the equipment in order to perform his duties as an employee. The computer equipment is personal property. Defendant wrongfully exercised dominion and control over the equipment by not returning it immediately upon cessation of his employment. Plaintiffs have suffered injury because of Defendant's actions.

34. Defendant has also wrongfully kept in his possession certain confidential information, as described in Paragraph 20. Plaintiffs owned and had a right to immediate possession of the confidential information. Plaintiffs developed the confidential information using their funds. Defendant was in possession of the confidential information in order to perform his duties as an employee. He intended to deprive Plaintiffs of the information by keeping it and using it in a manner that is inconsistent with Plaintiffs' rights. Plaintiffs have suffered injury because of Defendant's actions, and will suffer irreparable injury should Defendant not be enjoined from using the confidential information in the future.

COUNT III – MISAPPROPRIATION OF TRADE SECRETS

35. Defendant misappropriated Plaintiffs' trade secrets, including but not limited to the trade secrets described in Paragraph 20, in violation of the Texas Uniform Trade Secrets Act (Texas Civil Practices and Remedies Code Section 134A). Plaintiffs owned the trade secrets. The information in question constitutes trade secrets because Plaintiffs have taken reasonable steps to keep it secret, including the use of confidentiality agreements and password-protected access. The information also has independent economic value to third parties because it is generally unknown and not readily ascertainable by proper means.

36. Defendant was originally in possession of the confidential information in order to perform his duties as an employee. He misappropriated the trade secrets when he left Raiden without returning the trade secrets. Defendant knew that the information constituted trade secrets, knew that the trade secrets belonged to Plaintiffs, and knowingly and intentionally maintained possession and control of the trade secrets by improper means when he terminated his employment. Plaintiffs have suffered injury because of Defendant's use and threatened use of the information to compete with Plaintiffs. Plaintiffs will suffer irreparable injury should Defendant not be enjoined from using the confidential information in the future.

COUNT IV – BREACH OF PARTNERSHIP OBLIGATIONS

37. If the Court finds that Defendant is a partner in Raiden Commodities, LP or Aspire Commodities, LP, then Defendant has breached his partnership obligations. He has converted partnership property and confidential information and misappropriated partnership trade secrets for his own benefit and to the detriment of the partnership and the other partners. He also harmed the partnership and other partners by locking them out of Raiden Commodities, LP's shared files. Finally, on information and belief, Defendant intends to form a competing company. It is likely that discovery will reveal even more misconduct. Based on information known to date, and upon information and belief, Defendant has breached at least the following provisions of the Raiden LPA and/or Aspire LPA:

- a. Requirement to devote full time effort to the partnership (§1.9);
- b. Prohibitions against self-dealing, competition, solicitation, diversion or circumvention of prospective business transactions and relationships, and actions injurious or prejudicial to the goodwill of the partnership (§1.10);
- c. Prohibition against disparagement (§1.12);
- d. Misuse of confidential information (§3.10);
- e. Prohibition against wrongful withdrawal (§3.12);
- f. Obligation of fiduciary duty of loyalty and allegiance to act at all times in the best interests of the Partnership and to do no act which would injure the Partnership's business, its interests, its Property or its reputation (standard term of admission of new Trading Partners) (*see* § 3.15).

38. If this Court finds that Defendant is a partner, then Defendant is not entitled to some or all of the payments he claims. *See* Raiden LPA and Aspire LPA, §3.15. Rather, Plaintiffs are entitled to damages related to Defendant's breach of the partnership agreement(s).

ATTORNEYS' FEES AND COSTS

39. Whether as a partner, employee or otherwise, Plaintiffs are entitled to recover reasonable attorneys' fees pursuant to Sections 37.009, 38.001, and 134A.005(3) of the Texas Civil Practice and Remedies Code. Additionally, if this Court finds that Defendant is a partner in Aspire or Raiden, then Plaintiffs are also entitled to attorneys' fees under the Section 7.10 of the Raiden LPA or Aspire LPA.

SPECIAL DAMAGES

40. Plaintiffs are entitled to recover their foreseeable and contemplated special damages resulting from Defendant's actions, including but not limited to lost profits, cost of delay in making their trades, damage to their reputation and relationship with other traders, loss of their intellectual property, confidential information, and trade secrets, and cost to replace the converted computer equipment.

EXEMPLARY AND PUNITIVE DAMAGES

41. Plaintiffs are entitled to recover exemplary and punitive damages against Defendant as a result of his malicious conduct. TEX. CIV. PRAC. & REM. CODE § 41.003. Plaintiffs are also entitled to exemplary damages in accordance with Texas Civil Practices and Remedies Code Section 134A.004(b) for willful and malicious misappropriation of trade secrets.

REQUEST FOR PERMANENT INJUNCTION

42. Plaintiffs are entitled to injunctive relief in accordance with Texas Civil Practices and Remedies Code Section 134A.003 to prevent the actual and threatened misappropriation of

trade secrets. If this Court finds that Defendant is a partner in Raiden or Aspire, then Plaintiffs are also entitled to an injunction under Sections 3.10 and 7.10 of the partnership agreement(s).

43. Plaintiffs ask this Court issue a permanent injunction to prevent Defendant from using any of Plaintiffs' intellectual property, confidential information, or trade secrets.

44. It is probable that Plaintiffs will succeed after a trial on the merits because Defendant has misappropriated the trade secrets when he left Raiden without returning the trade secrets. Defendant knew that the information constituted trade secrets, knew that the trade secrets belonged to Plaintiffs, and knowingly and intentionally maintained possession and control of the trade secrets by improper means when he terminated his employment. Plaintiffs have suffered injury because of Defendant's use and threatened use of the information to compete with Plaintiffs.

45. Plaintiffs face irreparable harm if an injunction is not issued because Defendant's use of the trade secrets precludes Plaintiffs from using them, or at least using them to achieve maximum trading profits. Defendant is also likely to share those trade secrets with his purported partner, and once revealed, the confidential information will cease to be Plaintiffs' trade secret.

46. Plaintiff has no adequate remedy at law because monetary damages from the use and/or disclosure of Plaintiffs' trade secrets are difficult to calculate.

JURY DEMAND

47. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

CONDITIONS PRECEDENT

48. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

49. Under Texas Rule of Civil Procedure 194, Plaintiffs request that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER FOR RELIEF

50. Plaintiffs request the following relief:
- (a) That this Court issue a declaratory judgment that Defendant was and is not a partner in Raiden Commodities, LP or Aspire Commodities, LP or alternatively, that this Court issue a declaratory judgment that: (a) defendant violated his obligations as a partner; b) any partnership interest is subject to the terms of the written partnership agreement, including all terms and conditions applicable to other Trading or QA Partners; and (c) Defendant is entitled to no payment for the repurchase of his alleged partnership interest;
 - (b) That this Court issue a declaratory judgment that Defendant is not owed any compensation for “additional services” that he performed as an employee;
 - (c) That this Court issue a declaratory judgment the Defendant is not owed bonus for 2015 profits or for future profits resulting from trades Defendant placed prior to the termination of his employment;
 - (d) That this Court issue a permanent injunction to prevent Defendant from using any of Plaintiffs’ intellectual property, confidential information, or trade secrets;
 - (e) An award of economic, actual, direct, consequential, special, and compensatory damages against Defendant;
 - (f) An award of exemplary damages against Defendant;
 - (g) Costs of suit;
 - (h) Attorneys’ fees, costs, disbursements, and other charges to the fullest extent permitted under the applicable agreement(s) and law; and
 - (i) Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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