

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
CENTRO JUDICIAL DE BAYAMÓN

RECIBIDO
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SALA DE BAYAMÓN
SECCION CIVIL
2017 MAR - 8 PM 3:33

PATRICK A.P. DE MAN; MIKA DE MAN
(A.K.A. MIKA KAWAJIRI-DE MAN OR
MIKA KAWAJIRI); y la SOCIEDAD LEGAL
DE BIENES GANANCIALES COMPUESTA
POR AMBOS

CASO NUM.: DAC2016-2144

Demandantes,

SOBRE:

vs.

ADAM C. SINN; RAIDEN COMMODITIES,
L.P.; RAIDEN COMMODITIES 1 LLC;
ASPIRE COMMODITIES, L.P.; ASPIRE
COMMODITIES 1, LLC; SINN LIVING
TRUST

INCUMPLIMIENTO DE DEBER DE
FIDUCIA; INCUMPLIMIENTO DE
CONTRATO OPERATIVO;
INCUMPLIMIENTO DE CONTRATO DE
SOCIEDAD LIMITADA; DAÑOS Y
PERJUICIOS; MALA FE Y DOLO; MALA
FE EN LA CONTRATACIÓN;
ENRIQUECIMIENTO INJUSTO.

Demandados

SOLICITUD DE PARALIZACIÓN DE LOS PROCEDIMIENTOS

COMPARECEN los co-demandados Adam C. Sinn; Raiden Commodities, L.P. (“Raiden LP”); Raiden Commodities 1 LLC; Aspire Commodities, L.P. (“Aspire LP”); Aspire Commodities 1, LLC; y Sinn Living Trust (en conjunto, los “Demandados”), por conducto de la representación legal que suscribe y, sin someterse a la jurisdicción de este Honorable Tribunal, respetuosamente exponen y solicitan:

I. INTRODUCCIÓN:

La parte demandante inició el presente caso el pasado 16 de diciembre de 2016, mediante la presentación de la Demanda de epígrafe. Mediante su Demanda, la parte demandante formuló seis causas de acción en base a las cuales solicitó que este Honorable Tribunal imponga a los Demandados el pago de sumas que en conjunto totalizan \$24.5 millones. Al así proceder, la parte demandante convenientemente omitió mencionar en su Demanda la existencia de un pleito iniciado previamente por los co-demandados Raiden LP y Aspire LP en contra del Sr. Patrick de Man ante la Corte estatal del estado de Texas, y en el cual se encuentran en controversia muchos de los hechos que la parte demandante alega en la Demanda de epígrafe.

Conforme se expondrá detalladamente a continuación, a los fines de evitar la duplicidad de procedimientos, así como las inconveniencias e injusticia que implicaría el litigio paralelo de dos casos íntimamente relacionados con resultados potencialmente distintos, la parte compareciente respetuosamente solicita de este Honorable Tribunal que paralice los procedimientos en el caso de referencia hasta tanto la Corte de Texas haya dilucidado una

controversia jurisdiccional trabada en el caso ante su consideración. A continuación un breve resumen de las incidencias procesales del litigio en dicha jurisdicción estadounidense.

II. BREVE RELACIÓN DE HECHOS RELEVANTES A LA SOLICITUD DE PARALIZACIÓN:

1. El 6 de septiembre de 2016, 3 meses antes de haberse radicado la Demanda en el caso de autos, los co-demandados Raiden LP y Aspire LP presentaron una Demanda en contra del Sr. Patrick de Man ante la Corte de Distrito de Texas. Véase, Demanda presentada en el caso intitulado Raiden Commodities, LP & Aspire Commodities LP v. Patrick de Man, Caso Núm. 2016-59771 ante la Corte de Distrito de Texas, Condado de Harris, Distrito Judicial 125, copia de la cual se incluye como **Anejo I** del presente escrito.

2. En lo aquí pertinente, mediante dicha Demanda, Raiden LP y Aspire LP alegaron que en o alrededor del 1ro de julio de 2016, el Sr. de Man decidió dar por terminado su empleo con Aspire LP e informó al Sr. Sinn su intención de formar su propia compañía de corretaje. Acto seguido, el Sr. de Man privó al Sr. Sinn y a los empleados de Aspire LP de acceso a ciertos expedientes electrónicos esenciales para la operación de la compañía. El Sr. de Man condicionó la devolución del acceso a dichos documentos al pago de más de \$1 millón por concepto de bonos de productividad a los que alegó tener derecho.

3. Más aún, conforme alegado en la Demanda ante la Corte de Texas, una vez concretada su súbita partida de Aspire LP, el Sr. de Man reclamó ser un socio limitado de Aspire LP y de Raiden LP y reclamó el pago de una suma multimillonaria por concepto de la venta de su supuesta participación en las compañías.

4. En base a estas alegaciones, Aspire LP y Raiden LP solicitaron de la corte estatal de Texas que emita una sentencia declaratoria mediante la cual declare que el Sr. de Man no es ni nunca ha sido socio general ni limitado de ninguna de dichas compañías y que éste no ha realizado ninguna aportación de capital ni otorgado ningún tipo de contrato para adquirir un interés propietario en dichas compañías. De igual manera, Raiden LP y Aspire LP solicitaron de la Corte de Texas que declare que el Sr. de Man no ostenta derecho alguno a ninguna compensación por concepto de “servicios adicionales” realizados como empleado de Aspire LP y/o de Raiden LP, ya que sus servicios fueron prestados en calidad de empleado de Aspire LP y en consideración al salario devengado y/o bonos de productividad percibidos.

5. Además de lo anterior, los Demandados solicitaron de la Corte de Texas que declare la mala fe del Sr. de Man y libere a Aspire LP y a Raiden LP de cualquier obligación que pudieran haber tenido de pagar cualquier tipo de bonificación al Sr. de Man.

6. La Demanda que pende ante la Corte de Texas incluye además una petición para que se le prohíba al Sr. de Man el uso de la información de la cual tomó posesión indebidamente.

7. Aspire LP y Raiden LP además reclaman el pago de honorarios de abogados y costas de litigio, daños especiales, daños punitivos, así como la expedición de un *injunction* permanente prohibiendo al Sr. de Man utilizar los secretos de negocios obtenidos indebidamente para fines de su nueva empresa.

8. Así las cosas, el 7 de noviembre de 2016, el Sr. de Man presentó una comparecencia especial en el caso de Texas a los fines de objetar la jurisdicción de la Corte de Texas sobre su persona.

9. Entretanto, el 16 de diciembre de 2016, la parte demandante inició el procedimiento de epígrafe mediante la presentación de la Demanda; esto es, **3 meses después que Aspire LP y Raiden LP presentaron su Demanda en contra del Sr. de Man en la Corte de Texas.**

10. Luego de recibir la oposición de Raiden LP y de Aspire LP a la comparecencia especial del Sr. de Man, así como una subsiguiente réplica de parte de este último, la Corte de Texas llevó a cabo una vista argumentativa el pasado 17 de febrero de 2017. Durante dicha vista, el tribunal escuchó los argumentos vertidos por las partes y posteriormente adelantó que estaría emitiendo una orden declarando Con Lugar la posición del Sr. de Man. Al presente dicha Orden no ha sido expedida, por lo que el asunto se encuentra aún pendiente de resolución por parte de dicho foro.

11. No obstante, habida cuenta de que el juez que preside dicho procedimiento adelantó verbalmente su determinación, Aspire LP y Raiden LP han decidido que apelarán el dictamen de la Corte de Texas una vez éste sea formalmente notificado.

III.DISCUSIÓN:

12. La pendencia del caso en Texas aconseja la paralización de los procesos en el caso de epígrafe toda vez que **ambos casos implican cuestiones comunes y el pleito en Texas fue iniciado con anterioridad al presente caso.**

13. Del Anejo I a la presente moción, así como de la breve relación de hechos que antecede, se desprende que la Demanda que pende ante la consideración de la Corte de Texas

implica hechos comunes y pertinentes al presente pleito. Por ejemplo, en el caso de Texas Aspire LP y Raiden LP esbozaron su posición a los efectos de que el Sr. de Man no es, ni nunca ha sido, socio de ninguna clase de ninguna de dichas entidades corporativas. Mediante la Demanda de epígrafe, el Sr. de Man alega precisamente haberse convertido en socio de Aspire LP y Raiden LP y exige el pago de ciertas sumas de dinero basado en su posición. Por tanto, ambos casos involucran cuestiones comunes de hecho y de derecho.

14. Habida cuenta de que el caso de Texas fue iniciado con anterioridad al presente, el Sr. de Man tenía la opción de presentar su reclamo al amparo del pleito estatal de Texas. No obstante, éste optó por iniciar el presente pleito separadamente y, de esa manera, obligar a la parte compareciente a litigar este asunto de manera paralela al caso que se tramita ante la Corte de Texas. Su pretensión es improcedente pues, de conformidad con el principio de eficiencia en el trámite de los litigios, se debe evitar la duplicidad de procedimientos y de inversión de recursos en el litigio de dos cuestiones similares paralelamente.

15. Además de lo anterior y más importante aún, la paralización del presente caso se hace necesaria ante el hecho de que el curso de acción a ser adoptado por la parte compareciente en este caso dependerá en gran medida de la determinación de la Corte de Texas en torno al asunto jurisdiccional, pues los argumentos disponibles a la compareciente podrían variar dependiendo de la resolución de la controversia jurisdiccional.

16. Como es sabido, “cuando dos o más tribunales tienen jurisdicción concurrente en una controversia, puede ocurrir que uno de ellos decline ejercer su jurisdicción en deferencia o cortesía hacia el otro tribunal.” Sentencia de 6 de diciembre de 2007 del Tribunal de Apelaciones en Rowan Kemint v. Tresgallo Salas, Case Núm. KAC 1007-4303. Ello en atención al principio de “comity”. *Id.* Véase además, Ramírez Sainz v. Cabanillas y otros, 177 D.P.R. 1 (2009)(pautando los criterios aplicables a una solicitud de paralización y/o desestimación basada en la doctrina de *forum non conveniens*).¹ A la luz de ello, los procedimientos en el presente caso deben ser paralizados, al menos hasta tanto advenga final la determinación en torno a la jurisdicción de la Corte de Texas sobre la persona del Sr. de Man.

¹ A manera de ejemplo, en Ramírez Sainz v. Cabanillas y otros, 177 D.P.R. 1 (2009), el Tribunal Supremo de Puerto Rico pautó que entre los criterios que un tribunal de instancia vendría llamado a considerar al resolver un planteamiento de *forum non conveniens* es si el foro local es claramente inapropiado para resolver una disputa y *si existe un Estado que también tiene jurisdicción* y que claramente es el más apropiado para resolver la disputa. Por tanto, un argumento de dicha naturaleza depende en gran medida de la existencia de jurisdicción en el estado de Texas.

17. La posición fundamentada de los Demandados es que la Corte de Texas ostenta jurisdicción sobre la Demanda presentada allí en contra del Sr. de Man. Es por ello que Aspire LP y Raiden LP se opusieron a la comparecencia especial del Sr. de Man en dicho caso. Si bien el tribunal de instancia de Texas expresó su inclinación por desestimar dicha Demanda por falta de jurisdicción sobre la persona, Aspire LP y Raiden LP han decidido que una vez se notifique dicha determinación por parte de la Corte de Texas, estarán apelando la misma.

18. Ciertamente, la determinación final en torno a dicho asunto definirá la posición que asumirán los Demandados en el presente caso.

19. En suma, a fines de evitar la innecesaria multiplicidad de pleitos y la consecuente inversión de recursos que ella conlleva, la parte compareciente ruega de este Honorable Tribunal que paralice los procedimientos en el presente caso hasta tanto advenga final la decisión de la Corte de Texas en torno al asunto jurisdiccional.

20. Dependiendo de dicha determinación, variará el curso de acción a seguir por los Demandados en el presente caso pues la misma tendría inherencia en varios argumentos de naturaleza jurisdiccional que podrían ser incluidos por los Demandados en su alegación responsiva en este caso.

21. De este Honorable Tribunal no acoger la solicitud de paralización según esbozada, la parte compareciente respetuosamente solicita de este Honorable Foro que le conceda un término de 20 días –contados a partir de la notificación de su determinación-- para presentar su alegación responsiva a la Demanda de epígrafe.

EN MÉRITO DE LO EXPUESTO, los Demandados de epígrafe respetuosamente solicitan de este Honorable Tribunal que paralice los procedimientos de epígrafe hasta tanto la Corte de Texas resuelva formal y finalmente el asunto jurisdiccional ante sí en el caso que fue radicado por los Demandados previo a que la parte demandante radicara el caso de epígrafe. En la alternativa, la parte compareciente respetuosamente solicita que se le concedan 20 días, a partir de la notificación de la determinación de este Honorable Tribunal, para presentar su alegación responsiva.

RESPETUOSAMENTE SOMETIDA.

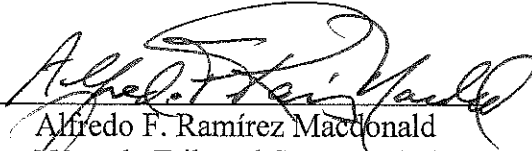
En San Juan, Puerto Rico, a 8 de marzo de 2017.

CERTIFICAMOS, haber enviado copia fiel y exacta del presente escrito por correo ordinario y correo electrónico al **Lcdo. Roberto A. Cámara Fuertes**, Ferraiuoli, LLC, PO Box 195168, San Juan, Puerto Rico 00919-5168, rcamara@ferraiuoli.com.

O'NEILL & BORGES LLC

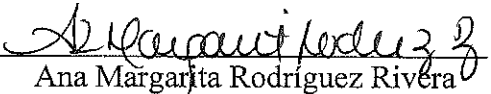
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Por:



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Por:



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CAUSE NO. _____

RAIDEN COMMODITIES, LP & ASPIRE	§	IN THE DISTRICT COURT OF
COMMODITIES, LP	§	
	§	
	§	
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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