

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE BAYAMÓN

PATRICK A.P. DE MAN; MIKA DE
MAN (t/c/c MIKA KAWAJIRI-DE MAN
O MIKA KAWAJIRI); y la SOCIEDAD
LEGAL DE BIENES GANANCIALES
COMPUESTA POR AMBOS

Demandantes,

v.

ADAM C. SINN; RAIDEN
COMMODITIES, L.P. (t/c/c ASPIRE
POWER VENTURES, LP); RAIDEN
COMMODITIES 1, LLC; ASPIRE
COMMODITIES, L.P.; ASPIRE
COMMODITIES 1, LLC; SINN LIVING
TRUST y/o GONEMAROON LIVING
TRUST; ASPIRE COMMODITIES,
LLC; ASPIRE COMMODITIES
HOLDING COMPANY, LLC; ASPIRE
COMMODITIES HOLDINGS, LLC;
ASPIRE CAPITAL MANAGEMENT,
LLC; COMPAÑÍAS ABC y DEF,

Demandados.

CIVIL NÚM.: D AC2016-2144 (701)

SOBRE:

INCUMPLIMIENTO DE DEBER DE
FIDUCIA; INCUMPLIMIENTO DE
CONTRATO; DAÑOS Y PERJUICIOS;
MALA FE Y DOLO; MALA FE EN LA
CONTRATACIÓN;
ENRIQUECIMIENTO INJUSTO;
FRAUDE DE ACREEDORES; VELO
CORPORATIVO

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OPOSICIÓN A MOCIÓN DE DESESTIMACIÓN

AL HONORABLE TRIBUNAL:

Comparecen los demandantes, Patrick A.P. De Man ("De Man"), Mika De Man (t/c/c Mika Kawajiri o Mika Kawajiri De Man) y la Sociedad Legal de Bienes Gananciales compuesta por ambos, a través de la representación legal que suscribe, y muy respetuosamente exponen, alegan y solicitan:

1. La Demanda en el presente caso se presentó el 16 de diciembre de 2016. La Demanda original tenía 25 páginas e incorporaba seis causas de acción: (a) incumplimiento de deberes de fiducia; (b) incumplimiento de contrato; (c) incumplimiento intencional de acuerdo, apropiación ilegal y conversión de capital; (d) daños y perjuicios; (e) mala fe (dolo) y (f) enriquecimiento injusto. La contención de que la parte demandada adeudaba al demandante cerca de \$700,000 por concepto de dineros retenidos, se hizo formar parte de la causa de acción (c). En el párrafo 3 de la Demanda se aseveraba que el demandado Adam Sinn no mantenía la

separación debida entre los asuntos de sus corporaciones y los suyos personales.

2. El 11 de enero de 2019, la parte demandante solicitó permiso para enmendar su demanda, a los fines de incluir como partes a ciertas entidades adicionales relacionadas con los traslado de Aspire Commodities, LP a Delaware y de Raiden Commodities, LP a Tejas para alegar que dichas transacciones habían sido en fraude de acreedores. La demanda enmendada reduce y simplifica las alegaciones de la demanda original, es sustancialmente más corta (16 páginas), e incorpora las mismas causas de acción de la demanda original. La parte demandante separó su reclamación por los dineros adeudados y la enumeró como su primera causa de acción. Las causas de acción de mala fe y enriquecimiento injusto fueron consolidadas bajo un sólo acápite. Estos cambios no introdujeron nuevas reclamaciones porque lo solicitado formaba parte de la demanda original. Las únicas adiciones a la demanda original consisten en que la parte demandante añadió una causa de acción relacionada con el fraude de acreedores y que planteó, como una causa de acción separada, su solicitud rasgar el velo corporativo (que ya estaba incluida en la demanda original).

3. Mediante una extensa moción presentada el 25 de febrero de 2019, la parte demandada solicita la desestimación de la demanda. La moción de la parte demandada es sustancialmente más larga que la propia demanda enmendada y plantea, luego de dos años de litigio, que las alegaciones de la parte demandante no exponen hechos que justifiquen la concesión de un remedio.¹

4. La solicitud para que se desestime la totalidad de la demanda es improcedente porque, mediante sentencia parcial del 27 de diciembre de 2018, este Tribunal ya declaró con lugar la primera causa de acción de la parte demandante. La parte demandada solicitó reconsideración de este

¹ Naturalmente, si la parte demandada necesita 26 páginas para discutir las alegaciones de la parte demandante no deben ser insustanciales.

dictamen, la que fue denegada. La moción de desestimación de dicha parte constituye una artimaña para volver a plantear un asunto que ya está resuelto.

5. La moción de desestimación también resulta improcedente en cuanto a las demás causas de acción. Según indicado, estas causas de acción estaban presentes en la demanda original (con excepción de la alegación de los traspasos en fraude de acreedores), sin que hubiera ninguna cuestión planteada sobre la suficiencia de lo alegado.

6. Para determinar si la demanda enmendada expone hechos que justifiquen la concesión de un remedio, el tribunal no tiene que leer las 26 páginas de la moción de la parte demandada, sino que basta con que examine los hechos que se exponen en la demanda enmendada. La norma es que estos hechos se presumen ciertos para fines de la moción, Torres, Torres v. Torres Serrano, 179 D.P.R. 481, 501 (2010), y que las alegaciones de la parte demandante se interpretan de manera liberal a favor de dicha parte, Dorante v. Wrangler, 145 D.P.R. 408, 414 (1998).

7. El Tribunal Supremo de Puerto Rico ha advertido que la desestimación de su faz de una reclamación sólo procede cuando de un examen de las alegaciones se desprenda que la parte reclamante no tendría derecho a remedio alguno bajo cualesquiera hechos que puedan ser probados. Roldán v. Lutrón, S.M., Inc., 151 D.P.R. 883, 890 (2000); Pressure Vessels de P.R. v. Empire Gas P.R., 137 D.P.R. 497, 505 (1994). Si existe un defecto que pueda ser subsanado mediante enmienda, el Tribunal debe permitir su corrección. Clemente v. Depto. de la Vivienda, 114 D.P.R. 763, 771 (1983).

8. Sostenemos, a la luz de este estándar, que todas las causas de acción de la parte demandante constituyen remedios que proceden en derecho, una vez establecidos los hechos que se alegan en la demanda. La parte demandante alega que él acordó que iba a ser socio en las empresas del grupo corporativo del Sr. Sinn y que el demandado ha incumplido con este

acuerdo. Lo que alega el demandante, no sólo se presume cierto, sino que está corroborado por los documentos que le han sido presentados al tribunal hasta la fecha.

9. El Tribunal ha podido apreciar que en los formularios K-1 que se preparaban para el I.R.S. federal, la parte demandada representaba que el demandante era un socio. La parte demandada se ha rehusado hasta el momento a cumplir con el descubrimiento de prueba, porque conoce que los documentos que obran en su poder reflejan cuáles fueron los acuerdos entre las partes, pero llamamos la atención a este Tribunal de lo que dice el "Memorandum of Understanding" suscrito el 10 de abril de 2010 por el codemandado Adam Sinn dirigido a su abogado George M. Kuhn, que fue acompañado con la moción de desestimación de la parte demandada. Este documento no nos había sido producido a pesar de las órdenes del Tribunal. En él se indica de forma clara que: **"Patrick will become a 50/50 owner of Raiden which will consist of his business activities and will be jointly managed by Patrick and Adam."** (Énfasis nuestro). En dicho memorando también se aclara que el demandante iba a trabajar como empleado de Aspire Commodities y de Raiden Commodities, LP ("Patrick will perform general work for Aspire Commodities and will also be doing FTR transactions under Raiden Commodities, LP").²

10. A la luz de lo anterior, no existe ninguna base para desestimar la demanda.

11. Inicialmente, la parte demandada solicitó al Tribunal que paralizara los procedimientos, alegando que la jurisdicción sobre la controversia correspondía al estado de Tejas. La parte demandante se opuso. Luego de recibir numeros escritos de las partes, mediante resolución emitida el 8 de mayo de 2017, el Tribunal denegó la moción de los demandados. En su resolución, el Tribunal observó que "Patrick de Man, es residente de Puerto

² El demandante nunca aceptó los términos del documento que se le envió, ni tampoco suscribió el acuerdo de sociedad de Raiden Commodities, LP, el que fue un documento otorgado unilateralmente por el Sr. Sinn.

Rico con dirección en Dorado, Puerto Rico. En adición, la Corte de Texas concluyó que no existen contactos mínimos de De Man con el Estado de Texas y que Raiden y Aspire tienen su principal sitio de negocios en Puerto Rico. Por último, Adam C. Sinn es residente de Puerto Rico con dirección en Dorado, Puerto Rico.”

12. En su moción de desestimación, la parte demandada renueva sus planteamientos jurisdiccionales, alegando ahora que el Tribunal no puede conceder los remedios solicitados, porque Raiden Commodities, LP fue incorporada en Islas Vírgenes y porque el derecho de dicha jurisdicción no contempla la posibilidad de contratos orales, según sí lo hace el de Puerto Rico.

13. No es cierto que, bajo el derecho de Islas Vírgenes, los contratos de sociedad no puedan otorgarse u enmendarse de manera oral. Véase, el Uniform Partnership Act, 26 V.I.C. § 2(7) (“Partnership Agreement’ means the agreement, whether written, oral, or implied among the partners concerning the partnership, including amendments to the partnership agreement”); Uniform Limited Partnership Act, 26 V.I.C. § 322(9) (“Partnership Agreement’ means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.”).

14. Sin embargo, la parte demandante entiende que el Tribunal no viene obligado a investigar el derecho de Islas Vírgenes porque éste no es aplicable en este caso.

15. Para determinar cuál es el derecho aplicable a una controversia, en nuestra jurisdicción, se emplea la teoría de los contactos dominantes. Véanse, Vda. De Fornaris v. Amer. Surety Co. of NY, 93 D.P.R. 29, 47 (1966) (rechazando aplicación del derecho de Islas Vírgenes a accidente ocurrido en aguas de St. Thomas, porque los contactos dominantes eran con Puerto Rico); Almodóvar v. Margo Farms del Caribe, Inc., 148 D.P.R. 103, 115-117 (1999) (rechazando aplicación del derecho de Islas Vírgenes a reclamación laboral de obrero contratado por corporación de Puerto Rico que rindió servicios en la

isla de Santa Cruz); véanse, además, Rosello Puig v. Rodríguez Cruz, 183 D.P.R. 81, 147-148 (2011); Toppel v. Toppel, 114 D.P.R. 775, 789-795 (1983) (centro de intereses); además, Federal Ins. Co. v. Dresser Ind., Inc., 111 D.P.R. 96, 106 (1981); Green Giant Co. v. Tribunal Superior, 104 D.P.R. 489, 498-499 (1975).

16. La parte demandada ha sido inconsistente en sus alegaciones sobre este particular. En su reclamación contra el demandante ante el Estado de Texas, la parte demandada alegó que los contactos dominantes en la controversia eran con el estado de Tejas. Véase el ¶ 5 del Anejo 1 que se acompaña. (“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”). El Tribunal de Texas, sin embargo, consideró que la jurisdicción sobre la controversia correspondía a los tribunales de Puerto Rico y desestimó la demanda presentada por los demandados. (Véanse los anejos de la Moción presentada por la parte demandante el 15 de marzo de 2017).

17. La parte demandada alega ahora que debe desestimarse la controversia porque Raiden Commodities, LP fue organizada en Islas Vírgenes y porque el derecho de dicha jurisdicción no permite que se modifiquen contratos de sociedad a base de acuerdos orales. La caracterización que ofrece la parte demandada del derecho de Islas Vírgenes es incorrecta. Debemos señalar, en cualquier caso, que Raiden Commodities, LP no es una entidad de Islas Vírgenes, sino que fue trasladada a Texas en septiembre de 2016 (véase, el ¶ 10 de la Demanda Enmendada; véase, además, el anejo 2 de esta moción), cuyo tribunal ya determinó que no tiene jurisdicción sobre la controversia.

18. Raiden Commodities, LP es meramente una de numerosas empresas que componen el grupo corporativo del Sr. Sinn. Conforme las alegaciones de la parte demandada, el demandante con quien contrató fue con Aspire Commodities, LP para trabajar en Raiden Commodities, LP. Véase

el ¶ 27 de la Reconvención (“Aspire LP contrató los servicios del señor De Man para que se desempeñara como empleado de Raiden LP”). Aspire Commodities, LP no es una entidad de Islas Vírgenes como no lo son las otras entidades que componen el grupo corporativo. La parte demandante alega que el Sr. Sinn mezcla su patrimonio y el de sus corporaciones, por lo que no cabe deslindar a ninguna de las personas jurídicas de las otras.

19. En este caso, el Tribunal ya determinó que los contactos dominantes con la controversia corresponden a la jurisdicción de Puerto Rico. Ello, porque tanto el demandante como el demandado son residentes de Puerto Rico y porque las gestiones de trading del grupo corporativo se conducen desde Puerto Rico, para lograr los beneficios contributivos de las leyes 20 y 22 de 17 de enero de 2012. Conforme observó este Tribunal en su resolución del 8 de mayo de 2017, a la fecha del inicio de la controversia, Raiden Commodities, LP estaba ubicada en Puerto Rico (Véase el anejo 3 de esta moción).

20. La Ley de Puerto Rico no exige ninguna forma particular para la existencia de un contrato, sino que dispone que los contratos son obligatorios, “cualquiera que sea la forma en que se hayan celebrado, siempre que en ellos concurren las condiciones esenciales para su validez,” 31 L.P.R.A. sec. 3451; Velco v. Industrial Serv. Apparel, 143 D.P.R. 243, 250 (1997) (“no es necesario para la validez de un contrato que éste se haga constar en documento público, pues los contratos son obligatorios independientemente de la forma en que se hayan celebrado”); véase, además, López Torres v. González Vázquez, 151 D.P.R. 225, 231 (2000) (“[e]n nuestro ordenamiento, con respecto a los contratos, rige el principio de libertad de forma”).

21. En este caso, las partes acordaron que el demandante sería socio en la empresa. La parte demandada viene obligada a cumplir con lo que se comprometió.

22. La moción de desestimación constituye una táctica dilatoria más, para desgastar al demandante y forzarlo a transigir el caso en términos desfavorables. Este Tribunal no debe favorecer este tipo de táctica.

POR TODO LO CUAL, la parte demandante respetuosamente solicita de este Tribunal que deniegue la moción de desestimación.

RESPETUOSAMENTE SOMETIDA.

CERTIFICO: Haber notificado copia fiel y exacta del presente escrito al Lcdo. Alfredo F. Ramírez Macdonald (alfredo.ramirez@oneillborges.com), Lcda. Ana M. Rodríguez Rivera (ana.rodriguez@oneillborges.com) y Lcdo. Arturo L.B. Hernández González (arturo.hernandez@oneillborges.com), O'NEILL & BORGES, 250 Avenida Muñoz Rivera, Suite 800, San Juan, Puerto Rico 00918-1813.

En San Juan, Puerto Rico, a 1ro de marzo de 2019.

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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 judgment 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,

KING & SPALDING LLP

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**ATTORNEYS FOR PLAINTIFFS
RAIDEN COMMODITIES, LP &
ASPIRE COMMODITIES, LP**

FILED
In the Office of the
Secretary of State of Texas
SEP 19 2016
Corporations Section

CERTIFICATE OF CONVERSION
of

RAIDEN COMMODITIES, LP
a foreign U.S. Virgin Islands limited partnership
(Converting Entity)

into

RAIDEN COMMODITIES, LP
a Texas limited partnership
(Converted Entity)

The undersigned Converting Entity hereby adopts the following Certificate of Conversion for the purpose of effecting a conversion in accordance with the provisions of the Texas Business Organizations Code:

1. A Plan of Conversion, approved and adopted in accordance with the provisions of Chapter 10 of the Texas Business Organizations Code, providing for the conversion of **RAIDEN COMMODITIES, LP**, a foreign U.S. Virgin Islands limited partnership, its federal employer identification number is 660758575, formed in that jurisdiction on December 22, 2010, and registered as a foreign limited partnership with the Secretary of State of Texas on March 22, 2012 under file number 801570448 (the "Converting Entity"), to **RAIDEN COMMODITIES, LP**, a Texas limited partnership (the "Converted Entity"), has been executed by the Converting Entity and the parties thereto.
2. The Plan of Conversion was unanimously approved and was duly authorized by all action required by the laws of the State of Texas and those of the U.S. Virgin Islands, and by the constituent documents of the Converting Entity.
3. An executed Plan of Conversion is on file at the principal place of business of the Converting Entity at 200 Dorado Beach Drive, Suite 3232, Dorado, PR 00646, and from and after the conversion, an executed Plan of Conversion will be on file at the principal place of business of the Converted Entity at 200 Dorado Beach Drive, Suite 3232, Dorado, PR 00646.
4. A copy of the Plan of Conversion will be furnished upon written request and without cost by the Converting Entity prior to the conversion or by the Converted Entity after the conversion to any shareholder of the Converting Entity or partner of the Converted Entity.
5. The Certificate of Formation of the Converted Entity, which is to be created pursuant to the Plan of Conversion, is attached hereto as Exhibit A and is incorporated herein by reference for filing by the Secretary of State.
6. The Converted Entity shall be responsible for the payment of all fees imposed by the State of Texas, including franchise tax or gross margins tax, on the Converting Entity and/or the Converted Entity, and shall be obligated to pay the same when due.

7. This document becomes effective when the document is accepted and filed by the Secretary of State of Texas.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Coded, or other law applicable to and governing the converting entity, to execute the filing instrument.

EXECUTED to be effective as of September 19, 2016.

CONVERTING ENTITY:

RAIDEN COMMODITIES, LP, a foreign U.S. Virgin Islands limited partnership


By: Raiden Commodities 1, LLC, Its General Partner

By: 

Adam Sinn, President

EXHIBIT A

Certificate of Formation

<p>Form 207 (Revised 12/15)</p> <p>Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709</p> <p>Filing Fee: \$750</p>	 Certificate of Formation Limited Partnership	<p>This space reserved for office use.</p> <p style="text-align: center;">FILED In the Office of the Secretary of State of Texas SEP 19 2016 Corporations Section</p>
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Article 1 – Entity Name and Type

The filing entity being formed is a limited partnership. The name of the entity is:

Raiden Commodities, LP

The name must contain the words "limited," "limited partnership," or an abbreviation of that word or phrase. The name of a limited partnership that is also a limited liability partnership must also contain the phrase "limited liability partnership" or "limited liability limited partnership" or an abbreviation of one of those phrases.

Article 2 – Registered Agent and Registered Office

(Select and complete either A or B and complete C)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:
KB Carlton, PLLC

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name	M.I.	Last Name	Suffix
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C. The business address of the registered agent and the registered office address is:

2500 Dallas Pkwy., Ste. 501	Plano	TX	75093
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3—Governing Authority

(Provide the name and address of each general partner.)

The name and address of each general partner are set forth below:

GENERAL PARTNER				
NAME (Enter the name of either an individual or an organization, but not both)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
Raiden Commodities 1, LLC				
<i>Organization Name</i>				
ADDRESS				
200 Dorado Beach Dr., Ste. 3232	Dorado	PR	USA	00646
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

GENERAL PARTNER 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
Organization Name				
ADDRESS				
Street or Mailing Address		City	State	Country Zip Code

GENERAL PARTNER 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
Organization Name				
ADDRESS				
Street or Mailing Address		City	State	Country Zip Code

Article 4—Principal Office

The address of the principal office of the limited partnership in the United States where records are to be kept or made available under section 153.551 of the Texas Business Organizations Code is:

200 Dorado Beach Dr., Ste. 3232 Dorado PR USA 00646

Street or Mailing Address City State Country Zip Code

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

A Limited Partner's right to sell an interest in the Partnership is restricted significantly, as explained in detail in the Limited Partnership Agreement on file in such Partnership's corporate records.

The Partnership is being formed pursuant to a plan of conversion. The converting (prior) entity was Raiden Commodities, LP, a foreign U.S. Virgin Islands limited partnership, its federal employer identification number is 660758575. It was formed in that jurisdiction on December 22, 2010, and registered as a foreign limited partnership with the Secretary of State of Texas on March 22, 2012 under file number 801570448.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned general partner affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: September 19, 2016

Signature for each general partner:



Adam Sinn, President of Raiden Commodities 1, LLC, General Partner

651113

PARTNER# 2
Schedule K-1
(Form 1065)

2015

For calendar year 2015, or tax

Partner's Share of Income, Deductions,
Credits, etc. See back of form and separate instructions.

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

Part I Information About the Partnership

A Partnership's employer identification number
8575

B
RAIDEN COMMODITIES LP
200 DORADO BEACH DRIVE UNIT 3232
DORADO PR 00646

C
E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E
-6481

F
ADAM C SINN
200 DORADO BEACH DRIVE UNIT 3232
DORADO PR 00646

G

H

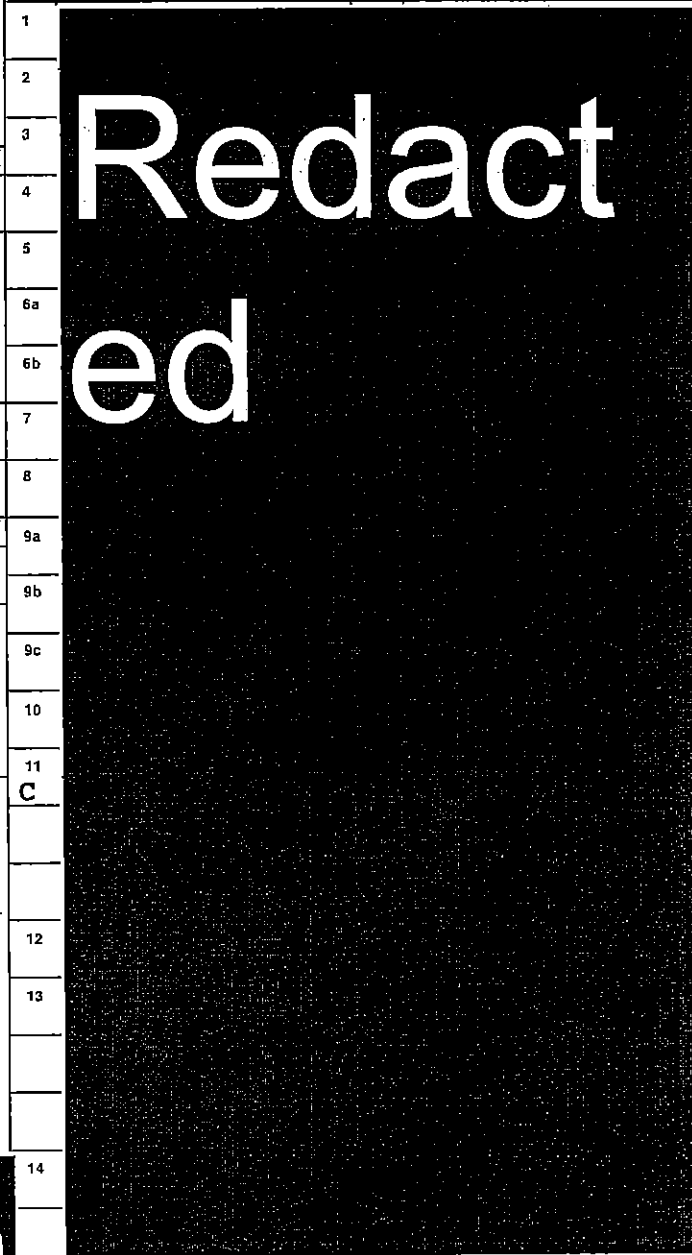
I1 INDIVIDUAL

I2

J

Beginning	Ending
99.000000	99.000000
99.000000	99.000000
99.000000	99.000000

K



L

M Yes No
If "Yes," attach statement (see instructions)

*See attached statement for additional information.

For IRS Use Only

