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NO. 01-17-00181-CV

IN THE FIRST COURT OF APPEALS
OF TEXAS AT HOUSTON

RAIDEN COMMODITIES, LP, AND ASPIRE COMMODITIES LP,

APPELLANTS

V.

PATRICK DE MAN,

APPELLEE

On Appeal from Case Number 2016-59771
in the 125th District Court, Harris County, Texas

APPELLEE'S BRIEF

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

Two non-resident partnerships, Raiden Commodities, LP ("Raiden") and Aspire Commodities, LP ("Aspire") (collectively, "Plaintiffs"), brought an action for declaratory judgment and damages against a non-resident individual, Patrick de Man ("De Man"). De Man specially appeared, challenging both general and specific jurisdiction. After De Man demonstrated an absence of any relevant contacts with Texas, the trial court sustained the special appearance and made extensive findings of fact and conclusions of law. Plaintiffs brought this appeal.

ISSUE PRESENTED

1. Did the trial court correctly refuse to exercise personal jurisdiction over Patrick de Man, given that he lives in Puerto Rico, had minimal contacts with Texas, and Plaintiffs' claims do not arise from his Texas contacts?

STATEMENT OF FACTS[1]

At Plaintiffs' request, the trial court made findings of fact and conclusions of law on De Man's special appearance. Before the trial court entered its findings, Plaintiffs submitted Proposed Alternative and Supplemental Findings of Fact, and the trial court declined to adopt any of them.[2] In their brief, Plaintiffs fail to challenge the legal or factual sufficiency of the trial court's findings, and they fail to challenge the trial court's refusal to make their proposed and supplemental findings.

Unchallenged findings of fact are conclusive and are binding on the parties and the court. *In re K.R.P.*, 80 S.W.3d 669, 673 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). Accordingly, the trial court's findings of fact, as well as its refusal to find other facts, must be considered conclusive in this case in the absence of any challenge. Plaintiffs rely throughout their brief on citations to record evidence of facts that the trial court did not find, in effect asking this Court to disregard the trial court's fact-finding (and the facts that it refused to find) in considering this appeal. De Man would suggest that the proper approach would be instead to consider

[1] The trial court made findings of fact and conclusions of law after the clerk's office had prepared and filed the clerk's record. Although counsel for Plaintiffs requested a supplemental clerk's record, at the time of the submission of this brief, this first supplemental record had not been filed with the Court. Accordingly, a copy of the trial court's findings of fact and conclusions of law is attached as Tab A to the Appendix to this brief, and is cited herein as "Findings and Conclusions, Tab A, ¶ ___."

[2] Second Supplemental Clerk's Record 3–9.

only the unchallenged and conclusive findings of fact in determining the issues on appeal and to decline to consider facts not found by the trial court.

Regardless of what evidence is considered, there is no basis in this record on which to support the exercise of personal jurisdiction over De Man. The trial court's order dismissing the claims against De Man for want of jurisdiction was proper, and should be affirmed, even assuming that Plaintiffs have properly cited the evidence in the record. Therefore, De Man responds below to Plaintiffs' arguments based on the entirety of the record.

Defendant, Patrick de Man ("De Man") is an individual who currently resides in Puerto Rico, and at all times relevant to his special appearance, lived in New York, Connecticut, or Puerto Rico.[3] He is a citizen of the Netherlands.[4] Raiden is a limited partnership that was created under the laws of the Virgin Islands,[5] is located in Dorado, Puerto Rico,[6] and its general partner is a Puerto Rican limited liability company, Raiden Commodities 1, LLC.[7] Aspire is a Texas limited partnership located in Dorado, Puerto Rico,[8] whose general partner is a Puerto Rican limited liability company, Aspire Commodities 1, LLC.[9] Adam Sinn ("Sinn") controls both

[3] Findings and Conclusions, Tab A, ¶¶ 1–5.
[4] *Id.* ¶ 1.
[5] Findings and Conclusions, Tab A, ¶ 14; Clerk's Record ("C.R.") 430, 435.
[6] Findings and Conclusions, Tab A, ¶ 15; *see also* C.R. 424.
[7] C.R. 399, 435.
[8] Findings and Conclusions, Tab A, ¶ 16; *see also* C.R. 407, 446.
[9] C.R. 674; C.R. 62, ¶ 3.

of the Plaintiffs,[10] and he is a resident of Puerto Rico, having moved there in 2013 "for tax reasons."[11]

I. Sinn Recruits De Man Outside of Texas.

In 2009, Sinn approached De Man about the possibility of De Man's working with one of Sinn's affiliated trading companies.[12] These negotiations continued until 2011, and it was Sinn who repeatedly reached out to De Man to discuss this prospective partnership.[13] All of these negotiations occurred while De Man lived outside of Texas, in either New York or Connecticut.[14] De Man never set foot in Texas during these negotiations, but Sinn met with De Man in New York on several occasions to encourage him to work for one of his companies.[15] Sinn's trips to New York include:

- On August 21, 2009, Sinn had dinner with De Man and his wife at Sushi of Gari 46 in the Theater District.
- On December 19, 2009, Sinn had lunch with De Man and his wife at an Italian restaurant in the East Village.
- On September 19, 2010, Sinn had dinner with De Man at Brasserie 8½ in Midtown Manhattan.
- On October 30, 2010, Sinn met with De Man at the Standard Hotel in the Meatpacking District.

[10] C.R. 62, ¶ 3.
[11] Appellants' Br. 2.
[12] Findings and Conclusions, Tab A, ¶ 7.
[13] *Id.* ¶¶ 7–10; *see also* C.R. 393–94, ¶¶ 13–14.
[14] Findings and Conclusions, Tab A, ¶ 8.
[15] *Id.* ¶¶ 8, 9.

- On December 18, 2010, Sinn had lunch with De Man, his wife, and his son at Sprig in Midtown East.[16]

Sinn sought to persuade De Man to take a risk by leaving his job at Sempra, a well-established and reputable institution, to work for a company affiliated with Sinn, who was a relatively unknown player on the market.[17] De Man's wife had just recently given birth to their son, and it would have been a highly risky move for him to leave Sempra to join one of Sinn's companies.[18] To persuade De Man to take this risk, Sinn repeatedly reached out and visited De Man in New York.[19] De Man never came to Texas for any of these discussions.[20]

II. De Man Goes to Work for Aspire While Living in Connecticut.

Aspire hired De Man to work in Connecticut as a commodities trader, starting in April 2011.[21] Every trade De Man performed on behalf of Aspire was executed from outside of Texas.[22] De Man never signed a written employment agreement for

[16] *Id.*¶ 9; *see also* C.R. 394, ¶ 14.
[17] Findings and Conclusions, Tab A, ¶ 10.
[18] *Id.*
[19] *Id.* ¶ 9; *see also* C.R. 394, ¶ 14.
[20] Findings and Conclusions, Tab A, ¶ 8.
[21] *Id*. ¶ 11. The record is replete with evidence that De Man worked in Connecticut, including (1) an application to the Connecticut Department of Labor completed by Sinn, which describes the "Business Location" as De Man's home address in Connecticut; (2) an Employer Contribution Voucher from the Connecticut Department of Labor for the first quarter of 2013; (3) a letter acknowledging Aspire's registration with the Connecticut Department of Revenue Services; (4) an invoice for worker's compensation insurance in Connecticut for 2012; (5) a notice of cancellation of worker's compensation insurance beginning July 1, 2013; and (6) a paystub for De Man for working from his home in Stamford, Connecticut. *See id.*; *see also* C.R. 395, ¶ 17; C.R. 504–16.
[22] C.R. 394–95, ¶ 16.

his work with Aspire.[23] Plaintiffs seek to rely on various provisions of an *unsigned* "offer letter," but it is undisputed that the parties never executed the offer letter.[24]

III. De Man, Sinn, Raiden, and Aspire Move to Puerto Rico in 2013, and Starting the Following Year, De Man Receives K-1s Reflecting His Partnership Interests in Raiden and Aspire.

In 2013, De Man moved to Puerto Rico and established residency there.[25] He has resided there ever since.[26] Sinn also moved to Puerto Rico in 2013 and has lived there ever since.[27] Also in 2013, De Man terminated his employment with Aspire and became an employee of Raiden Commodities 1, LLC ("RC1").[28] RC1 was and still is a Puerto Rican LLC with its principal place of business in Dorado, Puerto Rico, and it is not a party to this litigation.[29] After 2013, De Man was not an employee of either Plaintiff; indeed, De Man was never an employee of Raiden.[30]

In his capacity as an employee of RC1, De Man executed trades on behalf of Raiden and Aspire.[31] De Man purchased and sold power contracts in the market administered by the Electric Reliability Council of Texas (ERCOT).[32] During the course of his employment with the Sinn entities, De Man made four visits to

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[23] C.R. 393, ¶ 13.
[24] *See* Appellants' Br. 28 n.3 ("The parties did not execute that agreement.").
[25] Findings and Conclusions, Tab A, ¶ 5.
[26] *Id.*
[27] *See* Appellants' Br. 2.
[28] C.R. 390, ¶ 3.
[29] *Id.*
[30] *Id.*
[31] C.R. 394–95, ¶ 16.
[32] *Id.*

Houston: three in 2011 and one in 2014.[33] Each of these visits lasted only three to five days, and none of them is related to any of the claims asserted by Plaintiffs.[34] Since 2014, De Man has not visited Texas.[35]

After De Man moved to Puerto Rico in 2013, he became a limited partner in both Raiden and Aspire in 2014. Each of those entities prepared and provided to Sinn and De Man Schedule K-1 tax forms (IRS Form 1065), entitled "Partner's Share of Income, Deductions, Credits, Etc." The record contains Schedule K-1's for Sinn from Raiden and Aspire in 2013,[36] for De Man from Raiden and Aspire in 2014,[37] and for De Man from Raiden in 2015,[38] which the trial court relied upon in its findings of fact and conclusions of law.[39]

Around July 2016, De Man's relationship with Sinn deteriorated.[40] De Man ceased to perform work for Sinn-affiliated entities and demanded the distribution of $690,847.00 of unpaid compensation from Raiden that was reported on De Man's Schedule K-1 form, but which Sinn had withheld from De Man.[41] That dispute is currently being litigated in Puerto Rico.[42]

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[33] C.R. 395, ¶ 19.
[34] *Id.*
[35] *Id.*
[36] C.R. 446, 458.
[37] C.R. 402, 407.
[38] C.R. 424.
[39] Findings and Conclusions, Tab A, ¶¶ 12, 15–16.
[40] C.R. 285–89.
[41] *Id.*
[42] C.R. 308.

SUMMARY OF THE ARGUMENT

The trial court correctly granted Patrick de Man's special appearance because the court lacks personal jurisdiction over De Man. Although it is not clear that Plaintiffs even allege general jurisdiction, it is certain that De Man is not subject to general jurisdiction in Texas. De Man does not live in Texas; he has been a resident of Puerto Rico since 2013.

The trial court correctly held that it lacks specific jurisdiction because De Man does not have sufficient minimum contacts with Texas and Plaintiffs' claims do not arise from any Texas contact. Plaintiffs' declaratory judgment action seeks a determination that De Man has no partnership interests in entities based in Puerto Rico. The declaratory judgment claim involves no injury in Texas, alleges no tort or breach of contract in Texas, and seeks a declaration that would have no effect in Texas. All aspects of the claim are centered outside of Texas.

Similarly, all of the alleged conduct pertaining to the claims for breach, conversion, and misappropriation of trade secrets, and all of the alleged harm, is centered in Puerto Rico. Because there is no substantial connection between the claims, on the one hand, and Texas or De Man's contacts with the state, on the other, the court lacks specific jurisdiction.

Allowing this dispute to be litigated in Texas would not comport with traditional notions of fair play and substantial justice, because it would impose an

unreasonable burden on De Man. De Man is and has been a resident of Puerto Rico since 2013, and Sinn, the sole voting member of the general partners of Aspire and Raiden, has also lived in Puerto Rico since 2013. De Man and Sinn are in litigation in Puerto Rico currently, and this Court should allow their dispute to be resolved in Puerto Rico.

ARGUMENT

I. Standard of Review.

To the extent they are challenged, the appellate court reviews findings of fact for sufficiency of the evidence. *C-Loc Retention Sys., Inc. v. Hendrix*, 993 S.W.2d 473, 476 (Tex. App.—Houston [14th Dist.] 1999, no pet.). Conclusions of law are reviewed de novo. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

II. The Court Lacks General Jurisdiction Over De Man.

It has long been established that the Fourteenth Amendment's Due Process Clause limits the personal jurisdiction of state courts. *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1779 (2017). The U.S. Supreme Court's precedents recognize two types of personal jurisdiction: "general" (sometimes called "all-purpose") and "specific" (sometimes called "case-linked") jurisdiction. *Id.* at 1780.

General jurisdiction exists only when the defendant has had "continuous and systematic" contacts such that he is "essentially at home" in the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). *Goodyear* "made clear that only a limited set of affiliations with a forum" will render a defendant amenable to general jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 924).

At all times relevant to this lawsuit, De Man lived outside of Texas.[43] When this lawsuit was filed, and at all times since then, De Man lived in Puerto Rico.[44] Plaintiffs make no argument in support of general jurisdiction in this appeal. In fact, Plaintiffs concede that De Man is a "non-resident."[45] Because De Man is not domiciled in Texas, he is not subject to general jurisdiction.

III. The Court Lacks Specific Jurisdiction Over De Man.

For a court to exercise specific jurisdiction over a nonresident defendant, the defendant must have minimum contacts with the forum state, and the suit must arise out of or relate to those contacts. *See Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Daimler AG*, 134 S. Ct. at 749); *see also Searcy v. Parex Resources, Inc.*,

[43] Findings and Conclusions, Tab A, ¶¶ 1–5.
[44] *Id.* ¶ 5; C.R. 395, ¶ 18.
[45] Appellants' Br. ix–xi, 16, 33, 36, 40.

496 S.W.3d 58, 67 (Tex. 2016). With regard to the minimum contacts requirement "the plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014). The U.S. Supreme Court has made clear that courts must reject "attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* Thus, no matter how "significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Walden*, 134 S. Ct. at 1122 (quoting *Rush v. Savchuk*, 444 U.S. 320, 322 (1980)).

Furthermore, the court does "not look to all of [Defendant's] activities in Texas, but only [his] activities that give rise to [the Plaintiff's] cause of action." *RSM Prod. Corp. v. Glob. Petroleum Group, Ltd.*, 507 S.W.3d 383, 396 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Stated differently, "for a nonresident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007).

The court must examine the contacts relevant to each separate cause of action to determine whether specific jurisdiction may be exercised as to each. "A plaintiff bringing multiple claims that arise out of different forum contacts of the defendant

must establish specific jurisdiction for each claim." *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 274 (5th Cir. 2006). Accordingly, De Man examines each of the causes of action separately to demonstrate that specific jurisdiction cannot properly be exercised with respect to any of them.

A. De Man is Not Subject to Personal Jurisdiction with Respect to Plaintiffs' Declaratory-Judgment Claims.

With regard to their declaratory-judgment claims, Plaintiffs form their jurisdictional argument around three flawed propositions: (1) that De Man purposefully directed commercial efforts toward Texas by negotiating a business relationship with two entities based in Texas; (2) that De Man claims that those negotiations gave rise to a partnership interest in those entities; and (3) that De Man performed "employment services directed at Texas."[46] Each of these propositions is factually questionable, but even if they were true, they do not provide a basis for the exercise of personal jurisdiction over De Man.

In addition to these assertions, Plaintiffs contend that De Man is subject to jurisdiction here because of an unsigned employment agreement and the terms of limited partnership agreements that Plaintiffs have not permitted De Man to consider, much less execute. These arguments fail.

[46] *See* Appellants' Br. 19.

1. Plaintiffs Are Not "Texas-Based" Entities, and Negotiations with Texas Entities Would Not Supply a Basis for the Exercise of Personal Jurisdiction.

Plaintiffs themselves describe Raiden as "a limited partnership incorporated under the laws of the Virgin Islands with its principal office in San Juan, Puerto Rico."[47] Raiden was founded in the Virgin Islands,[48] and Schedule K-1 tax forms show a Virgin Islands address in 2013 and 2014 and a Puerto Rico address in 2015.[49] The trial court conclusively found: "The Schedule K-1 tax forms provided by Raiden to Sinn and De Man show that Raiden was located in the Virgin Islands and Puerto Rico."[50] Raiden's sole general partner, Raiden Commodities 1, LLC, is a Puerto Rican limited liability company,[51] and that entity's sole voting member is Sinn,[52] who has lived in Puerto Rico since 2013.[53]

Aspire's principal place of business is and long has been Puerto Rico. "Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Aspire is located in Puerto Rico."[54] Aspire's sole general partner, Aspire Commodities 1,

[47] C.R. 5, ¶ 3.
[48] C.R. 430.
[49] C.R. 402, 424, 458.
[50] Findings and Conclusions, Tab A, ¶ 15.
[51] C.R. 399, 435.
[52] C.R. 670.
[53] Appellants' Br. 2.
[54] Findings and Conclusions, Tab A, ¶ 16; C.R. 407, 446.

LLC, is a Puerto Rican limited liability company,[55] and that entity's sole voting member is Sinn,[56] who has lived in Puerto Rico since 2013.[57]

Even if Raiden and Aspire were "Texas-based" entities, it is undisputed that any "negotiations" De Man may have had with them took place when De Man was outside of Texas. Sinn reached out to De Man in New York and Connecticut to persuade De Man to work for Aspire. The facts are undisputed that:

- On August 21, 2009, Sinn had dinner with De Man and his wife at Sushi of Gari 46, in Midtown Manhattan.
- On December 19, 2009, Sinn had lunch De Man and his wife at an Italian restaurant in the East Village of Manhattan.
- On September 10, 2010, Sinn had dinner with De Man at Brasserie 8½ in Midtown Manhattan.
- On October 30, 2010, Sinn met with De Man at the Standard Hotel, in the Meatpacking District of Manhattan.
- On December 18, 2010, Sinn had lunch with De Man and his family at Sprig in Midtown Manhattan.[58]

The negotiations, to the extent they occurred, took place in New York and elsewhere outside of Texas. Binding precedent establishes that the defendant's contacts with the plaintiff cannot be the only link between the defendant and the forum. *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014). Numerous courts have

[55] C.R. 674; C.R. 62, ¶ 3.
[56] C.R. 688.
[57] Appellants' Br. 2.
[58] Findings and Conclusions, Tab A, ¶¶ 7–9; *see also* C.R. 394, ¶ 14.

specifically held that "an exchange of communications in the course of developing and carrying out a contract does not, by itself, constitute the required purposeful availment of the benefits and protections of Texas law." *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 312 (5th Cir. 2007) (holding that there was no personal jurisdiction in plaintiff's suit for declaratory relief); *see also, e.g.*, *Stuart v. Spademan*, 772 F.2d 1185, 1193 (5th Cir. 1985) ("[W]e have held that an exchange of communications between a resident and a nonresident in developing a contract is insufficient of itself to be characterized as purposeful activity invoking the benefits and protection of the forum state's laws."); *Kern v. Jackson*, 4:08CV436, 2009 WL 1809973, at *3 (E.D. Tex. June 25, 2009) (dismissing declaratory-judgment claim for lack of personal jurisdiction even though plaintiffs were "located in Texas while contracts were being negotiated and finalized" and "much of the contact with Plaintiffs was apparently made on a cell phone or via email, which have increasingly been viewed as less convincing indicators of purposeful availment"); *U.S. Rest. Properties Operating L.P. v. Aloha Petroleum, Ltd.*, CIV.A.3:01-CV-0987-D, 2001 WL 1568762, at *3 (N.D. Tex. Dec. 5, 2001) (dismissing declaratory-judgment claim for lack of personal jurisdiction despite "long-distance communications leading up to the formation of the contract" and a Texas choice-of-law provision); *Tabor, Chhabra & Gibbs, P.A. v. Med. Legal Evaluations, Inc.*, 237 S.W.3d 762, 774 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (quoting *Moncrief Oil*, 481 F.3d

at 312) (relying on *Moncrief Oil* in a published decision of this Court dismissing a case for lack of personal jurisdiction). De Man's negotiations while he was outside of Texas do not constitute sufficient minimum contacts to support the exercise of personal jurisdiction over Plaintiffs' declaratory-judgment claims.

2. De Man's "Negotiations" Are Not at Issue, Did Not Involve a Contact with Texas, and Cannot Support Personal Jurisdiction.

De Man's contention that he owns partnership interests in certain Sinn-related entities is based on: (1) his accumulated capital contributions; and (2) his performance of administrative and management tasks, which took time away from his trading.[59] These events took place long after De Man's employment negotiations. As such, De Man's employment negotiations do not form the basis of any claim or defense.

Furthermore, as set forth fully above, the negotiations did not involve any contacts between De Man and Texas that could form a basis for personal jurisdiction. *See, e,g.*, *Moncrief Oil*, 481 F.3d at 312; *Spademan*, 772 F.2d at 1185; *Kern*, 2009 WL 1809973, at *3; *Aloha Petroleum, Ltd.*, 2001 WL 1568762, at *3; *Tabor*, 237 S.W.3d at 774.

[59] C.R. 350–51, ¶¶ 40–44.

3. De Man Performed No Services "Directed At" Texas.

Plaintiffs argue that De Man's ERCOT trades establish a basis for specific jurisdiction. Plaintiffs' contention appears to be that merely trading power commodities over a Texas market gives rise to jurisdiction over claims unrelated to those trades. The law requires more than the use of a market in Texas to give rise to jurisdiction for actions not arising from the use of that market.

Moreover, when De Man executed ERCOT trades, he did not make contact with Texas for purposes of specific jurisdiction because he was acting as an agent of Raiden and not in his personal capacity. *See Mort Keshin & Co., Inc. v. Houston Chronicle Pub. Co.*, 992 S.W.2d 642, 647 (Tex. App.—Houston [14th Dist.] 1999, no pet.) ("When an agent negotiates a contract for its principal in Texas, it is the principal who does business in this state, not the agent."); *Hotel Partners v. Craig*, 993 S.W.2d 116, 121 (Tex. App.—Dallas 1994, pet. denied) ("When an agent arrives in Texas to represent his principal, only the principal is doing business in Texas."); *Ross F. Meriwether & Assocs., Inc. v. Aulbach*, 686 S.W.2d 730, 731 (Tex. App.—San Antonio 1985, no writ) ("The agent, having entered into no contract, has done no business in Texas, and, therefore, has done no act nor has he consummated a transaction in Texas."). Because De Man was trading on behalf of other entities on ERCOT, and his partnership claim does not arise out of his ERCOT trades, his trading activity cannot be the basis for specific jurisdiction.

4. Unsigned Agreements Do Not Provide a Basis for the Assertion of Personal Jurisdiction.

Plaintiffs assert that an unsigned employment agreement and certain partnership agreements that Plaintiffs have not permitted De Man to review or execute supply a basis on which to exercise personal jurisdiction. Plaintiffs cannot provide a single example of a case in which an unsigned agreement had such power. The forum-selection clause in an unsigned letter offering employment is irrelevant because the offer letter was never signed by De Man or Sinn.[60] Aspire claims that De Man's proposed revisions to the offer letter suggest that he approved of the letter's other provisions, but neither he nor Sinn ultimately signed the document. A "purported acceptance that changes or qualifies an offer's material terms constitutes a rejection and counteroffer rather than an acceptance." *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68, 74 (Tex. App.—Houston [14th Dist.] 2010, pet. denied); *see also Davis v. Tex. Farm Bureau Ins.*, 470 S.W.3d 97, 104–05 (Tex. App.—Houston [1st Dist.] 2015, no pet.). By suggesting revisions to the offer letter, De Man rejected the terms of Sinn's offer, and the fact that the parties never signed the document shows that they did *not* wish to be bound by its terms.

Similarly, the forum-selection clauses in the purported amended partnership agreements of Raiden and Aspire, which were not signed by De Man, cannot

[60] C.R. 75.

establish specific jurisdiction. The forum-selection clauses in those purported agreements are irrelevant, because they are not being litigated in this case. *See RSM Prod. Corp. v. Glob. Petroleum Group, Ltd.*, 507 S.W.3d 383, 397 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (declining specific jurisdiction based on a choice-of-law provision that is not the basis of plaintiff's claims). De Man's claim to partnership is based on his unwritten agreement with Sinn that he would receive a partnership interest in exchange for capital contributions and his performance of administrative and managerial tasks.[61] De Man performed those actions while he was living in Connecticut and Puerto Rico, on behalf of out-of-state entities, and those actions have no connection to Texas. Plaintiffs have not claimed, and they cannot show, that the forum-selection clauses are binding here, because De Man's claim does not involve those agreements.

The dispute between De Man and Plaintiffs, at its core, is about a Puerto Rican resident's partnership interest in entities located in Puerto Rico, based on work that he performed while he was in Connecticut and Puerto Rico. That dispute arises not from any Texas contacts by De Man, but from an unwritten agreement between De Man and Sinn that has no relationship to Texas. Because the declaratory-judgment action does not arise from any Texas contacts, there is no specific jurisdiction with respect to that claim.

[61] C.R. 350–51, ¶¶ 40–44.

Plaintiffs' reliance on *Murray v. Epic Energy Resources, Inc.*, 300 S.W.3d 461 (Tex. App.—Beaumont 2009, no pet.), is misplaced. In that case, personal jurisdiction was predicated on the existence of an *executed* employment contract containing Texas choice-of-law and arbitration-forum-selection clauses. *Id.* at 470. Here, there is no signed employment contract between De Man and either of the Plaintiffs.

Plaintiffs also cite *Smart Call LLC v. Genio Mobile*, 349 S.W.3d 755 (Tex. App.—Houston [14th Dist.] 2011, no pet.), but they neglect to discuss how the court's exercise of personal jurisdiction in that case was based on Smart Call's shipment of physical products to Texas—cell phone SIM cards—and Smart Call's "additional step of customizing its products for the Texas market." *Id.* at 764. Those factors are not present in this case. Furthermore, that case involved claims for breach of contract, whereas here, Plaintiffs are pursuing a declaratory-judgment action. *Smart Call* has little to say about the types of contacts that could support an action such as this one.

The most analogous case is a precedent of this Court, *Gonzalez v. AAG Las Vegas, L.L.C.*, 317 S.W.3d 278 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). In *Gonzalez*, the general manager of Lexus of Las Vegas and Lexus of Akron-Canton was fired and sued in Houston for: (1) breach of fiduciary duty; (2) usurpation of corporate opportunities; and (3) a declaratory judgment that he was not entitled to

ownership interests in Lexus of Las Vegas and Lexus of Akron-Canton. *Id.* at 280–81. As is the case here, there was no written contract describing the terms of the defendant's relationship with the plaintiffs. *Id.* at 286. The Court held that the general manager did not have minimum contacts with Texas, even though he: (1) went to Houston for a job interview, during which he claimed to have been promised an ownership interest in the dealerships; (2) was employed by a company that had its principal place of business in Houston; (3) was paid from Texas; (4) regularly reported to executives in Texas by telephone; and (5) attended a two-day meeting for general managers in Houston. *Id.* at 280–81. Even though the general manager went to Houston for an interview and to negotiate his ownership interests in the dealerships, the Court found that he did not "direct . . . efforts at Texas to obtain employment" with the Plaintiffs. *Id.* at 286. Rather, he "came to Texas to interview for the position" at the "request" of a representative of the Plaintiffs "while he was employed by another car dealership." *Id.* Thus, the Court held that there was "no substantial connection between the operative facts of the claims in this litigation and Gonzalez's alleged contacts with Texas." *Id.* at 285.

Just as Gonzalez did not reach out to Texas to seek a general manager position with Lexus of Las Vegas and Lexus of Akron-Canton, De Man did not reach out to Sinn in Texas for positions with Raiden and Aspire. Rather, it was Sinn who repeatedly visited De Man in New York to persuade him to quit his job with

Sempra.[62] De Man's Texas contacts during the negotiations were more attenuated than those of Gonzalez, because De Man never once set foot in Texas, whereas Gonzalez actually went to Houston to interview and negotiate his ownership interests in the dealerships. Under this Court's precedent in *Gonzalez*, there is no substantial connection between De Man's Texas contacts during the negotiations and any of the Plaintiffs' claims.

B. Plaintiffs' Claims for Breach of Partnership Agreement Do Not Arise From Texas Contacts.

Plaintiffs muddle the jurisdictional analysis by lumping their declaratory-judgment actions with their claims for breach of their partnership agreements.[63] Despite Plaintiffs' attempt to focus on De Man's negotiations with Sinn in 2010 and 2011, those negotiations have nothing to do with Plaintiffs' claims for breach of partnership agreement. Plaintiffs' allegations about what happened during the breakdown of the parties' relationship form the factual basis of their claims for breach.[64]

Aspire and Raiden are entities located in Puerto Rico,[65] and they allege that a Puerto Rican, De Man, breached their partnership agreements in the summer of 2016, based on actions that he took while he was in Puerto Rico.[66] Those claims do

[62] Findings and Conclusions, Tab A, ¶¶ 7–9; *see also* C.R. 394, ¶ 14.
[63] Appellants' Br. 21–24.
[64] C.R. 16, ¶ 37.
[65] Findings and Conclusions, Tab A, ¶¶ 15–16; C.R. 407, 424, 446.
[66] C.R. 11–12, 16, ¶¶ 22–25, 37 (basing claim on alleged conduct occurring in 2016).

not arise out of or relate to contacts by De Man with Texas, and without such a substantial connection, there is no specific jurisdiction over Plaintiffs' claims for breach of their partnership agreements.

C. Plaintiffs' Claims for Misappropriation of Trade Secrets Do Not Arise From Texas Contacts.

There is also no specific jurisdiction over Plaintiffs' trade-secrets claims, because those claims are not substantially connected to any Texas contacts by De Man or actions purposefully directed at Texas. A nonresident directing an alleged tort at Texas from afar is insufficient to confer specific jurisdiction. *See Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 790–92 (Tex. 2005) (rejecting "directed-a-tort" jurisdiction). At best, Plaintiffs' allegations are that the alleged misappropriation occurred (if anywhere) solely in Puerto Rico, by a Puerto Rican resident, against parties that have their principal places of business in Puerto Rico.[67] Plaintiffs ignore the undisputed fact that the alleged tortious act on which their claims are based occurred *outside the forum state*, in the summer of 2016, while De Man was in Puerto Rico.

Plaintiffs cite *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142 (Tex. 2013), as an example of a case in which the court exercised personal jurisdiction over a nonresident in a trade-secrets case. In that case, in contrast to the facts here,

[67] C.R. 11–12, 15, ¶¶ 23–25, 35–36 (basing claim on alleged conduct occurring in 2016).

defendants allegedly misappropriated trade secrets that were revealed during two meetings that took place physically in Texas. *Id.* at 147. Moreover, the claim in that case centered on the establishment of a joint venture within Texas that would do business in Texas with a Texas corporation. *Id.* at 148. This case involves a Puerto Rican resident working for an entity doing business in Puerto Rico, who allegedly misappropriated trade secrets in Puerto Rico. *Cf. M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 887 (Tex. 2017) (distinguishing *Moncrief Oil* on the ground that "the precise act giving rise to the tort—actually took place in Texas").

The physical location of the relevant events is of primary importance in evaluating whether specific jurisdiction exists, as the Court indicated in the opening sentences of *Moncrief Oil*: "We have observed that the business contacts needed for specific personal jurisdiction over a nonresident defendant 'are generally a matter of physical fact, while tort liability (especially misrepresentation cases) turns on what the parties thought, said, or intended. Far better that judges should limit their jurisdictional decisions to the former rather than involving themselves in trying the latter.'" *Id.* at 147 (quoting *Holten*, 168 S.W.3d at 791). *Moncrief Oil* and *Holten*'s emphasis on the physical location where the relevant events took place provides strong authority for the trial court's conclusion that there was no specific jurisdiction

because "Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico."[68]

Plaintiffs (again) invoke the "contemplated"—but never executed—employment offer letter from Aspire, arguing that De Man and Sinn "contemplated the protection" of certain information disclosed to De Man during negotiations in 2011.[69] The problem with that argument, of course, is that the letter was never signed by either De Man or Sinn.[70] Regardless of what the parties may have contemplated when they circulated drafts of the offer letter, their decision not to sign it shows that they ultimately contemplated not having the protections of a legally binding confidentiality provision.

Plaintiffs' reliance on *Delta Brands, Inc. v. Rautaruukki Steel*, 118 S.W.3d 506 (Tex. App.—Dallas 2003, pet. denied), is misplaced. In *Delta Brands*, the court held that there was personal jurisdiction over a defendant who had entered into a confidentiality agreement expressly covering information that the defendant received in Texas. *Id.* at 511. *Delta Brands* based its holding on the definitive "scope of the confidentiality agreement" and the "plain language" of that contract, which allowed the court to make a certain determination that sufficient contacts

[68] Findings and Conclusions, Tab A, ¶ 20.
[69] Appellants' Br. 38; *see also* C.R. 67, ¶ 19.
[70] C.R. 75.

existed to support jurisdiction. *Id.* at 511. But here, there is no confidentiality agreement protecting any alleged "secrets."

Plaintiffs' response to this argument is that it goes to the merits of the underlying trade-secrets claim.[71] But in cases where "personal jurisdiction is predicated on the commission of a tort within the state, of course the jurisdictional question involves some of the same issues as the merits of the case." *Wyatt v. Kaplan*, 686 F.2d 276, 280 (5th Cir. 1982); *see also Capital Fin. & Commerce AG v. Sinopec Overseas Oil & Gas, Ltd.*, 260 S.W.3d 67, 84 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (noting that "a trial court must frequently resolve preliminary questions of fact to determine the jurisdictional question"). The fact that Sinn disclosed information to De Man while De Man was at a competitor firm, when there was no signed confidentiality agreement, forecloses any possibility that the information disclosed to De Man was "secret." As such, that disclosure of information could not possibly form the basis of a claim to specific jurisdiction. The trial court was correct to conclude that there was no specific jurisdiction over the trade-secrets claims, and this Court should affirm its grant of De Man's special appearance.

[71] Appellants' Br. 38 n.5.

D. Plaintiffs' Claims for Conversion Do Not Arise From Texas Contacts.

Plaintiffs' claims of conversion involves conduct that occurred while De Man was in Puerto Rico and does not arise from any of De Man's Texas contacts. Plaintiffs assert that they "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," and "Defendant has also wrongfully kept in his possession certain confidential information."[72] Essentially, Plaintiffs claim that De Man failed to return certain property while he was in Puerto Rico when his relationship with Aspire and Raiden deteriorated. Given that De Man was in Puerto Rico, and Aspire and Raiden are located in Puerto Rico, this dispute has no substantial connection to Texas contacts by De Man.

Even if the mere fact of Aspire's formation in Texas were enough to render it a Texas entity—despite its description of itself as a business located in Puerto Rico to the IRS—allegations that an out-of-state defendant refused to return property that belongs to a Texas plaintiff are insufficient to establish personal jurisdiction over the defendant. *See Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 230 (5th Cir. 2012) (citing *Laykin v. McFall*, 830 S.W.2d 266, 269–70 (Tex. App.—Amarillo 1992, no writ)) ("The mere fact that the converted item originated in Texas

[72] C.R. 14–15, ¶¶ 33–34.

is not sufficient to create personal jurisdiction under the long-arm statute; the item must be in Texas when the conversion actually occurs. . . . Because the alleged conversion by Lexware occurred, if at all, in Germany, when Lexware refused to return its copy of Btrieve [software contained on a "master CD" with a "key generator"] to Pervasive, the Texas district court lacked specific personal jurisdiction over the conversion claim."); *Laykin*, 830 S.W.2d at 269–70 (holding that there is no personal jurisdiction over a conversion claim where a ring, sent voluntarily out of Texas to a broker in California, was not converted until the broker refused to return it and therefore converted it in California, not Texas).

The holdings of *Lexware* and *Laykin* are in accord with the general rule that specific jurisdiction "does not turn on where a plaintiff happens to be, and does not exist where the defendant's contacts with the forum state are not substantially connected to the operative facts of the case." *Searcy v. Parex Resources, Inc.*, 496 S.W.3d 58, 70 (Tex. 2016). Because the conversion claims do not arise from Texas contacts by De Man, the court lacks specific jurisdiction over those claims, and this Court should affirm the trial court's grant of De Man's special appearance.

IV. It Would be Unreasonable to Have This Dispute Litigated in Texas.

Separate from the inquiry into minimum contacts is the question of whether exercising personal jurisdiction would comport with traditional notions of fair play and substantial justice. "The strictures of the Due Process Clause forbid a state court

to exercise personal jurisdiction over [a Defendant] under circumstances that would offend traditional notions of fair play and substantial justice." *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 113 (1987).

In making this inquiry, courts must consider a variety of interests, including the interests of the forum state and the plaintiff's interest in having the case heard in the forum of his choice, but the U.S. Supreme Court recently clarified that the "primary concern" is "the burden on the defendant." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). Assessing this burden requires a court to consider the practical problems that result from litigating in the forum. *Id.* at 1780.

De Man is a resident of Puerto Rico, and he has lived there since 2013.[73] Sinn, who is the sole voting member of the general partners of Aspire and Raiden, has also lived in Puerto Rico since 2013.[74] And Aspire and Raiden themselves are located in Puerto Rico.[75] Given the location of the parties, it would impose an unreasonable burden on De Man to make him litigate this dispute in Houston, Texas, especially given that the parties are also currently litigating in Puerto Rico.[76] Forcing a Puerto Rican resident to defend a lawsuit brought by the businesses of another Puerto Rican

[73] C.R. 395, ¶ 18.
[74] Appellants' Br. 2; C.R. 62, ¶ 3.
[75] Findings and Conclusions, Tab A, ¶¶ 15–16; C.R. 407, 424, 446.
[76] C.R. 308.

resident in Texas, when another lawsuit is pending in Puerto Rico, is contrary to the traditional notions of fair play and substantial justice embodied in the Due Process Clause, and as such, this Court should affirm the trial court's grant of De Man's special appearance.

CONCLUSION

For the reasons set forth above, the judgment of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this Brief contains 6,796 words, excluding the words not included in the word count pursuant to Texas Rule of Appellate Procedure 9.4(i)(1). This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

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As required by Texas Rules of Appellate Procedure 6.3 and 9.5, I certify that I have served this document on all parties on July 28, 2017, via e-filing and/or e-mail.

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NO. 01-17-00181-CV

IN THE FIRST COURT OF APPEALS
OF TEXAS AT HOUSTON

RAIDEN COMMODITIES, LP, AND ASPIRE COMMODITIES LP,

APPELLANTS

V.

PATRICK DE MAN,

APPELLEE

On Appeal from Case Number 2016-59771
in the 125th District Court, Harris County, Texas

APPENDIX TO APPELLEE'S BRIEF

TAB	DOCUMENT
A	Apr. 24, 2017 Findings of Fact and Conclusion of Law

TAB A

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CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, & ASPIRE COMMODITIES, LP,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF HARRIS COUNTY, TEXAS
PATRICK DE MAN,	§	
Defendant.	§	125TH JUDICIAL DISTRICT

~~DEFENDANT'S PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the pleadings and arguments of counsel concerning Defendant Patrick de Man's special appearance, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Patrick de Man ("De Man") lives in Dorado, Puerto Rico.[1] At all times material to this case he was a citizen of the Netherlands.[2]

2. After the Lehman Brothers bankruptcy in September 2008, De Man moved to New York City, New York, and he lived there until 2010.[3]

3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.[4]

4. From 2010 to 2013, De Man lived in Stamford, Connecticut.[5]

5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.[6]

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[1] De Man Declaration ¶ 1.
[2] First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 8.
[3] De Man Declaration ¶ 13.
[4] *Id.*
[5] De Man Declaration ¶¶ 13, 18.
[6] De Man Declaration ¶ 18.

6. De Man has not lived in Texas since September 2008.

7. In 2009, Adam Sinn ("Sinn") approached De Man about the possibility of working with one of the trading companies affiliated with Sinn.[7]

8. During the entire time that Sinn was having those discussions with De Man, De Man lived in New York or Connecticut, and De Man never set foot in Texas.[8]

9. In 2009 and 2010, Sinn met with De Man in New York on at least five occasions and discussed the possibility of a working relationship.[9]

10. At the time of those meetings, De Man felt that he had a job at a well-established and reputable institution, Sempra, and the thought of leaving that job to work with a Sinn-affiliated company seemed risky to him.[10] De Man's wife had recently given birth to his son, and Sinn sought to persuade De Man to take the risk of working with him.[11]

11. In 2012 and part of 2013, De Man was hired by Plaintiff Aspire Commodities LP ("Aspire") to work as a commodities trader in Connecticut, as evidenced by numerous employment documents from the State of Connecticut.[12]

12. In 2013, De Man moved to Puerto Rico, and he was subsequently described as a partner on Schedule K-1 tax forms (IRS Form 1065) for Plaintiffs Raiden Commodities LP ("Raiden") and Aspire Commodities LP ("Aspire").[13]

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[7] De Man Declaration ¶ 14.
[8] *Id.*
[9] *Id.*
[10] De Man Declaration ¶ 15.
[11] *Id.*
[12] De Man Declaration ¶ 17 and Exhibits 20–25.
[13] De Man Declaration at Exhibits 2, 3, and 9.

13. All of the trading in which De Man engaged in on behalf of Raiden and Aspire was executed from outside of Texas.[14]

14. Raiden was originally incorporated in the Virgin Islands, and it was incorporated there at all times prior to and including the date on which this lawsuit was filed.[15]

15. The Schedule K-1 tax forms provided by Raiden to Sinn and De Man show that Raiden was located in the Virgin Islands and Puerto Rico.[16]

16. The Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Aspire is located in Puerto Rico.[17]

CONCLUSIONS OF LAW

I. Specific Jurisdiction

17. "[F]or a nonresident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007).

18. "The purpose of the minimum-contacts analysis is to protect the defendant from being haled into court when its relationship with Texas is too attenuated to support jurisdiction." *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

19. This Court lacks specific jurisdiction over the Plaintiffs' declaratory judgment actions concerning whether De Man has partnership interests in the Plaintiffs. De Man is a resident of Puerto Rico.[18] Both Raiden and Aspire have their principal places of business in Puerto Rico,

[14] De Man Declaration ¶ 16.
[15] De Man Declaration ¶ 6 and Exhibits 10 and 11.
[16] De Man Declaration at Exhibits 2, 9, and 12.
[17] De Man Declaration ¶ 7 at Exhibits 3 and 12.
[18] De Man Declaration ¶ 18.

as evidenced by the K-1 tax forms filed with the IRS.[19] There is no substantial connection between Plaintiffs' declaratory judgment actions and any Texas contacts by De Man.

20. This Court lacks specific jurisdiction over the Plaintiffs' trade secret claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' trade secret claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

21. This Court lacks specific jurisdiction over the Plaintiffs' conversion claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Even if the Plaintiffs were located in Texas, allegations that an out-of-state defendant refused to return property that belongs to a Texas plaintiff are insufficient to establish personal jurisdiction over a defendant. *See Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 230 (5th Cir. 2012) (citing *Laykin v. McFall*, 830 S.W.2d 266, 269–70 (Tex. App.—Amarillo 1992, no writ)). Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' conversion claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

22. This Court lacks specific jurisdiction over the Plaintiffs' alternative claims for breach of partnership obligations. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. There is no substantial connection between Plaintiffs' claims for breach of partnership obligations and any Texas contacts by De Man.

[19] De Man Declaration at Exhibits 3, 9, and 12.

II. General Jurisdiction

23. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

24. General jurisdiction exists only when a defendant has had "continuous and systematic" contacts such that they are "essentially at home" in the forum state. *Id.* at 919. "It may be that whatever special rule exists permitting 'continuous and systematic' contacts to support jurisdiction with respect to matters unrelated to activity in the forum applies *only* to corporations." *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 610 n.1 (1990).

25. At the time this lawsuit was filed, and at all times since then, De Man's domicile was Puerto Rico.[20] Therefore, De Man is not subject to general jurisdiction in Texas.

Signed this the _____ day of _____, 2017

Signed:
4/24/2017

JUDGE PRESIDING

[20] De Man Declaration ¶ 18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 21st day of April 2017, a true and correct copy of the foregoing instrument has been served upon counsel of record in accordance with the requirements of the Texas Rules of Civil Procedure, addressed as follows:

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