

CAUSE NO. 2019-79857

PATRICK A.P. DE MAN § IN THE DISTRICT COURT
§
VS. § 61ST JUDICIAL DISTRICT
§
RAIDEN COMMODITIES, L.P. AND §
ASPIRE COMMODITIES, L.P. § HARRIS COUNTY, TEXAS

Application for Post Judgment Turnover Order,
And Appointment of Receiver and Master

1. Parties. Applicant, Patrick A. P. De Man, judgment-plaintiff, requests the appointment of a Receiver and turnover of the non-exempt property of each of the judgment defendants, RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. (hereinafter "RAIDEN") and ASPIRE COMMODITIES, L.P., ("defendant"), under Sec. 31.002 of the Texas Civil Practices and Remedies Code (the "Statute"), and appointment of a Master under Rule 171, Texas Rules of Civil Procedure (the "Rule").
2. Judgment Amount. Applicant owns an unpaid final judgment against defendant for \$690,847.00 plus attorney's fees of \$103,627.05, plus interest and court costs. No credit is due.

Property. The statute, as amended in 2017, only requires proof that defendants have property. The statute no longer requires proof of non-exempt assets that cannot be readily attached or levied upon. Defendant owns clothes, *i.e.*, property.
3. Each defendant also owns non-exempt rights to present or future property that cannot be attached or levied upon by ordinary legal process, like bank accounts that are easily moved and constantly changing in balance. The property made the basis of this application is not readily attachable by ordinary legal process. Garnishment is an extraordinary remedy. See attached hereto as Plaintiff's Exhibit A is the Declaration of Patrick A. P. De Man describing the assets of the judgment debtors and explaining the factual bases for the court to grant this application for turnover.
4. Receiver. Applicant requests the appointment of a Receiver with the powers granted in the statute and the attached order, and that each defendant be ordered

to turn over to Receiver all requested documents and property, including those set out in exhibit A. ("property").

5. Applicant believes that defendant owns or has rights to non-exempt personal property, but applicant needs the assistance of a Receiver and Master to discover, seize, administer, and sell the assets.
6. The statute authorizes applicant to recover its reasonable attorneys' fees for preparing and urging this application, and assisting in prosecuting the order.
7. Master in Chancery Powers. The Court may submit to the master whichever matters are deemed necessary and proper in the circumstances.¹ The order of reference to the master may specify or limit his powers. See Tex. R. Civ. P. 171. Subject to the limitations and specifications stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. *Id.*

A Master may require the production before him of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents and other writings applicable thereto. *Id.* He may rule upon the admissibility of evidence, unless otherwise directed by the order of reference and has the authority to put witnesses on oath, and may, himself, examine them, and may call the parties to the action and examine them upon oath. *Id.*

A master can immediately issue orders, rather than incurring the delays required for the opportunity to be heard in open court. Otherwise, property, evidence, and witnesses can easily disappear before a hearing can be held.

Appointing a master allows submission of a formal report of the facts (subject to the Court's review) that were discovered. Defendants may object to the report, but if defendants do not object, the facts set out in the report are binding. This procedure saves the Court a great deal of time by limiting the disputed facts.

Appointing a master will cause the need for fewer hearings, lower attorneys' fees, and protect the economic interests of both the debtor and creditor. The master's fees may be included in Receiver's fees, so normally no extra cost will be incurred, and the Master's report will be useful to the Court.

This being a post-judgment case, the master's duties will be limited to locating non-exempt assets and the records that determine the ownership of the assets, their value, and the liens against the assets.

8. Injunction. Plaintiff moves that each defendant be enjoined from encumbering or transferring property to anyone but Receiver and that each defendant be enjoined from concealing property, including through third parties, relatives, companies,

¹ *Edinburg Irr. Co. v. Paschen*, 235 S.W. 1088 (Tex. Comm'n App. 1922); *Arlington Heights Realty Co. v. Citizen's Ry. & Light Co.*, 160 S.W. 1109 (Tex. Civ. App. Amarillo 1913).

trusts, agents, attorneys, pseudonyms or assumed names. Receiver's bond should also serve as the injunction bond.

9. Compensation to Receiver. Plaintiff moves that each defendant be ordered to pay Receiver 25% of the recoveries, as compensation to Receiver, and that the compensation (and out of pocket expenses directly related to the recovery) be paid, as taxable court costs, besides the amount owed to plaintiff. A contingency fee is the only way that plaintiff can afford a Receiver.

Requiring hourly receivers' fees easily doubles or triples the fees, especially in small cases. If a \$20,000 judgment is collected, Receiver's contingency fee is \$5,000. The assessment of the fees is simple: $\$20,000 \times .25 = \$5,000$. If receiver must prove his hourly fees, he will spend 5-10 hours computing the fees, preparing for the hearing, and testifying. In a contested case, receiver will need representation—another 10-15 hours—resulting in a total prove-up cost of at least 15-20 hours—well over the \$5,000 contingency fee—and this is before Receiver's hours are assessed—which could easily be 60 hours. The payoff figure for a \$20,000 judgment could easily double the judgment to over \$40,000.

If the judgment is only \$5,000, an hourly receiver's fee could easily exceed the principal amount.

10. Bond. Being a post-judgment matter, Plaintiff moves that a nominal bond for Receiver be required, that may be in cash.
11. Attorneys' Fees. Plaintiff had to employ counsel to file this application and may recover reasonable costs, including attorneys' fees and expenses.
12. Certificate of Conference. Since this is a post-verdict application, pursuant to Harris County Local Rule 3.3.6, no certificate of conference is required.
13. Notice. The judgment debtors are not entitled to notice of this proceeding. *Ross v. 3D Tower, Ltd.*, 824 S.W.2d 270, 272 (Tex. App.—Houston [14th Dist.] 1992). Plaintiff presents, by way of the Declaration of Patrick A. P. De Man attached as Plaintiff's Exhibit A, evidence that the defendants would hide assets from the reach of the court appointed receiver if the judgment debtors in this case were notified of this Application for Turnover and Appointment of a Receiver in this case, as testified to by Patrick A. P. De Man's belief that RAIDEN and ASPIRE COMMODITIES, L.P. would hide these assets beyond the reach of any court appointed receiver and that as soon as RAIDEN and ASPIRE COMMODITIES, L.P. became aware of the filing of the Application for Turnover and Appointment of a Receiver, that to hide these assets 1) the Cash Funds would be transferred from RAIDEN to a newly formed entity unrelated to RAIDEN, 2) this new entity would register as market participant with ERCOT, 3) the Letter of Credit would be amended to reflect this new entity as market participant, and 4) this new entity would subsequently continue the business where RAIDEN left off. This exact same scenario has played out regarding ASPIRE COMMODITIES, L.P. and is straightforward to implement also for RAIDEN. Time is of the essence because all existing trading positions of RAIDEN expire on December 31, 2019, and RAIDEN has already ceased entering trading positions beyond 2019.

This information is publicly reported by ERCOT and implies that as of January 2020, RAIDEN has no further obligations to ERCOT and can remove all assets immediately.

14. Prayer. Plaintiff requests an order granting this application, and ordering that:
- a. A Receiver and Master be appointed and a nominal Receiver's bond be set.
 - b. Each defendant be ordered to deliver all non-exempt property, with necessary documents, properly endorsed to transfer title to Receiver.
 - c. After ten days the property be liquidated by Receiver or Receiver's agents, and that the sales proceeds and all the cash on hand be delivered to Plaintiff, after offset of Receiver's fee and costs, in reduction of the judgment and all amounts awarded since judgment.
 - d. Plaintiff have judgment against each defendant for all costs incurred, including reasonable attorneys' and Receiver's fees.
 - e. Each defendant and third party be enjoined from concealing or transferring any property until the receivership is closed and the judgment paid.
 - f. The Court grant all appropriate relief.

Respectfully submitted,

/s/ Richard Fason

Richard Fason
Attorney at Law
2101 Louisiana
Houston, Texas 77002
T/P 713 222-0351
Fax 713-759-0642
SBOT 797935
E-Mail: rfason@pattersonboyd.com

CAUSE NO. 2019-79857

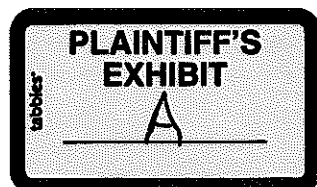
PATRICK A.P. DE MAN	§	IN THE DISTRICT COURT
VS.	§	61ST JUDICIAL DISTRICT
RAIDEN COMMODITIES, L.P. AND	§	
ASPIRE COMMODITIES, L.P.	§	HARRIS COUNTY, TEXAS,

DECLARATION OF PATRICK A.P. DE MAN

1. My name is Patrick A. P. De Man. I am over twenty-one (21) years of age and am of sound mind, and am otherwise capable of making this Declaration. The facts stated in this Declaration are within my personal knowledge and are true and correct.

2. I own a judgment against RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES, L.P. The judgment has been domesticated in the above captioned case and court. RAIDEN COMMODITIES, L.P. is now known as ASPIRE POWER VENTURES, L.P. pursuant to a name change filed by RAIDEN COMMODITIES, L.P. with the Texas Secretary of State in December of 2017. Attached hereto as Exhibit 1 is a true and correct copy of that name change Certificate of Amendment filed with the Texas Secretary of State.

3. ASPIRE COMMODITIES, L.P. was a company based in Houston, Texas, engaged in trading electricity futures contracts on The InterContinental Exchange, which is a futures exchange. In the course of litigation, ASPIRE COMMODITIES, L.P. was terminated and converted to ASPIRE COMMODITIES, L.L.C, a Delaware limited liability company. See attached hereto as Exhibit 2 is a true and correct copy of the Certificate of Termination filed



with the Texas Secretary of State in December of 2017. See attached hereto as Exhibit 3 is a true and correct copy of the Certificate of Conversion, filed with the State of Delaware in December of 2017. All assets of ASPIRE COMMODITIES, L.P. were transferred to ASPIRE COMMODITIES, L.L.C., which is continuing the business of trading electricity futures contracts on The InterContinental Exchange from the same offices in Houston, Texas.

4. RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. (hereinafter "RAIDEN") is a company engaged in trading electricity futures contracts and, as such, is a registered market participant with the Electric Reliability Council of Texas (hereinafter "ERCOT"). ERCOT is a membership-based 501(c)(4) nonprofit corporation, governed by a board of directors and subject to oversight by the Public Utility Commission of Texas and the Texas Legislature, and manages the flow of electric power to more than 25 million Texas customers, representing about 90 percent of the state's electric load. ERCOT also performs financial settlement for the competitive wholesale bulk-power market in which RAIDEN is active.

5. ERCOT holds two sources of funds belonging to RAIDEN:
- a. Cash Funds in an account referred to by ERCOT as the Flexible Account, which is used for trade settlement. For example, when RAIDEN buys a position, ERCOT is paid for this purchase with Cash Funds from this Flexible Account, and when RAIDEN executes a profitable trade, ERCOT will deposit those profits as Cash Funds into this Flexible Account.

b. Collateral Funds in the form of a Letter of Credit, which serves to 1) satisfy the credit requirements of the trading activities, and 2) if necessary, provide access to cash funds to satisfy outstanding and unpaid invoices. See attached hereto as Exhibit 4 is a true and correct copy of that Letter of Credit. The original Letter of Credit was issued by Bank of America in May of 2016. See attached hereto as Exhibit 5 is a true and correct copy of ERCOT's confirmation regarding the Letter of Credit. See attached hereto as Exhibit 6 is a true and correct copy of an email by the Bank of America representative demonstrating that the Letter of Credit is supported by funds of Rural Route 3 Holdings, LP, specifically a "\$10MM line" under which this Letter of Credit has been issued. Rural Route 3 Holdings, LP does not have a formal relationship with RAIDEN, but was the 99% Class A limited partner of ASPIRE COMMODITIES, L.P. All three entities are under the sole control of the same individual, namely Adam Sinn.

6. RAIDEN maintains a bank account with JPMorganChase, and all transfers of Cash Funds between ERCOT and RAIDEN are transacted through this bank account. See attached hereto as Exhibit 7 is a true and correct copy of the JPMorganChase bank statement of RAIDEN for May of 2016. Note that the large transactions received from ERCOT on this statement are the return of i) cash collateral after the Letter of Credit had posted, and ii) Cash Funds from the Flexible Account.

7. Based upon my knowledge, experience and training as a commodities trader for and partner of RAIDEN and ASPIRE COMMODITIES, L.P., the foregoing described assets of RAIDEN are the only assets that RAIDEN and ASPIRE COMMODITIES, L.P.

have. Further, it is my belief that there are no other assets of RAIDEN and ASPIRE COMMODITIES, L.P. Further, these foregoing described assets cannot be levied upon by ordinary means and necessitate the appointment of a receiver. In addition, if the judgment debtors in this case were notified of an Application for Turnover and Appointment of a Receiver in this case, I believe that RAIDEN and ASPIRE COMMODITIES, L.P. would hide these assets beyond the reach of any court appointed receiver. It is my opinion and belief that as soon as RAIDEN and ASPIRE COMMODITIES, L.P. became aware of the filing of the Application for Turnover and Appointment of a Receiver, that to hide these assets 1) the Cash Funds would be transferred from RAIDEN to a newly formed entity unrelated to RAIDEN, 2) this new entity would register as market participant with ERCOT, 3) the Letter of Credit would be amended to reflect this new entity as market participant, and 4) this new entity would subsequently continue the business where RAIDEN left off. This exact same scenario has played out regarding ASPIRE COMMODITIES, L.P. and is straightforward to implement also for RAIDEN. Time is of the essence because all existing trading positions of RAIDEN expire on December 31, 2019, and RAIDEN has already ceased entering trading positions beyond 2019. This information is publicly reported by ERCOT and implies that as of January 2020, RAIDEN has no further obligations to ERCOT and can remove all assets immediately.

8. My concerns regarding the secreting of assets by RAIDEN and ASPIRE COMMODITIES, L.P. are further motivated by the fact that the individual in control of these entities is Adam Sinn, who is, like RAIDEN and ASPIRE COMMODITIES, L.P., a co-defendant in the litigation in Puerto Rico, now ongoing for three years. Adam Sinn is

a person with a well-earned reputation for prevarication in litigation and has a history of misrepresenting material facts in litigation. His misrepresentations have been the subject of pleadings filed in cases to which he has been a party. See attached hereto as Exhibit 8 is a true and correct copy of one of such pleadings, Defendants/Counter-Plaintiffs' Response to Plaintiff/Counter-Defendants Adam Sinn, XS Capital Investments, L.P. and Aspire Commodities, L.P.'s Motion for Traditional Summary Judgment, demonstrating Adam Sinn's conduct on pages 1-2 and 17-19.

My name is Patrick Antonius Petrus De Man. My date of birth is January 14, 1974. My address is URB Sabanera Dorado, 544 Corredor del Bosque, Dorado, Puerto Rico, 00646, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in the Municipality of Dorado, Commonwealth of Puerto Rico, on the 9th day of December, 2019.



Patrick A. P. De Man, Declarant

Form 424

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



Certificate
of Amendment

Filed in the Office of the
Secretary of State of Texas
Filing #: 802545753 12/22/2017
Document #: 783875240002
Image Generated Electronically
for Web Filing

Filing Fee: See instructions

Entity Information

The filing entity is a: Domestic Limited Partnership (LP)

The name of the filing entity is: RAIDEN COMMODITIES, LP

The file number issued to the filing entity by the secretary of state is: 802545753

Amendment to Name

The amendment changes the formation document of the filing entity to change the article or provision that names the entity. The article or provision is amended to read as follows:

The name of the filing entity is:

ASPIRE POWER VENTURES, LP

A letter of consent, if applicable, is attached.

Statement of Approval

The amendment has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing

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 its filing by the secretary of state. The delayed effective date is:

Execution

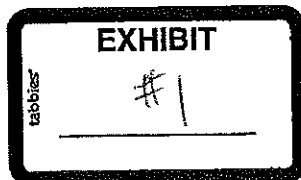
The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and declares under penalty of perjury that the undersigned is authorized under the Texas Business Organizations Code to execute the filing instrument.

Date: December 22, 2017

Sarah Spangler, Attorney-in-Fact for Adam Sinn, Manager of Raiden Commodities 1, LLC, General Partner

Signature of authorized person

FILING OFFICE COPY



Form 651

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709



**Certificate of Termination
of a
Domestic Entity**

Filed in the Office of the
Secretary of State of Texas
Filing #: 801348025 12/18/2017
Document #: 782197400003
Image Generated Electronically
for Web Filing

Filing Fee: \$40

Entity Information

The name of the domestic entity is:

ASPIRE COMMODITIES, LP

The entity is organized as a : **Domestic Limited Partnership (LP)** under the laws of Texas.

The date of formation of the entity is: **November 24, 2010**

The file number issued to the entity by the secretary of state is: **801348025**

Governing Persons

The names and addresses of each of the filing entity's governing person are:

NAME OF GOVERNING PERSON :

IF INDIVIDUAL

OR

IF ORGANIZATION

Aspire Capital Management, LLC

ADDRESS OF GOVERNING PERSON :

3333 Allen Parkway, Ste. 610 Houston TX, USA 77019

Event Requiring Winding Up

The nature of the event requiring winding up is:

Aspire Commodities, LP is terminated in the State of Texas on the the written consent of all partners in the limited partnership.

Completion of Winding Up

The filing entity has complied with the provisions of the Texas Business Organizations Code governing its winding up.

Effectiveness of Filing

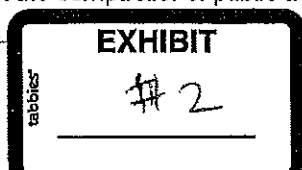
A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Tax Certificate

A. Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid.



zz-2017-12-18 - TX Comp ltr - Tax Clearance Letter - Aspire Commodities LP.pdf

B. The entity is a domestic non profit corporation and is not required to provide a certificate of account status under the provisions of the Texas Business Organizations Code.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: December 18,
2017

Sarah Spangler, Attorney-in-Fact for Adam Sinn, Manager of Aspire
Capital Management, LLC, General Partner

Signature and title of authorized person(s)

FILING OFFICE COPY



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Comptroller.Texas.Gov

December 16, 2017

ASPIRE COMMODITIES, LP
1302 WAUGH DR # 539
HOUSTON TX 77019-3908

Certificate of Account Status

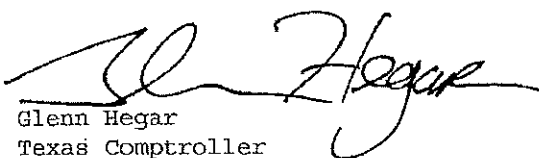
THE STATE OF TEXAS
COUNTY OF TRAVIS

I, Glenn Hegar, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY that according to the records of this office

ASPIRE COMMODITIES, LP

has filed all required reports for taxes administered by the Comptroller under Title 2, Tax Code, and taxes reported due on those reports have been paid. This certificate must be filed with the Texas Secretary of State to legally end the entity's existence in Texas. This certificate is valid through December 31, 2017.

GIVEN UNDER MY HAND AND SEAL
OF OFFICE in the City of
Austin, this 16th day of
December, 2017 A.D.


Glenn Hegar
Texas Comptroller

Taxpayer number: 32043091969
File number: 0801348025

NOTE: Failure by registered Texas entities to legally end existence with the Texas Secretary of State on or before the expiration of this certificate will result in additional franchise tax responsibilities. Texas entities not registered with the Texas Secretary of State and all out-of-state entities are responsible for franchise tax through the last date of business in this state.

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A LIMITED PARTNERSHIP TO A
LIMITED LIABILITY COMPANY PURSUANT TO
SECTION 18-214 OF THE LIMITED LIABILITY ACT

- 1.) The jurisdiction where the Limited Partnership first formed is TEXAS.
- 2.) The jurisdiction immediately prior to filing this Certificate is TEXAS.
- 3.) The date the Limited Partnership first formed is 11/24/2010.
- 4.) The name of the Limited Partnership immediately prior to filing this Certificate is ASPIRE COMMODITIES, LP.
- 5.) The name of the Limited Liability Company as set forth in the Certificate of Formation is ASPIRE COMMODITIES, LLC.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the 5TH day of December, A.D. 2017.

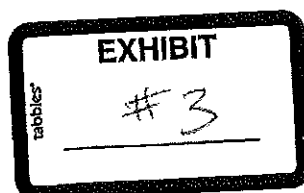
By: S Spangler
Authorized Person

Name: Sarah Spangler

By: ASPIRE COMMODITIES I, LLC,
General Partner

By: SINN LIVING TRUST, Manager of
General Partner

By: SARAH SPANGLER, Special Trustee





**IRREVOCABLE AND UNCONDITIONAL
STANDBY LETTER OF CREDIT**

"Market Participant Applicant":

RAIDEN COMMODITIES, LP

[Name]

200 DORADO BEACH DRIVE, UNIT 3232, DORADO, PR

[Address]

"Amount": \$4,000,000.00 U.S. Dollars

"Date of Issuance": May 11, 2016

"Expiration of Initial Term (subject to automatic extension and renewal as provided herein)":
April 03, 2017

"Issuing Bank":

[Name]

BANK OF AMERICA, NA

[Address]

ONE FLEET WAY, SCRANTON PA 18507

[Phone]

800-370-7519, OPTION 1

[Fax]

800-755-8743

"Beneficiary":

Electric Reliability Council of Texas, Inc. ("ERCOT")

Attn: Credit

7620 Metro Center Drive

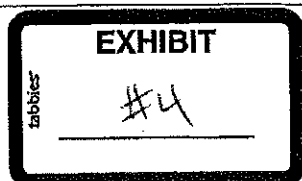
Austin, Texas 78744

Facsimile No. (512) 225-7020

To Beneficiary:

The undersigned Issuing Bank hereby establishes in your favor, effective immediately, an Irrevocable and Unconditional Standby Letter of Credit No. 68125049 ("Letter of Credit") in the amount of 4,000,000.00 U.S. Dollars.

This Letter of Credit is available for payment upon demand at sight at our counters at: ONE FLEET WAY, SCRANTON PA 18507, upon demand to the attention of STANDBY LETTER OF CREDIT DEPARTMENT by telephone at 800-370-7519, OPTION 1, or upon demand by fax at 800-755-8743 and presentation to us (a) at sight at our counters, or (b) by fax of the following: (i) your written demand for payment containing the text of Exhibit I attached hereto, and (ii) your statement containing the text of Exhibit II, Exhibit IV, Exhibit V, or Exhibit VI attached hereto. If presentation is made by facsimile, original documents will be delivered to us at the address stated above.





Taylor
2705 West Loka Drive
Taylor, TX 76574
T 512.225.3000
F 512.248.3005

Austin
4070 Metro Center Drive
Austin, TX 78754
T 512.225.7000
F 512.225.7020

ercot.com

Date: May 25, 2016

To: Bank of America, N.A.
% Standby Dept.

From: ERCOT
Vanessa Spells

Re: Letter of Credit#: 68125049
Amount: \$4,000,000.00
Expiration: 05/11/17 (subject to automatic extension and renewal)

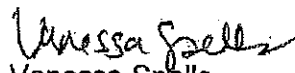
Beneficiary: Electric Reliability Council of Texas (ERCOT)
Address: 7620 Metro Center Dr.
Austin, TX 78744

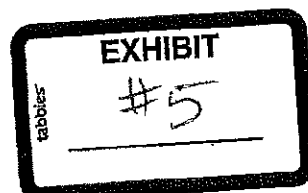
Market Participant: Raiden Commodities, LP
200 Dorado Beach Drive, Unit 3232,
Dorado, PR

ERCOT has received and accepted the Letter of Credit (referenced above) and its amendment submitted by Bank of America, N.A on behalf of Raiden Commodities, LP.

Please feel free to contact me at (512) 225-7014 if you have any questions.

Sincerely,


Vanessa Spells
ERCOT – Credit Manager





AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No: 68125049 Dated: May 11, 2016

Beneficiary:

Electric Reliability Council of Texas, Inc. (ERCOT)
7620 Metro Center Drive
Austin, Texas 78744
Attn: Credit

Market Participant Applicant:

RAIDEN COMMODITIES, LP
200 DORADO BEACH DRIVE
Unit 3232, DORADO PR 00646

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: The Expiration Date has been extended to May 11, 2017 and the terms of the auto extend clause remain in place. All other terms and conditions of the Irrevocable and Unconditional Letter of Credit remain unchanged.

This amendment is effective only when accepted by ERCOT, which acceptance may only be valid by a signature of an authorized representative.

Dated: May 24, 2016

Yours faithfully,
Bank of America, N.A.

By: [Signature]
Title: Assistant Vice President

ACCEPTED:

Electric Reliability Council of Texas, Inc

By: Vanessa Spella
Title: Credit Manager
Date: 5-25-16

**Secured Message**

From: Johnson, Barry M <barry.m.johnson@ustrust.com>
 To: Barry Hammond <bhammond@rk-lawfirm.com>
 Date: April 8, 2016 8:43:22 PM GMT+00:00
 Subject: FW: LC DRAFT REQUEST - RURAL ROUTE 3 HOLDINGS LP
 Attachments: [image001.jpg](#) [image003.jpg](#) [DRAFT LC FOR REVIEW 4 8 16.pdf](#) [RURAL ROUTE 3 HOLDINGS LP - LC for Raiden to ERCOT.docx](#)

Barry,

Please have Patrick and Adam review the attached L/C using the instructions provided below. Please note that the "Credit Taker" is RR3 as the L/C will be issued using the capacity under the \$10MM line. The "Beneficiary" is Raiden Commodities, LP.

If anyone has any questions, don't hesitate to call. Have a great weekend.

Regards,

Barry Johnson

Senior Vice President, Private Client Advisor

W: 713.247.6221 / Fax: 972.728.9478

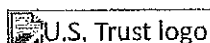
Email: barry.m.johnson@ustrust.com

NMLS ID #1418034

U.S. Trust, Bank of America Private Wealth Management

700 Louisiana Street, 6th Floor, TX4-213-06-13

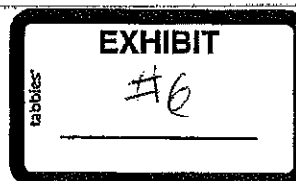
Houston, TX 77002



Office of Supervisory Jurisdiction:
 Merrill Lynch, Pierce, Fenner & Smith Inc.
 Bank of America Plaza
 300 Convent Street, TX7-060-08-03
 San Antonio, TX 78205-3701
 Phone: (210) 270-5373

This communication is confidential and intended only for the addressee. If you are not the intended recipient, you may not copy, disclose, or distribute this message to anyone else; any such actions may be unlawful. If you have received this communication in error, please contact the sender of the message to inform him or her of the error. Regular Internet e-mail is not secure. We ask that you do not send personal or company information of a sensitive or confidential nature through unsecured e-mail. For questions concerning your account relationship with Bank of America, you may contact us by phone or US mail.

From: Anderson, Glenda
Sent: Friday, April 08, 2016 3:33 PM
To: Johnson, Barry M
Cc: Martinez, Debbie - HOUSTON TX
Subject: LC DRAFT REQUEST - RURAL ROUTE 3 HOLDINGS LP



Good afternoon Barry,

Please see the attached Letter of Credit DRAFT for review/approval purposes ONLY.

Please forward on to the client for review, and ask the client to have the Beneficiary review the LC DRAFT in its entirety to insure that it is correct.

The LC Team confirmed that the Credit Taker (RR3) on the SBLC Application will sign/approve the Draft:
***"RURAL ROUTE 3 HOLDINGS LP** is the party named in Section 1 (SBLC App), therefore the appropriate signature/title on behalf of Rural Route 3 LP will be required to sign the SBLC Application as well as the LC Draft (for the approval process)".*

Please see the LC DESK instructions below:

- Please review and also provide the DRAFT to the Beneficiary for review for accuracy
- Should there be any revisions that need to be made to the Draft, please have the Draft marked up with changes or provide the details via email to Nicole.bianchi@baml.com
- Once Draft has been finalized and the Line of Credit (supporting this LC) has closed and is booked, please provide the following to proceed with the issuance of the LC request:
 - LC DRAFT approval – the Draft must be signed AND dated by all the signor(s) who will sign the SBLC application on behalf of **RURAL ROUTE 3 HOLDINGS LP** .
 - SBLC Application – (attached for reference only) completed and signed by authorized party for **RURAL ROUTE 3 HOLDINGS LP** (cannot execute until after the Line of Credit loan documents are signed)

All signature pages can be scanned and provide by email or faxed to us (713-247-7229). However, we need the completed/signed original SBLC Application and the FINAL DRAFT with signature approval/date returned to complete the LC file.

Thank you,

Glenda Wilson Anderson
Vice President
NMLS # 652701
U.S. Trust, Bank of America Private Wealth Management
TX4-213-06-13
700 Louisiana, 6th Floor
Houston, TX 77002
☎ (713) 247-6481 Office - Houston, Texas
☎ (800) 589-5189 Toll-free

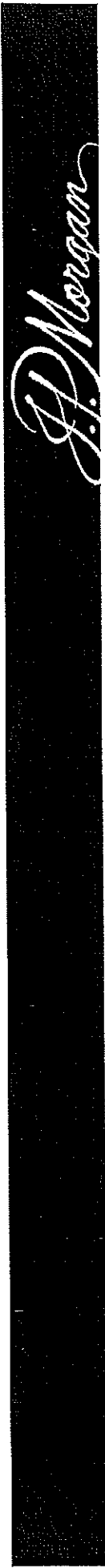
E-MAIL ADDRESS:✉ glenda.anderson@ustrust.com

Office of Supervisory Jurisdiction
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Bank of America Plaza
300 Convent St., TX-060-08-03
San Antonio, TX 78205-3701
210-270-5373

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Primary Account: 000000478078087
 For the Period 4/30/16 to 5/31/16

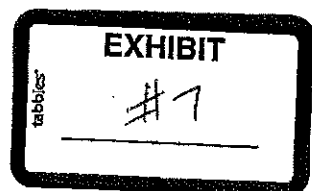
JPMorgan Chase Bank, N.A.
 Texas Market
 P O Box 669754
 San Antonio, TX 78265 - 9754



00011815 DPB 201 212 15316 NNNNNNNNNN 1 000000000 60 0000
 RAIDEN COMMODITIES, LP
 3333 ALLEN PKWY UNIT 1605
 HOUSTON TX 77019-1844

J.P. Morgan Team

Barbara Fuqua (877) 576-2750
 Lisa Michelle Rosette (800) 576-6209
 For assistance after business hours, 7 days a week.
 Deaf and Hard of Hearing (800) 242-7383
 Online access: www.jpmorganonline.com



JPMorgan Classic Business Checking

Checking Account Summary	Instances	Amount
Beginning Balance		47,115.49
Deposits & Credits	5	13,039,224.70
Payments & Transfers	3	(43,381.09)
Ending Balance	8	\$13,042,959.10



00000478078087
 RAIDEN COMMODITIES, LP

Primary Account: 00000478078087
 For the Period 4/30/16 to 5/31/16

Deposits & Credits

Date	Description	Amount
05/03	Pjmssettlementinc Payment 20611 CCD ID: 1273718196	12,086.88
05/10	Pjmssettlementinc Payment 20611 CCD ID: 1273718196	12,959.39
05/24	Pjmssettlementinc Payment 20611 CCD ID: 1273718196	13,145.35
05/27	Book Transfer Credit B/O: Electric Reliability Council of TX Austin TX 78744- Trn: 4028300148Jo	11,001,033.08
05/27	Book Transfer Credit B/O: Electric Reliability Council of TX Austin TX 78744- Trn: 4028400148Jo	2,000,000.00
Total Deposits & Credits		\$13,039,224.70

Payments & Transfers

Date	Description	Amount
05/03	05/03 Online Payment 5970835634 To Eepb P.C.	19,000.00
05/13	Pjmssettlementinc Achdratt 20611 CCD ID: 1273718196	2,381.09
05/25	05/25 Online Transfer To Chk ...8391 Transaction#: 5949642052	22,000.00
Total Payments & Transfers		(\$43,381.09)

Daily Ending Balance

Date	Amount
05/03	40,202.37
05/10	53,161.76
05/13	50,780.67
05/24	63,926.02
05/25	41,926.02
05/27	13,042,959.10



00000478078087
RAIDEN COMMODITIES, LP

Primary Account: 00000478078087
For the Period 4/30/16 to 5/31/16

Fees and Charges for Deposit Accounts

Fees	Description	Volume	Allowed	Excess	Unit Price	Fees
00000478078087	Monthly Service Fee	1.00	0	1	0.00	0.00
	Deposits / Credits	5.00	499	0	0.80	0.00
	Check / Debit Posted	1.00	1	0	0.20	0.00
	Total Fees					\$0.00



1011815020200000082



Primary Account: 0000000478078087
For the Period 4/30/16 to 5/31/16

Important Information About Your Statement

In Case of Errors or Questions About Your Electronic Funds Transfers

Call or write to the Bank (Consumers should use the phone number and address on front of statement and non-consumers their J.P. Morgan Team contact information.) If you think your statement or receipt is incorrect, or if you need more information about an electronic transaction on a statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- Tell us your name and account number.
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

In Case of Errors or Questions About Non-Electronic Transfers (Checks or Deposits):

Contact the Bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing as soon as possible after the statement was made available to you. For more complete details, see the applicable account agreements and appendices that govern your account.

Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC

Mutual Funds/Securities

JPMorgan Funds are distributed by JPMorgan Distribution Services, Inc., which is an affiliate of JPMorgan Chase & Co. Affiliates of JPMorgan Chase & Co. receive fees for providing various services to the funds.

Bank products and services are offered by JPMorgan Chase Bank, N.A. and its affiliates. Securities are offered by J.P. Morgan Securities LLC, member NYSE, FINRA and SIPC.

Investment Products: Not FDIC insured • No bank guarantee • May lose value

judgment, Sinn filed an affidavit denying that he breached the non-disparagement clause of the settlement agreement. At his deposition, he admitted having repeatedly made such statements. Their motions for summary judgment must be denied. Atlas and Taylor will move for summary judgment at the appropriate time and will show through the expert testimony of Rob Hancock that they have been harmed by Torres and Sinn's violations of the Settlement Agreement.

II. OBJECTIONS TO SINN'S SUMMARY JUDGMENT EVIDENCE

Defendants object to Sinn's Summary Judgment Evidence as follows:

Exhibit 1. One of the two pieces of evidence attached to Sinn's motion for summary judgment is an affidavit that contains statements that are utterly false. For example, in paragraph 15 of his affidavit, Sinn states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.

(Sinn Ex. A. ¶ 15.) After executing this affidavit, Sinn admitted that he sent the photograph to an unknown person or persons with the message "Happy Holidays Atlas." (Ex. O, Sinn Dep., at 69:5–20.)

Sinn's testimony therefore rests entirely on his credibility. "If the credibility of the affiant or deponent is likely to be a dispositive factor in the resolution of the case, then summary judgment is inappropriate." *Casso v. Brand*, 776 S.W.2d 551, 558 (Tex. 1989).

III. SUMMARY JUDGMENT EVIDENCE

Defendants rely on the following:

Exhibit A: Photograph

Exhibit B: December 23, 2013 Email from Berg to Moore and Langham

Exhibit C: December 24, 2013 Email from Langham to Berg, copy to Moore

- Exhibit D: December 24, 2013 Email from Berg to Langham, copy to Moore
- Exhibit E: December 24, 2013 Email from Langham to Berg and Moore
- Exhibit F: December 25, 2013 Email from Berg to Langham and Moore
- Exhibit G: December 31, 2013 Email from Berg to Langham and Moore
- Exhibit H: January 1, 2014 Email from Langham to Berg and Moore
- Exhibit I: January 2, 2014 Email from Berg to Langham and Moore
- Exhibit J: January 7, 2014 Email from Berg to Langham and Moore
- Exhibit K: January 7, 2014 Email from Langham to Berg and Moore
- Exhibit L: January 7, 2014 Email from Berg to Langham and Moore
- Exhibit M: August 15, 2013 Settlement Agreement
- Exhibit N: Excerpts from March 6, 2015 Deposition of Eric Torres
- Exhibit O: Excerpts from April 8, 2015 Deposition of Adam Sinn
- Exhibit P: Declaration of Craig Taylor
- Exhibit Q: Defendants' First Set of Interrogatories and Requests for Production to Plaintiff Eric Torres
- Exhibit R: Eric Torres' Response to Defendants' First Set of Interrogatories and Requests for Production
- Exhibit S: Defendants' First Set of Interrogatories and Requests for Production to Plaintiff Adam Sinn
- Exhibit T: Adam Sinn's Response to Defendants' First Set of Interrogatories and Requests for Production
- Exhibit U: Affidavit of Kathryn E. Nelson

IV. UNDISPUTED FACTS

Atlas is a commodities brokerage. For the most part, it brokers energy products, facilitating the transfer, storage, and purchase of gas, electricity, physical crude and related commodities. Taylor is Atlas' majority shareholder.

In or about September 2010, Torres and Taylor entered into negotiations for Torres to purchase an equity interest in Atlas. The idea was that Torres would buy into Atlas, establish and run Atlas' electricity/power transactions (known as ERCOT). Taylor agreed to sell a 25% ownership interest in Atlas to Torres for \$750,000. An additional 10% interest in Atlas was conveyed subject to reversion if Torres failed to meet certain revenue goals.

Soon after Torres "purchased" the shares in Atlas, Taylor questioned whether Plaintiff/Counter-Defendant Adam Sinn ("Sinn") was the source of Torres' investment funds. Torres prevaricated and stalled in order to protect himself and refused to admit that Sinn was indeed the source of the funds with which he "purchased" the shares in Atlas. (*See* Ex. N, Torres Dep. at 11:24–13:8; 14:8–17:5.)

When it became clear that Sinn had financed Torres' investment and was the true owner of Atlas' shares, Atlas offered to simply return all of Sinn's money in exchange for return of Atlas' shares and Torres' departure. (*See* Ex. N, Torres Dep., at 22:16–25.) Atlas was prepared to absorb the damage that had been done to the company and its reputation in order to be rid of Sinn and Torres. Sinn and Torres refused. (*See id.*)

Ultimately, as he did here, Torres preemptively filed suit against Atlas, Taylor and Marshall. Atlas and Taylor counterclaimed and joined Sinn, XS, and Aspire for, among other things, rescission of the sale to Torres/Sinn of Atlas shares. A settlement was reached and, on August 15, 2013, a settlement agreement was signed ("Settlement Agreement"). (Ex. M at 1.) Though Sinn/Torres had paid \$750,000 for shares of Atlas and the company had grown since the sale, Atlas/Taylor agreed to buy back their shares for \$500,000 paid out without interest over two years as follows: \$250,000 up front, and then \$10,000 per month for twenty-five months. (*See id.* ¶ 3.)

Return of Sinn/Torres' shares of Atlas was to, and did, take place immediately. (See Ex. M, Settlement Agreement, ¶ 1; Ex. N, Torres Dep., at 26:12–17.) Taylor and Atlas made the \$250,000 payment, and four subsequent payments of \$10,000 each. (See Ex. N, Torres Dep. at 26:24–27:28:3.) The case was dismissed with prejudice and, at Sinn's request, the records were sealed.

The Settlement Agreement contains the following non-disparagement provision:

Non-Disparagement. The Parties agree that in exchange for the consideration provided under this agreement, the Parties shall not directly or indirectly, disparage, make or publish any false, derogatory, slanderous or libelous comments about any other Party regarding any matter likely to be harmful to the Party's business, business reputation, or personal reputation. Further, the Parties agree that they shall not solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation of any other Party. Further, the Parties agree that they will not restrict, limit, or prohibit any third party or employee from socializing, fraternizing, or doing business with any other Party.

(Ex. M, Settlement Agreement, ¶ 19.)

On December 22, 2013 at 12:06 a.m., four months after execution of the Settlement Agreement, Taylor received a text message from Sinn. (Ex. P, Taylor Aff., ¶ 3.) The message contained no text, just a photograph of Sinn, Torres, Barry Hammond (another of Sinn's lawyers), and a few other energy traders, Evan Caron, Paul Sarver, and Sean Kelly. (*Id.*) They are standing in front of a Christmas tree—and all but Caron are extending their middle fingers at the camera. (Ex. A.) At the time the picture was taken, Caron and Kelly were traders at companies that do business with Atlas. (Ex. P, Taylor Aff., ¶ 4.) Sarver is a former Atlas employee who worked for a competitor. (Ex. P, Taylor Aff., ¶ 5.)

Taylor and Atlas were not interested in reinstating litigation or seeing the settlement unravel because Sinn and a few apparently intoxicated friends were not imaginative enough to do anything more amusing than say “f-you” with their fingers. So on Monday, December 23, 2013, counsel for Taylor and Atlas sent the following email to counsel for Torres and Sinn:

As you know, the settlement agreement between our clients contains confidentiality and non-disparagement clauses. I can't say I've ever seen a violation of those provisions quite like this one, but Mr. Sinn texted the attached picture to Craig Taylor this past weekend. As you can see, the photo features Mr. Sinn and Mr. Torres. Also making an appearance is Chanler's co-counsel, not exactly living up to the highest standards of professionalism by upholding his middle finger instead of the dignity of the profession, as the rules require.

Whether they thought they were being funny or trying to accomplish something else isn't clear. I'm going to guess, though, that this picture was not taken right after your clients and co-counsel either refused to discuss Atlas, Taylor, Marshall or the settlement or used "words to the effect that all disputes among [the Parties] have been fully settled and resolved" and nothing else, as the agreement requires.

It looks to me like they were just drunk. Whatever the case, Mr. Taylor isn't amused, and I don't blame him.

This case took a lot of effort from all of us to get settled and I don't want to undo it over this. Without waiving Atlas' right to act in response to any future violation(s), and without asking that either of your clients admit to having violated it, request is made that Mr. Sinn, Mr. Torres and Chanler's co-counsel (whose name escapes me at the moment) each apologize to Mr. Taylor before Christmas and then leave him alone.

If you would like to discuss, please let me know.

(Ex. B.)

The next day, on December 23, 2015, counsel for Sinn responded by saying that the picture was not intended for Taylor, but was in fact sent to people associated with *Atlas* with the tag line "Happy Holidays from *Atlas*." (Ex. C (emphasis added).) This of course would be a far more serious breach of the Settlement Agreement than originally believed, so counsel for Atlas and Taylor wrote back just over an hour later requesting (i) that Sinn provide "the picture with the tag line, a list of senders, and a full list of recipients, including all names, phone numbers, and email addresses," and (ii) that *no related material be deleted or destroyed*. (Ex. D.)

Later that night (at 8:30 on Christmas Eve), counsel for Sinn emailed again, explaining that in his response to counsel for Atlas, he typed "*Atlas*" when what he meant was "*Aspire*," Sinn's

company. In other words, Sinn was now claiming that the photograph was sent to people associated with *Aspire* with the tag line “Happy Holidays from *Aspire*.” Along with this explanation, counsel for Sinn forwarded to counsel for Taylor and Atlas an email from Sinn in which he explained:

I thought I was sending the photo to someone else, I know multiple Craig’s [sic] and even two Craig Taylor’s [sic] believe it or not. This is the first I’ve learned of Craig Taylor getting sent this photo errantly. Everyone needs to lighten up a bit, and yes I sent it to a bunch of folks as a joke. If Craig has [sic] issue I can surely apologize, but in now [sic] way are the others in the photo apologizing for something I did by accident.

(Ex. E.)

The next day, Wednesday, December 25, counsel for Taylor and Atlas again emailed counsel for Sinn, pointing out that the message received by Taylor contained no text—no “tag line”—at all, just a picture, and requesting that he forward what Sinn now claimed were “holiday cards” to *Aspire* associates by Friday, December 27. (Ex. F.)

By the following Tuesday, December 31, Sinn had not responded at all, so counsel for Taylor and Atlas again emailed counsel for Sinn and said:

I didn’t receive any of these, so I will assume your client does not intend to provide them.

Contacting people associated with Atlas with an obscene message purporting to be “from Atlas” is a violation of the settlement agreement. This breach by Mr. Sinn and Mr. Torres excuses further performance by Atlas, which will now consider what action it should take to protect itself.

(Ex. G.)

The following day, January 1, 2014, counsel for Sinn emailed the following *non sequitur* to counsel for Taylor and Atlas:

I assume from your response that you did not understand that I wrote a typo in my previous email. The places where I referenced “*Atlas*” should have referenced “*Aspire*.” It is my understanding that Mr. Taylor received the message and photo in error. It was not meant for him to receive it and it was not directed at him either.

Indeed, the message had nothing to do with Mr. Taylor or the lawsuit that we amicably resolved.

We did not send any messages to people associated with your client's company, we also did not purport to send any messages "from" your client's company. This apparently is all a big misunderstanding. I don't think it would be appropriate to claim that the mistaken message or my typo is some breach of the settlement agreement. I also don't think it would be appropriate to unilaterally cease your clients [*sic*] performance under the settlement agreement based on a mistaken text message.

With that said, we sincerely apologize for any inconvenience this may have caused you and your client.

(Ex. H (emphasis added).)

The next day, January 2, 2014, counsel for Taylor and Atlas responded to counsel for Sinn:

Thanks for the clarification, but I do understand that you claim your previous email's reference to Atlas was a typo. I hope that is the case and look forward to receiving the original texts with the original tag lines and a list of recipients so that it can be confirmed.

(Ex. I.) Again, Sinn did not respond.

On January 7, still having had no response from Sinn, counsel for Taylor and Atlas emailed again, this time pointing out that Sinn had to that point simply ignored repeated requests that he produce whatever it was that he sent out, so:

Request is made—again—that you provide the original texts in full, with a list of senders and recipients. If you do not provide it by the close of business on Friday, January 10, 2014, Atlas will assume that it is because to do so would confirm Mr. Sinn and Mr. Torres' breach of the settlement agreement.

Breach by Mr. Sinn and Mr. Torres excuses further performance by Atlas. If Mr. Sinn or Mr. Torres have breached the settlement agreement, Atlas will have no obligation to make further payment, and such payments will not be made.

(Ex. J.)

That same day, instead of simply producing the texts which Sinn claimed would vindicate him, thus avoiding this entire dispute, he invoked the mediation clause of the Settlement

agreement, requesting that the parties make themselves available for a teleconference with the parties' agreed mediator, Paul Clote. (Ex. K.)

Taylor and Atlas agreed about an hour later, but pointed out that none of this would be necessary if Sinn would simply produce the documents he claimed would exonerate him: Taylor and Atlas would not invoke their right to cease performance, no attorneys' fees would be incurred, and no costs of any kind would be necessary. If litigation followed, Taylor and Atlas would be entitled to production of those messages in discovery anyway—all at much greater expense than simply producing them ahead of time. All Sinn had to do was show Taylor and Atlas—even Taylor and Atlas' counsel for his eyes only—what Sinn claimed were messages unrelated in any way to Atlas or Taylor. Counsel for Taylor and Atlas therefore responded:

I agree that Mr. Sinn and Mr. Torres' breach of the settlement agreement requires that the parties to confer with Paul Clote before initiating any action. I am available tomorrow afternoon anytime, Thursday from 1:30–2:45, Friday morning until 11:00, and Tuesday the 14th from 1:30–3:00.

As you know, if Mr. Clote is not able to assist us in resolving this matter and litigation follows, your clients will be required to produce in discovery what we're requesting now. If the texts didn't mention Atlas or go to anyone associated with Atlas, as you now claim, there will be nothing to drag third parties into. If that isn't the case, however, we will find out about it during discovery and those third parties will, at a minimum, be witnesses anyway. It is curious that Mr. Sinn and Mr. Torres would prefer to spend time and money jumping through all of these hoops instead of just forwarding what they claim would exonerate them and dispose of this issue completely.

Neither Mr. Sinn nor Mr. Torres have any reason to believe that Atlas wants to litigate further, as you now claim. It doesn't. Craig Taylor, James Marshall, and Atlas want nothing more to do with your clients. It wasn't Atlas that contacted them and it isn't Atlas which is refusing to prove something so simple.

If this was all a mistake, proving it is easy (which I guess you don't deny since you promise to provide some of the evidence to Mr. Clote). What makes absolutely no sense at all is to insist on spending thousands of dollars going through a mediator instead of just forwarding the requested information. It does make sense if Mr. Sinn and Mr. Torres have something to hide, though.

If your clients were actually concerned that Atlas was looking for an excuse to initiate litigation, you could have asked at any time over the last two-plus-weeks for an assurance that if you provided the material, Atlas would consider the issue resolved. Atlas would have said yes because litigation isn't what it wants. Instead, Mr. Sinn and Mr. Torres have done everything they can not to have to turn over what they sent out.

Mr. Sinn, XS, Aspire, and Mr. Torres are in breach of the settlement agreement. Because of their breach, further performance by Mr. Taylor, Mr. Marshall, and Atlas is excused. This email will be printed and sent by certified mail and facsimile to you and Melissa pursuant to paragraph 20 of the Settlement Agreement.

(Ex. L.) Payment from Atlas and Taylor to Sinn was accordingly halted.

The parties mediated, first by phone and then in person on April 1, 2014. Sinn steadfastly refused to produce what he actually sent.

On July 17, 2014, Torres filed this lawsuit against Atlas and Taylor for breach of the Settlement Agreement, complaining of their failure to pay them monies he claimed were due. Atlas and Taylor answered on August 18, 2014 and asserted a claim for breach of the non-disparagement provision of the Settlement Agreement.

Also on August 18, 2014, Defendants served their First Set of Interrogatories and Requests for Production on Sinn. (See Ex. S at 2.) Defendants specifically requested information regarding the photograph attached as Exhibit A:

REQUEST FOR PRODUCTION NO. 1: Produce all documents or communications sent to, received from, or created by you mentioning, relating, or referring to the photograph attached as Exhibit A to Defendants' Original Counterclaim.

...

REQUEST FOR PRODUCTION NO. 3: Produce all communications between you and Eric Torres between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 4: Produce all communications between you and Evan Caron between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 5: Produce all communications between you and Paul Sarver between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 6: Produce all communications between you and Sean Kelly between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 7: Produce all communications between you and Joonsup Park between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 8: Produce all communications between you and David Schmidli between August 15, 2013 and the present.

REQUEST FOR PRODUCTION NO. 9: Produce all communications in your possession, custody or control between August 15, 2013 and the present that, directly or indirectly, mention, relate, or refer to Craig Taylor. This request includes but is not limited to communications sent by you and those received by you.

...

REQUEST FOR PRODUCTION NO. 11: Produce all communications in your possession, custody or control between August 15, 2013 and the present that, directly or indirectly, mention, relate, or refer to Atlas. This request includes but is not limited to communications sent by you and those received by you.

REQUEST FOR PRODUCTION NO. 12: Produce all communications in your possession, custody or control which say "Happy Holidays from Atlas" sent by you between December 21, 2013 and the present.

...

REQUEST FOR PRODUCTION NO. 14: Produce all communications in your possession, custody or control which say "Happy Holidays from Atlas" sent to you between December 21, 2013 and the present.

...

REQUEST FOR PRODUCTION NO. 16: Produce all communications in your possession, custody or control which contain or refer to the photograph attached to Defendants' Original Counterclaim as Exhibit A.

(Ex. S.) On September 22, 2014, Sinn served general, boilerplate objections to the requests, but produced no documents whatsoever. (*See* Ex. T.)

On September 29, 2014, one week later, Defendants moved to compel responses to the requests. After hearing Defendants' motion, on November 11, 2014, the Court compelled Sinn to produce documents responsive to the requests. Despite repeated requests and an order from the Court compelling him to do so, Sinn has never produced the material he apparently still maintains would exonerate him. What little he has produced is heavily redacted, purportedly for privilege.¹ Defendants question whether the redacted information is privileged and whether the privilege was properly preserved and reserve the right to raise these issues with the Court.

Sinn and Torres both have now admitted that Sinn was the source of the funds Torres used to purchase a share of Atlas. (Ex. N, Torres Dep., at 11:21–12:8; Ex. O, Sinn Dep., at 23:12–24:6.) In addition, Torres has admitted and Sinn has confirmed that they committed fraud in executing the Settlement Agreement. In the Settlement Agreement, Torres represented—under oath—that he had not assigned any of his rights or interests under the agreement:

Warranty by Torres. Torres hereby represents and warrants that he has not assigned or otherwise transferred to any other person or entity any interest in any claims, actions, demands and/or causes of action he has, or may have, or may claim to have in connection with the matters released hereby and/or the persons and entities released herein. . .

(Ex. M, Settlement Agreement, ¶ 11, at 10.) This representation is flatly contradicted by both Torres' and Sinn's deposition testimony. First of all, Torres and Sinn both acknowledged at deposition that all moneys paid under the Agreement (\$290,000 to date) went to Sinn:

Q. So that lawsuit between you and Atlas Commodities, James Marshall and Craig Taylor was ultimately settled after a mediation; correct?

A. That's correct.

Q. And under the terms of that settlement, Atlas and Taylor basically were going to pay \$500,000 to you; right?

¹ The documents have been designated "Confidential" pursuant to the parties' Agreed Protective Order entered by the Court on November 19, 2014 and therefore are not attached to this response.

A. Correct

...

Q. And under the terms of the settlement agreement—Well, strike that.

\$250,000 was paid under the terms of the settlement agreement. Where did that money go?

A. That was paid, if I recall, directly to Chandler's [*sic*] law firm. That's—I'm sure that's how we set it up. Yeah.

Q. Okay. \$250,000 went to Chanler's law firm Chanler Langham at Susman, Godfrey who represented Adam Sinn and XS Capital.

A. Correct.

Q. So \$250,000 to Susman, Godfrey which then did what with it?

A. I'm—I don't know exactly what they did with it. I'm sure they gave—gave it to Adam Sinn or they used part of it to pay for legal fees, gave it to Adam Sinn, I don't know; but I know some of it got to Adam Sinn.

Q. None of it came to you.

A. Correct.

Q. Right. Then there were two payments made following that payment under the settlement agreement; correct?

A. Was it only two? I thought it was four.

...

Q. Those payments went, under the terms of the settlement agreement, to Chanler Langham's law firm; correct?

A. Correct.

Q. Okay. Ultimately Chanler's firm represented you, but it didn't at that point; correct?

A. I was represented by Melissa Moore.

Q. Right. Okay. So that money went to Susman, Godfrey—

A. Uh-huh.

Q. —which did what with it?

A. I imagine they gave it to Adam Sinn, but I don't know for sure.

Q. *Okay. That money was going directly to Adam Sinn, or at least to his representative.*

A. *Sure.*

Q. *None of it was going to you.*

A. *No.*

Q. *And none of the remainder was going to you.*

A. *Correct.*

Q. *It all goes to Adam Sinn, ultimately.*

A. *Ultimately, yes.*

(See Ex. N, Torres Dep., at 26:3–10, 26:22–27:20, 27:25–28:21 (emphasis added).)

Q. All right. So, Atlas made that first 250,000-dollar payment. Where did that go?

A. To Susman Godfrey.

Q. And what did Susman Godfrey do with it?

A. They then distributed it out.

Q. To whom?

A. To myself.

Q. Did Mr. Torres get any of it?

A. No.

Q. Okay. And then Atlas made payments of \$10,000 per month for four months, correct?

A. Correct.

Q. And those payments also went to Susman Godfrey, right?

A. They did.

Q. Susman Godfrey was the law firm which represented you before you hired Rapp & Krock, correct?

A. Yes.

Q. All right. And Susman Godfrey represented you in the lawsuit that was settled by this Settlement Agreement, right?

A. Correct.

Q. Okay. So, \$10,000 a month for four months went to Susman Godfrey, right?

A. Correct.

Q. And what happened to each of those payments of \$10,000?

A. They were distributed out to me.

Q. *Did Mr. Torres get any of those funds?*

A. *No.*

(Ex. O, Sinn Dep., at 35:16–36:20 (emphasis added).)

More importantly, Torres and Sinn have further admitted that the entire \$500,000 settlement was assigned to Sinn by Torres and that Torres has no right to any of that money. The assignment from Torres to Sinn was, according to Torres' testimony in this case, executed between the time the parties settled the underlying matter at mediation and the time they entered into the Settlement Agreement:

Q. Okay. Did you sign some agreement with Adam Sinn saying: All the money under this settlement agreement is going to you?

A. If I recall correctly, I did. I don't remember the exact document; but I think *after the settlement day, between that until the actual final agreement, there was a document that I signed where the \$500,000 was to be paid to Adam Sinn, essentially—*

Q. Okay.

A. —to cut out the middleman, basically.

Q. Do you know if that document was produced in this litigation?

A. I don't think so, no.²

(See Ex. N, Torres Dep., at 28:22–29:9 (emphasis added).)

Q. But you do have a written agreement on the total of 500,000 under the Settlement Agreement?

A. I don't recall, but potentially we do.

Q. Okay. Well, if it's not written, it's certainly oral, correct?

A. Like, I literally don't recall. I mean, I know he said that, but I don't recall.

Q. Okay.

A. I don't recall what the specific structure—

Q. Then let me—let me put it this way. He says to you in one way or another, oral, written, whatever you leave open the possibility.

A. Okay.

Q. *You just don't recall. He says: Hey, I owe you this money. Under the Settlement Agreement, it's \$500,000. It's yours. I assign it to you.*

A. *Uh-huh.*

Q. *Is that right?*

A. *Basically correct.*

Q. *Right. Whether it's written or oral, you don't remember, but that's how it happened?*

A. *Correct.*

(Ex. O, Sinn Dep., at 38:24–39:20 (emphasis added).) In addition to being completely at odds with the affidavit Torres filed in support of his motion for summary judgment, the Torres/Sinn assignment is itself a violation of the Agreement. (See Ex. M, Settlement Agreement, ¶ 11.)

² Defendants have produced no documentation of this assignment. (Ex. U, Nelson Aff., ¶ 3.) As otherwise set forth in this response, discovery is woefully incomplete. Defendants therefore request, in the alternative, a continuance of the motions for summary judgment set for July 24, 2015.

Any assignment of rights under the Settlement Agreement required consent of the Atlas parties:

Successors and Assigns. The rights of the Parties hereto, and any of their subsidiaries and affiliates, shall inure to the benefit of any and all of their successors and assigns. **No Party may assign any of its rights or delegate any of its duties hereunder without the written consent of the other Parties.**

(Ex. M, Settlement Agreement, ¶ 27 (emphasis added).) None of the Atlas parties consented to the Torres-Sinn assignment, nor were they ever asked. Atlas and Taylor would not have agreed to payment to Sinn, which is precisely why Plaintiffs did not ask. (See Ex. P, Taylor Aff., ¶ 7.)

In his motion for summary judgment and his affidavit in support thereof, Sinn claims that he “did not send the Picture to any customers or affiliates of Atlas, nor did he make any negative remarks about Taylor or Atlas.” (Mot. at 4.) This assertion is false. In paragraph 15 of his affidavit, Sinn again states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonup Park and David Schmidli. *I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.*

(Sinn Ex. A. ¶ 15 (emphasis added).) This representation, again, is false. After executing this affidavit, Sinn admitted that he sent the photograph to an unknown person or persons with the message “Happy Holidays Atlas”:

Q. Is this a message from you to someone else?

A. That’s correct.

Q. Okay. You see it has the picture—

A. Uh-huh.

Q. —which is attached as, I believe, Exhibit 3 to your deposition of you and your friends flipping off the camera? You see that?

A. Uh-huh.

Q. And it is to 713-377-2320, correct?

A. Correct.

Q. All right. And it says "Body: Happy Holidays Atlas." Do you see that?

A. Yes.

Q. *So, you did send out a message saying "Happy Holidays Atlas" with the picture, correct?*

A. *Yeah. Apparently so.*

(Ex. O, Sinn Dep., at 69:5–20 (emphasis added).) Sinn admitted that he did not know whose phone number that was. (Ex. O, Sinn Dep., at 68:16–17.)

In addition, Sinn admitted to making several negative and disparaging comments about Taylor:

Q. Do you remember calling Craig Taylor a cock blast?

A. Not specifically.

Q. Have you called him a cock blast?

A. I mean, possibly.

Q. What's a cock blast?

A. I would have no idea. Probably something like a dipshit.

Q. Well, it's not good. It doesn't sound good, is it?

...

A. Yeah. It's probably not flattering.

Q. (By Mr. Berg) Would you call a Christmas miracle if Craig Taylor had a heart attack?

A. Yeah. I think I jokingly—jokingly said that.

...

Q. Dave Schmidli said, “Looks like a Christmas card.” And you said, “Funny shit. Hope he chokes on his breakfast.” You were talking about Craig Taylor?

A. That moment in time, yes.

(Ex. O, Sinn Dep., at 53:1–16; 56:18–21.)

V. TRADITIONAL SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there are no disputed issues of material fact and the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). A party moving for summary judgment on its own cause of action must conclusively establish each element of its claim as a matter of law. *See Winchek v. Am. Exp. Travel Related Servs. Co.*, 232 S.W.3d 197, 201 (Tex. 2007); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam). All summary judgment evidence must be admissible. *United Blood Servs. v. Longoria*, 938 S.W.2d 29, 30 (Tex. 1997) (per curiam). When reviewing a motion for summary judgment, the court must take the nonmovant’s evidence as true, indulge every inference in favor of the nonmovant, and resolve every doubt in the nonmovant’s favor. *M.D. Anderson*, 28 S.W.3d at 23.

VI. ARGUMENT AND AUTHORITIES

A. Sinn Is Not Entitled to Summary Judgment on Defendants’ Claims

Defendants incorporate by reference the preceding paragraphs for all purposes.

As an initial matter, Sinn is not entitled to summary judgment on all of Defendants’ claims because he has not moved for summary judgment on all of Defendants’ claims. *See* Tex. R. Civ. P. 166a(a), (c) (summary judgment may only be granted on claims regarding which a party moves). Sinn has not moved for summary judgment on Defendants’ claim for fraud in the inducement and their request for indemnity. (*See* 2d Am. Pet. ¶¶ 28–62.) Sinn also has not moved for summary judgment on Defendants’ request for a declaration that he violated the non-assignment provision

of the Settlement Agreement. (*See* 2d Am. Pet. ¶ 51.) Summary judgment therefore cannot be granted on those claims. *See* Tex. R. Civ. P. 166a(a), (c).

Sinn moves for summary judgment on the first three declarations sought by Defendants and on Defendants' claim for breach of contract, all of which are related to the creation and transmission of the photograph attached as Exhibit A, along with any message that may have accompanied it. (Mot. at 5–6.) Sinn asserts that, by sending the photograph to Taylor, he did not violate the non-disparagement clause of the Settlement Agreement. (*See* Mot. at 7.) Sinn misstates Defendants' claims. Defendants do not allege that the transmission of the photograph to Taylor violated the Settlement Agreement. (*See* 2d Am. Pet. ¶ 51.) Sinn therefore is not entitled to summary judgment on that basis.

Sinn further asserts that the photograph and any accompanying message sent to the persons in the photograph did not contain “any ‘false, derogatory, slanderous or libelous comments’ about Taylor or Atlas ‘regarding any matter likely to be harmful’ to Taylor’s or Atlas’ ‘business, business reputation, or personal reputation.” (Mot. at 7.) He further claims that that he “did not send the Picture to any customers or affiliates of Atlas, nor did he make any negative remarks about Taylor or Atlas.” (Mot. at 4.) In paragraph 15 of his affidavit, Sinn again states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. *I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.*

(Sinn Ex. A. ¶ 15 (emphasis added).) These representations are demonstrably false. Sinn admitted, after being confronted with a forensic copy, that he sent the photograph attached as Exhibit A and an accompanying message stating “Happy Holiday’s [*sic*] Atlas” to another person. (Ex. O, Sinn Dep., at 68:18–69:20; Ex. Q, Report (emphasis added).) Sinn admitted to additional disparagement of Taylor, including calling him a “cockblast,” saying it would be a “Christmas miracle” if he had

a heart attack, and hoping he choked on his breakfast, all because Sinn found it amusing. (*See Ex. O, Sinn Dep.*, at 53:13–16; 56:18–57:8; 63:8–16.) Sinn therefore is not entitled to summary judgment on that basis.

Sinn baldly asserts that the transmission of the photograph and any accompanying message could not have damaged Taylor's or Atlas' reputation, citing the elements for a cause of action for business disparagement. (Mot. at 8.) But Defendants do not allege business disparagement. Defendants have sued for a breach of the non-disparagement clause of the contract at issue. For that reason alone, Sinn's motion for summary judgment may not be granted.

B. Sinn Is Not Entitled to Attorney's Fees

Defendants incorporate by reference the preceding paragraphs for all purposes.

A party has a duty to exercise reasonable care to mitigate its damages. *Great Am. Ins. Co. v. N. Austin Mun. Utility Dist. No. 1*, 908 S.W.2d 415, 426 (Tex. 1995). If a party fails to exercise such reasonable care, it cannot recover damages that could have been avoided. *Pinson v. Red Arrow Freight Lines, Inc.*, 801 S.W.2d 14, 15 (Tex. App.—Austin 1990, no writ). The doctrine of mitigation applies to claims for attorney's fees. *See Glenn v. Nortex Foundation Designs, Inc.*, No. 2-07-172-CV, 2008 WL 2078510, at *4 (Tex. App.—Fort Worth 2008, no pet.) (mem. op.) (upholding reduction of recoverable attorney's fees because of party's failure to mitigate after rejecting reasonable settlement offer); *A.D. Willis Co., Inc./Metal Bldg. Components, Inc. v. Metal Bldg. Components, Inc.*, No. 03-09-00574-CV, 2000 WL 1508500, at *5 (Tex. App.—Austin 2000, pet. denied) (upholding reduction of recoverable attorney's fees because of party's failure to make reasonable efforts to negotiate a compromise) Sinn has failed to mitigate his attorney's fees in this case by resisting discovery and violating the non-assignment clause of the Settlement Agreement himself. (*See Ex. O, Sinn Dep.*, at 35:16–36:20; 39:12–20.) Sinn therefore is not entitled to an

award of the attorney's fees incurred because of his multiple failures to mitigate his damages. *See Glenn*, 2008 WL 2078510, at *4; *A.D. Willis Co.*, 2000 WL 1508500, at *5.

VII. CONCLUSION AND PRAYER

For these reasons, Defendants/Counter-Plaintiffs Craig Taylor and Atlas Commodities, LLC respectfully request that the Court deny Plaintiff/Counter-Defendants Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P.'s Motion for Summary Judgment in its entirety and any for any other and further relief to which they may be entitled.

Respectfully submitted,
BERG FELDMAN JOHNSON BELL, LLP

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ATTORNEYS FOR CRAIG TAYLOR AND
ATLAS COMMODITIES, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served by electronic filing, certified mail, return receipt requested, email, and/or facsimile on July 17, 2015 as follows:

Kenneth M. Krock (kkrock@rk-lawfirm.com)
Terri S. Morgan (tmorgan@rk-lawfirm.com)
Megan N. Brown (mbrown@rk-lawfirm.com)
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/s/ Geoffrey Berg
Geoffrey Berg

CAUSE NO. 2019-79857

PATRICK A.P. DE MAN	§	IN THE DISTRICT COURT
	§	
VS.	§	61ST JUDICIAL DISTRICT
	§	
RAIDEN COMMODITIES, L.P. AND ASPIRE COMMODITIES, L.P.	§	HARRIS COUNTY, TEXAS

Order Requiring Turnover and Appointing Receiver and Master

(With Attached List of Items to be Turned Over)

The Court considered plaintiff's application for turnover, reviewed the documents on file, evidence, all arguments, and finds that plaintiff is entitled to aid from this Court.

Defined Terms. As used in this order, the terms below are defined.

Term	Definition
"Plaintiff" refers to:	PATRICK A.P. DE MAN
"Defendants" refers to:	RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. and ASPIRE COMMODITIES, L.P.
"Receiver" and Master" refer to:	Name: Riecke Baumann
	Address: 1832 Kirby Drive, Houston, Texas 77019
	Tel. No.: 713-529-1600
	E-Mail: Riecke@TexasCollect.com
"Judgment" refers to the judgment in this case.	Date: December 1 , 2019
	Principal Amount: \$690,847.00 plus attorney's fees of \$103,627.05
Bond Amount:	\$200.00

Findings. The Court finds that:

1. Plaintiff owns an unsatisfied final judgment against defendants;
2. Defendants own property.

Plaintiff has good faith reasons to believe that defendants owns non-exempt rights to present or future property that cannot be readily attached or levied upon by ordinary legal process, like bank accounts that are easily moved and constantly changing in balance. Appointing Receiver to locate, marshal, and administer assets is justified because non-exempt assets exist, as virtually everyone has a bank account or other non-exempt asset, that plaintiff believes that defendants will hide. Plaintiff has met the requirements of Tex. Civil. Prac. & Rem. Code §31.002.

3. If the Defendants were provided notice of the application for turnover that Defendants would hide these assets beyond the reach of any court appointed receiver and that as soon as Defendants. became aware of the filing of the Application for Turnover and Appointment of a Receiver, that to hide these assets 1) the Cash Funds would be transferred from RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. to a newly formed entity unrelated to RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P., 2) this new entity would register as market participant with ERCOT, 3) the Letter of Credit would be amended to reflect this new entity as market participant, and 4) this new entity would subsequently continue the business where RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. left off. This exact same scenario has played out regarding ASPIRE COMMODITIES, L.P. and is straightforward to implement also for RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. Time is of the essence because all existing trading positions of RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. expire on December 31, 2019, and RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. has already ceased entering trading positions beyond 2019. This information is publicly reported by ERCOT and implies that as of January 2020, RAIDEN COMMODITIES, L.P. now known as ASPIRE POWER VENTURES, L.P. has no further obligations to ERCOT and can remove all assets immediately.

Orders. The Court orders the relief set out below.

4. Appointment. After considering the propriety of receivers whom the Court has appointed in other cases and the plaintiff's recommendations, the Court appoints Riecke Baumnn as Receiver over each defendant's non-exempt assets, under Sec. 31.002 of

the Civil Practice and Remedies Code of Texas, to serve after posting the bond and taking the oath of office.

5. The Court assumes jurisdiction over and takes possession of defendant's non-exempt property (collectively, the "receivership assets").

6. Except for acts of intentional misconduct, Receiver and persons engaged or employed by him are not liable for loss or damage incurred by any person or entity for any act performed or omitted to be performed by Receiver or those engaged or employed by Receiver for the discharge of their duties and responsibilities for the receivership, including exercising control over receivership assets.

7. Effect of order on defendant and third parties. The unique power of the Receivership derives from the doctrine of *custodia legis*. Once a turnover order containing an appointment of a Receiver is signed, all of the judgment debtor's non-exempt property becomes property *in custodia legis*, or "in the custody of the law." *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976). The judgment debtor's property is in the constructive possession of the court. During the pendency of a receivership, the receiver has exclusive possession and custody of the judgment debtor's property to which the receivership relates. *Id.* No one, not even a lien holder with a prior filed deed of trust, can sell property held in *custodia legis* by a duly appointed receiver without first obtaining approval from the court in which the Receivership is pending, *id.* at 341; *Huffmeyer v. Mann*, 49 S.W.3d 554, 560 (Tex.Civ.App.—Corpus Christi, 2001). Any unauthorized transfer of property in the custody of a receiver is *not merely voidable, it is void.* *First Southern Properties*, 533 S.W.2d, at 341. Any conveyance of property in the custody of a receiver without approval by the court has no effect upon the receivership and the accomplishment of its purposes. *T.H. Neel v. W.L. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977). Any attempt by a judgment defendant to transfer any of his non-exempt property after the turnover order has been signed is void and can be called back by Receiver or by Receiver's suit to set aside the transfer.

Defendant is enjoined from selling non-exempt property, and must report to Receiver all sales and transfers of exempt property, within 5 days.

8. The Receivership owns all non-exempt assets of all defendants, regardless of whether Receiver takes actual possession. This includes accounts in financial institutions and banks.

9. Definition and purpose of the Receivership. Receiver and Master is the agent of this Court (not the attorney for any party), and is to be treated with the same courtesy accorded to the Court.

“Once an individual is cloaked with derived judicial immunity because of a particular function being performed for a court, every action taken with regard to that function—whether good or bad, honest or dishonest, well-intentioned or not—is immune from suit. Once applied to the function, the cloak of immunity covers all acts, both good and bad.” *Davis v. Radoff*, 317 S.W.3d 301, (Tex.App—Houston [1st Dist.] 2009), (citing *Ramirez v. Burnside & Rishebarger, L.L.C., No. 04-04-00160-CV*, 2005 WL 1812595 (Tex. App.-San Antonio Aug. 3, 2005, no pet.) (mem. op.)).

10. Defendants’ Responsibilities to Receiver and the Court. Each defendant is ordered, within the time periods set out in this order and the attached Exhibit A, to:

a. Deliver to Receiver, at the address provided by Receiver, the items described in Exhibit A, and all documents and records requested by Receiver, within ten days, then from time to time, in the time periods, manners, and formats requested;

b. Turnover to Receiver all non-exempt funds to the extent required to satisfy the judgment. No defendant may spend non-exempt funds, or sell, transfer, or encumber non-exempt assets without Receiver’s prior written consent;

c. Completely disclose to Receiver all assets of each defendant, and neither directly nor indirectly interfere with or impede Receiver in the performance of his duties. Defendant must disclose all exempt and non-exempt assets so the exempt status of every asset can be determined. Defendant’s disclosure must provide sufficient specificity to permit a constable to identify and levy on the assets;

d. Supplement all disclosures, in writing, within five days of knowledge of information required to be disclosed, without being prompted;

e. Organize and collate the disclosed information and documents in the formats and manners required by Receiver. The disclosures must be indexed and refer to the request to which it is responding. Responses like, “See response number so and so.” are prohibited;

f. Deliver to Receiver all passwords, user identification, login and other credentials used to access websites, owned, controlled, or managed by each defendant and on-line accounts that allow the control of assets (e.g. financial accounts, webhosting accounts, and other accounts that are used to control assets)

g. Defendant may not dispute a check that Receiver seizes and deposits, without first obtaining the Court’s permission.

11. **Receiver's Powers.** Receiver may:

- a. Take possession of Defendant's non-exempt property in defendant's actual or constructive possession, custody, or control, including the items described in Exhibit "A". This includes the accounts in banks, stock brokerage firms, and entities like E-Trade Clearing, LLC;
- b. Require the attendance of third parties, issue and serve subpoenas and notices to appear to third parties and those who may possess knowledge or information concerning a defendant's non-exempt assets. A subpoena is not required to compel attendance. Receiver may require the attendance of and issue subpoenas to any defendant, third party, or witness, to deliver receivership assets and information about receivership assets, including employment records from the Texas Workforce Commission, for the production of documents, things, and information, including matters about the employment or location of any defendant or witness, the existence, location, or value of defendant's assets. Receiver may schedule and issue notices for stenographic or non-stenographic examinations of anyone who may know of facts about a defendant's exempt assets;
- c. Obtain credit reports, financial institution statements, and other reports to aid in locating assets. Receiver may order Consumer Reporting Agencies, as defined by the Fair Credit Reporting Act ("FCRA") 16 USC §1681b(f) to provide consumer reports on defendants and witnesses as allowed under FCRA 16 USC §1681b(a)(1);
- d. Order providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, email hosts, iCANN providers, satellite television services, and similar services (including ComCast, AT&T, Verizon, Sprint, and Direct TV), and financial institutions to turnover information that Receiver believes may prove or lead to the discovery of the existence or location of a defendant's whereabouts or non-exempt assets, including account information, telephone numbers, names, service addresses, telephone numbers, payment records, and bank and credit card information.
 - i. The orders must be directed to the entity from which the information is sought and specifically describe the information requested with the dates for which the information is required, which may not be more than one year before issuing Receiver's request, unless specifically stated in the request or attachments.

- ii. This order specifically defines Receiver as a state official, acting in an official capacity, as defined in section 182.054(1) of the Texas Utility Code.
- iii. This order specifically serves as the court order required by 47 USC § 551, and Tex.Fin.Code §59.001, and satisfies all obligations of the responding party to obtain or receive a court order before contained personally identifiable information of the subscriber or customer;
- iv. Disclosing information under this order does not violate PUC Substantive Rule 25.272. This order satisfies the law, regulation, or legal process exception to the Proprietary Customer Information Safeguards found in PUC Substantive Rule 25.272 (g)(1);
- e. Take all actions to gain access to and enter all real property, leased premises, storage facilities, and safe deposit boxes where non-exempt property, or records of a defendant may be situated, and to seize the contents;
- f. Secure control over all non-exempt property and engage in presale activities, including appraisals, evaluations, listing and advertising agreements. Receiver may transfer title into the receivership or place a hold on the title of personal and intangible property, including patents, trademarks, servicemarks, copyrights, websites, and domain names;
- g. Redirect, read, and copy defendant's mail, whether electronic, paper, or facsimile, or otherwise, and whether sent to a street address, telephone line, post office box, or via the internet, before and exclusive of receipt. Establish procedures for allowing defendants to retrieve the mail, or copies;
- h. Disable or remove non-exempt property belonging to a defendant or place the property into storage; insure any property taken into his possession; obtain such writs as Receiver deems necessary to obtain possession; and change the locks to premises belonging to the defendant. Receiver has no duty to take these actions, or to maintain, guard, or insure property taken into *custodia legis*, or to maintain or pay any lease, nor shall Receiver be required to pay any mortgage, lien or assessment, defend against any lawsuit, pay any tax or fee, file tax returns, maintain any insurance coverage, or have any obligation except as specifically ordered;
- i. Hire any person, firm or company to further remedies available to Receiver, including hiring persons to: change locks to premises belonging to defendant; exclude persons from interfering with Receiver's custody of the premises; moving or storing defendant's property; collect accounts receivable; or sell defendant's non-exempt property;

j. Endorse and cash checks and negotiable instruments payable to defendant, except paychecks for current wages;

k. Assume that property is not exempt, until the person claiming the exemption files a statement that claims the exemption, cites the legal and factual grounds for the exemption, and describes the property with sufficient specificity that a constable can levy upon it. If there be any dispute whether an asset is exempt or belongs to a defendant, Receiver may take custody of the asset until the Court determines the rights of those claiming an interest in the asset;

l. Certify copies;

m. Serve defendants by placing the documents to be served in the defendant's mailbox, taping them to the defendant's door, or delivering them to the receptionist at the defendant's residence or place of business;

n. Serve non-natural entities by placing the documents to be served in the registered agents for the entities' mailbox, taping them to the registered agent for the entities' door, or delivering them to the receptionist of the registered agent for an entity's place of business.

o. Obtain defendant's and witness' driver's license records from the Texas Department of Public Safety, and all similarly named entities. Those entities are ordered to release defendant's records to Receiver and Master, including defendant's photograph;

p. Propound discovery, under the rules of civil procedure. Receiver may shorten the time periods;

q. File reports. Objections must be filed within 20 days, state each disputed ground, the reasons for each dispute, and attach the documents supporting each objection. Unopposed facts will be conclusively admitted.

12. Conduct and Disposition of Entities. If defendant is an individual, all legal right, title and ownership of any limited partnership interest, partnership interest, stock, or membership interest it has in any entity and business entity of that defendant is divested from the individual and placed *in custodia legis* with the Receiver. *Chitex Communication v. Kramer*, 168 B.R. 587, 590 (S.D. Tex. 1994) ("the president of an insolvent corporation had no authority to affect the corporation's property interests once a state court had placed it into receivership") if the debtor is the sole owner of that entity or business, all management authority is vested in the Receiver as if Receiver were the Receiver over that entity. If the Respondent is a business entity, all authority and power of the defendant in the management of the entity is vested in the Receiver and no decision may be made or carried out without the express approval of the Receiver. *Id.* ("Texas law asserts that Receiver has the full rights that the corporation had."). This

order supersedes the authority of any officers, directors or managers of the business entity debtor.

13. File a report that will be conclusive unless defendant denies each finding, explains why, and files supporting documentation. Unopposed findings will be deemed conclusive.

14. Notice of Intended Abandonment or Sale. Notice of abandonment of receivership assets must be provided:

a. At least ten days before any abandonment, Receiver must file a notice of the intended sale or abandonment that describes the property to be abandoned, its sale price, and how it will be sold or abandoned;

b. By first class mail to defendant and every person who has filed a request for notice;

15. Objection to Abandonment or Sale. Objections to the proposed abandonment or sale must state the grounds and be filed within five days after Receiver's service of the notice.

a. If no objection is timely filed, Receiver may abandon the property as described in the notice, without further order.

b. If an objection is timely filed, the proposed abandonment or sale must not be completed until the Court has decided the objection.

16. Duties of Peace Officers. Every constable, deputy constable, sheriff, deputy sheriff, and other peace officer may accompany Receiver to locations designated by Receiver where Receiver believes that a defendant's assets or records may be located. The peace officers are ordered to prevent interference with Receiver's carrying out any duty under this order or interference with property in Receiver's control or subject to this order.

17. Duties of Third Parties. Every person with actual notice of this order is ordered not to interfere with property in Receiver's control or subject to this order, and is ordered not to interfere with Receiver in the performance of Receiver's duties. Third parties are notified that Receiver, not defendant, is the party entitled to possess, sell, liquidate, and otherwise deal with defendant's non-exempt property and once any third party receives notice of this order, the third party may be subject to liability if the third party releases property, unless directed by Receiver or the Court.

a. All third parties who hold a defendant's property or records are ordered to immediately notify Receiver and to deliver the property within ten working days of Receiver's demand.

b. All third parties knowing of this order are ordered to immediately notify Receiver if they discover the existence of a defendant's property, or of facts that might lead to the discovery of property in which any defendant has any interest.

c. Electric Reliability Council of Texas, Inc. ("ERCOT") shall disclose any and all assets of the judgment debtors to the receiver and shall freeze any and all such assets to include: (i) Cash Funds in an account referred to by ERCOT as the Flexible Account, which is used for trade settlement; and (ii) Collateral Funds in the form of a Letter of Credit, which serves to 1) satisfy the credit requirements of the trading activities, and 2) if necessary, provide access to cash funds to satisfy outstanding and unpaid invoices.

d. Anyone resisting Receiver's order or request, based on legal or other advice, is ordered to give the full name, address, fax number, e-mail address, cell phone number, and direct telephone number for each person giving that advice and to instruct those persons to immediately contact Receiver. Doing so waives no attorney-client communication privilege.

18. Receiver is entitled to a fee equal to twenty-five percent of all sales of assets that come into his actual, constructive, or legal possession, and all recoveries and credits against the judgment, not to exceed 25% of the balance due on the judgment, including post-judgment attorney's fees, Receiver's fees and expenses, which the Court finds is a fair, reasonable, customary, and necessary fee for Receiver. A contingency fee is the only way that plaintiff can afford a receiver. Defendant has not tried to pay the judgment. The costs of proving an hourly fee are prohibitive. Competent and experienced receivers are rare and the time and effort required by a receiver to keep time, apply for fees and the lag between filing for fees and being paid and that the fees earned would be at an ordinary rate but not be paid at the time of or shortly after rendering of services would inhibit the recruitment of experienced receivers. Given the chances of no recovery, contingent fees are the most economical fee schedule. The costs of proving an hourly fee could easily exceed the original judgment. Receiver is directed to pay plaintiff's attorney, as plaintiff's trustee, the remaining 75% of all funds coming into Receiver's possession, after deducting Receiver's costs and payment of liens or set offs as Receiver deems reasonable. A receiver's fee exceeding 25% of all funds coming into Receiver's possession may be awarded after notice and opportunity for hearing to all parties. If the defendant files bankruptcy, Receiver's fee shall be equal to 25 percent of the debt owed when the bankruptcy is filed. Receiver's fees are taxed as costs and must be added to the cost docket of this Court.

19. All real property sales must be individually ordered, after notice and hearing.

20. Time for objections to the order. All objections to (i) this order, (ii) the bond, including its sufficiency, (iii) all affidavits that support or relate to this order, (iv)

Receiver's qualifications, and (v) every issue relating to this order, are waived if they are not filed within twenty days of the service on or notice of this order to defendant or his counsel.

21. Writs of turnover issued under this order, must not be limited in time or have an expiration date. Those serving the writs must return them to Receiver, not the clerk, unless otherwise instructed. More than one writ of turnover may be issued and outstanding at the same time. The clerk is ordered to issue writs on an expedited basis, upon request.

22. Receiver may collect all unclaimed funds belonging to defendant, including from the Texas Comptroller's Office, and may collect, sell, or assign defendant's rights to air miles and rewards programs.

23. Attorney's fees. The Court takes judicial notice of the time that is reasonable and necessary for obtaining this order, and Texas Premium Power Sports, LLC is ordered to pay Riecke Baumann \$750 in attorney's fees for obtaining this order. Additional fees may be awarded, after notice and hearing.

24. Retention of counsel. Receiver may employ counsel, at \$300.00 per hour, for representation and assistance in the prosecution of this order.

25. Receiver does not have to defend or prosecute any litigation regarding the defendant.

26. Receiver may serve discovery under the rules of civil procedure, and may shorten the time periods. He is not required to employ the discovery rules, and may obtain discovery by requesting the information or documents from defendant and third parties. Upon request, defendant must provide documents in WordPerfect, Microsoft Word, Microsoft Excel, Rich Text Format, JPEG, Adobe, or other format acceptable to Receiver, with indices.

27. All parties must serve Receiver with copies of all motions, notices, discovery responses, correspondence, and communications between them.

28. Special Master. Riecke Baumann is appointed as Special Master in Chancery. The appointment is justified to perform duties that a sitting court cannot undertake, like traveling to locate and inspect assets, delivering property to sales lots for inspection and valuation, and advertising for and locating prospective buyers and appraisers. Master will conserve the Court's resources on post judgment matters, including locating and liquidating property. Because the Court cannot order a witness to travel over 150 miles, Master is needed to travel to interview witnesses.

Master's appointment will lower attorneys' fees, reduce the need for hearings, and will protect the economic interests of both the debtor and creditor.

Master can immediately issue orders, rather than incurring the delays required for the opportunity to be heard in open court. Property, evidence, and witnesses can easily disappear before a hearing can be held. This is an exceptional case due to the complexity of locating assets and the intensity and spontaneity needed to enforce the judgment. Good cause exists to appoint Master. Master should be familiar with post judgment enforcement, and is.

Use of the terms, "Receiver," and "Master," include the other term, as allowed by law.

29. The Special Master in Chancery may:

a. Require the attendance of third parties, issue, and serve subpoenas to third parties, or those who may possess knowledge or information about defendant's assets, and whether they are exempt. A subpoena is not required to compel attendance. Master may require the attendance of and issue subpoenas to defendants, third parties, and witnesses. The Master may schedule and issue notices for stenographic or non-stenographic examinations of anyone who may know of facts about a defendant's non-exempt assets; *Ex Parte Odom*, 271 S.W. 2d 796 (Tex. 1954);

b. Serve discovery under the rules of civil procedure and shorten the time periods. Master required by the discovery rules, and may obtain discovery by requesting the information or documents;

c. Submit reports of the facts discovered. If defendants do not object, the facts in the report are binding. This procedure saves the Court a great deal of time by limiting factual disputes.

30. Master's duties are limited to locating non-exempt assets and the records that determine the assets' ownership, their value, with the liens against the assets, and reporting his findings to the Court.

Persons seeking protection must set the matter for the earliest possible hearing date, after giving Receiver notice and attempting to resolve the issues. (This does not mean merely sending a fax or e-mail.)

Signed December _____, 2019.

Judge Presiding

Approved:

/s/ Richard Fason
Richard Fason

Attorney for Plaintiff
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2101 Louisiana
Houston, Texas 77002
713 222-0351
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Exhibit A
Documents Ordered to be Delivered to Receiver, at His Office,
Within Ten Days of Receipt of the Order
Requiring Turnover and Appointing Receiver

Definitions and instructions.

- 1) Time Periods. All time periods are for the three years before this order was signed, unless otherwise stated.
- 2) Continuing duty to supplement. The turnover order is continuing and must be supplemented. Should a defendant or witness come into possession, custody, or control of anything that was ordered turned over or produced, that person must turn over the item within ten days.
- 3) Definitions.
 - a) "Order" means the turnover order in this case.
 - b) "Account Information" means the login, username or other account identifier with all passwords associated with accessing the accounts.
 - c) "Contact Information," "telephone number," and "address," mean that person's full name, nick names, d/b/a's, and all addresses (including work and residence), all telephone numbers (including home, office, fax, pager, and cell numbers), and e-mail, Facebook, social networking, and web site addresses. If any of the information is lacking, provide the Contact Information for every person believed to be able to provide the missing information.
 - d) "Defendant" includes every judgment defendant and every spouse or ex-spouse of the judgment defendant within three years of signing the order.
 - e) "Copies" means complete, legible copies. Illegible copies are to be provided, with a notation showing where legible copies can be found.
 - f) "Entity" includes all business organizations, whatever their form, including public or private corporations, limited liability companies, partnerships, joint ventures, unincorporated associations, and individual proprietorships.
 - g) "Manager" refers collectively to anyone who is an officer, director, manager, or supervisor of an Entity, or who makes business decisions for an Entity.
 - h) "Produce," means to deliver. If an item is not listed in this exhibit, the defendant or witness must turn over the item in the time specified by the demand.
 - i) "Records" and "Documents" are mutually inclusive, and include the records, documents, and items formally ordered turned over, or requested by the Receiver. Requests regarding property or Documents owned or possessed by a defendant also apply to defendant's spouse, ex-spouse, brother sister, child, step-child, mother, father, sister, brother, partner, or co-owner of a small business, if the requests involve documents that a defendant would be required

to turnover had defendant possessed or controlled the item.

- j) "Shareholder" includes the owners, members, partners and others who have ownership rights any Entity.
- k) "Turnover" includes creating a list or report, if no list or report exists. "Turnover" also means to convey the information that is available to you, not merely the information of your present knowledge, including providing information, Documents or Records known by you, or that is in your possession, or the possession of your family, employees, co-workers, co-owners or agents, including your attorney or any agent or investigator of your attorney.
- l) "Witness" means any person who is not a defendant but who may have information, Records or Documents relating to defendant.

4) Document labeling and identification.

- a) "All" is presumed to apply to every item. If a type of item is listed, this Order means all similar items.
- b) Each turned over Document, file, or photograph must be given a consecutive identification number and produced in the condition and order of arrangement in which it existed when the application for this Order was filed, including all file labels, dividers, or associated identifying markers. An index must be provided, if the documents are large, or if the Receiver requests.
- c) Creating lists and compilations. If the Order or this exhibit requires a defendant to compile or create a list or document, each defendant is ordered to do so.
- d) Lost Document, Records, or tangible things. If a defendant, or a defendant's attorneys, agents or representatives, had possession or control of a Document, Record, or tangible thing ordered turned over that has been lost, destroyed, purged, or is not in their possession or control, identify the item and describe the circumstances surrounding the loss, destruction, purging, or separation from your possession or control, indicating the dates that the circumstances occurred.
- e) No Document, file or photograph requested may be altered, changed, modified, disposed of or destroyed.
- f) Indicate to which paragraph of the Order the Document, Record or tangible thing applies. When producing data or information in electronic or magnetic form, make a paper copy. If it is not reasonably possible to make a hard copy print-out of the data or information, copy the data or information and provide it in WordPerfect, Microsoft Word, Microsoft Excel, Rich Text Format, JPEG, Adobe, or other format acceptable to the Receiver.

Items, data, and records ordered turned over.

1. A letter authorizing the Receiver to obtain all records and assets to which defendant is entitled;

2. Contact information for each defendant and witness controlling or knowing of relevant documents or information;
3. All royalty payments, rights to receive payment, websites, url, domain names,
4. For every Entity in which a defendant is an owner, Shareholder, or Manager, or has authority over accounts in financial institutions:
 - a. The Entity's Contact Information;
 - b. The Contact Information for every owner, Shareholder, or Manager of each Entity for the last three years;
5. The Contact Information for the accountants and bookkeepers for each Entity and every owner, Shareholder, or Manager for the last three years;
6. For each defendant, Entity, and owner, Shareholder, or Manager of the Entity in the last three years, turn over all:
 - a. Copies of all personal and business federal income tax returns filed by or prepared for defendant for the current year and for the last three years prior to the current year, with all schedules, attachments, W-2 forms, 1099 forms and all similar federal income summary forms for the same years;
 - b. Statements, canceled checks and deposit slips for all checking accounts, savings accounts, merchant service agreements, credit union accounts or other depository accounts, held either separately or jointly, for the current calendar year and for the last three years prior to the current calendar year for all accounts in which defendant's name is on the printed checks, in defendant has an interest or on which defendant has signatory authority;
 - c. All checks, cash, securities (stocks and bonds), promissory notes, deeds, deeds of trust, documents of title, contracts, accounts receivable, escrow agreements, retainage agreements, records and all documents that identify all property in which defendant has an interest and that is collateral or security for any obligation or contingent obligation of defendant, with all documents indicating any interest of the defendant in rental agreements, royalty agreements, licenses, bailment agreements, filings under the Uniform Commercial Code, security agreements, assignments, all filed or recorded liens, lis pendens, lawsuits, recorded mechanic's and materialman's lien affidavits, judgments, abstracts, partnership agreements, employment agreements, and all documents indicating each defendant's present and prospective heirship, beneficial interest in trusts, beneficial interest in insurance policies and insurance coverage and right to any insurance policy's cash surrender value or ownership in which defendant or defendant's spouse has any interest;
 - d. Copy of all statements and correspondence from and to the Electric Reliability Council of Texas, Inc. ("ERCOT"), for 2019 and 2018;
 - e. A copy of defendant's driver's license, social security card, and other items used to identify the witness, like an identification card issued by the Texas Department of Public Service or Department of Public Safety,

- corporate franchise certificate, or other licensing authority (ex: city health department);
- f. Copies of all financial statements prepared on defendant's behalf, including statements presented to financial institutions or other parties to guarantee, secure or attempt to secure a loan or financial assistance;
 - g. All booklets, annual statements and other documents evidencing the nature and extent of defendant's rights under any stock option plan, retirement plan, pension or profit sharing plan, employee stock ownership plan, company savings plan, thrift fund matching plan and all other similar plans prepared or received during the last three years;
 - h. The Contact Information of everyone knowing the status of assets and income in which defendant has an interest, whether being community or separate property, defendant's liabilities or the location and value of defendant's assets, including banks, savings and loan associations, mortgagees, merchants, credit providers, brokers, credit unions, financial institutions, security dealers, people and organizations dealing with mineral interests who have received information from defendant regarding defendant's assets, income, liabilities, employers, employees, partners, co-shareholders and members of corporations and LLC's, bookkeepers and CPA's, agents, ex-spouses, girl friends, boy –friends (current or past), family members, advisors, and attorneys;
 - i. All records that would indicate the cost basis of defendant's assets;
 - j. The most recent statements, deposit confirmation slips, and documents evidencing the balance, term and interest rates for money and assets in which defendant has any interest, whether separately or jointly, invested by or for defendant in any cash management funds, certificates of deposit, money market funds, treasury bills, bonds, debentures or any other type investment and acquisition paying or promising to pay a return on defendant's monies invested during the past three years;
 - k. All certificates of stock and brokerage house statements evidencing ownership and the purchase, sale, assignment or transfer of stocks, bonds, debentures or other securities (whether in privately held or publicly traded companies or institutions) owned by defendant or in which defendant has an interest;
 - l. Documents and records showing all business holdings, partnerships (general, limited or otherwise), sole proprietorships, trusts, corporations, joint ventures and any other business organizations in which defendant is a manager, shareholder or defendant has an interest;
 - m. Assumed name certificates under which defendant has done or is doing business;
 - n. Insurance policies, active or terminated, including life, health, auto, disability, homeowners, or personalty, of defendant is the owner, beneficiary, insured, heir to the proceeds, beneficiary of an existing or identified trust funded by insurance proceeds. This includes policies sought, but not obtained;

- o. All time and billing records, beginning ninety days before this order was signed, for attorneys who have represented a defendant or entities that a defendant owns, manages, or controls;
- p. All deeds, deeds of trust, land installment contracts, contracts for deeds, syndications, real estate investment trusts, partnership agreements, easements, rights of way, leases, rental agreements, documents involving mineral interests, mortgages, notes and closing statements relating to all real property in defendant has had an interest;
- q. The leases for, and addresses for all storage facilities, or places where defendant's assets are stored, including the contact information for the facility;
- r. Certificates of title, current licenses, receipts, bills of sale and loan documents for all motor vehicles and farm equipment, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, boats, trailers, airplanes and other motorized vehicles and equipment owned by defendant or in defendant has and had any interest;
- s. For every trust of which defendant is a trustee, joint trustee, beneficiary, settlor or trustor that conveyed, transferred, assigned, created any options to purchase, or disposed of any interest in real property or personal property, turnover documents evidencing the manner of disposition and the consideration. Documents showing all evaluations of defendant's interest, share of principal and income, and showing the principal and income allocated to defendant;
- t. All documents and records of safe deposit boxes maintained by defendant (including the spouse) or to which defendant (including the spouse) has had access, or has a claim, right or interest in, including all lists of all contents in the last three years. Identify the location of all the safe deposit boxes, the contents, and deliver the keys to the Receiver;
- u. Documents constituting or describing defendant's accounts receivable, for the past three years, including documents identifying the accounts receivable of the ongoing businesses that defendant owns or has had an interest, and copies of all collected, offset, credited, uncollected, discounted, assigned, pledged and exchanged accounts receivable;
- v. Appraisals for assets owned in the past three years;
- w. All documents, notes, bills, statements and invoices evidencing all current indebtedness payable by defendant or paid off by defendant, and all assignments of promissory notes made by defendant;
- x. A current inventory and all past inventories, accounts receivable of all ongoing businesses that defendant owns and had an interest and copies of all collected, offset, credited, uncollected discounted, assigned, pledged and exchanged accounts receivable of all businesses owned by defendant and in defendant has and had an interest;
- y. Lease agreements for personal and real property, whether as lessee, lessor, sublessee, sublessor, assignee or assignor, including mineral interest leases;

- z. All lease agreements for personal or real property executed or signed by defendant, whether as lessee, lessor, sublessee, sublessor, assignee or assignor, including any mineral interest leases or places where defendant resides or works;
 - aa. Records of all travelers checks, cashier's checks, money orders, draft and draws purchased or cashed;
 - bb. All deeds, deeds of trust, land installment contracts, contracts for deeds, syndications, real estate investment trusts, partnership agreements, easements, rights of way, leases, rental agreements, documents involving mineral interests, mortgages, notes and closing statements relating to all real property in any defendant has or in which defendant (including the spouse) had an interest during the last three years;
 - cc. All certificates of title, firearms, deer stands, atv's, boats, trailers, and motors, documentation regarding hunting or fishing leases or rights or the rights to time share units or the use of property, tickets to events, like ballet or sporting events, proof of spa or club memberships, current licenses, receipts, bills of sale and loan documents for all motor vehicles and farm equipment, including automobiles, trucks, motorcycles, recreational vehicles, boats, trailers, airplanes and other motorized vehicles and equipment owned by defendant (including spouse) or in defendant (including spouse) has and had any interest;
 - dd. All contracts in which defendant is a party or has or had a beneficial interest, including earnest money contracts, construction contracts and sales agreements for which defendant is due a commission or other remuneration for the last three years. If defendant is under the terms of any written employment contract or agreement or is due any remuneration under any past contract or agreement, furnish a copy of the contract or agreement;
 - ee. All documents identifying or explaining every gift, bailment, loan, gratuitous holding, assignment, sale, hypothecation, discounted transfer, transfer into lock box payment, or transfer of defendant's property;
 - ff. All employment records or pay records to indicate every business for which defendant was employed, provided services, was an independent contractor, general contractor, superintendent, agent or subcontractor during the last three years;
 - gg. A listing of all air miles and rewards programs, with the last year's statements.
7. Regarding entities in which a defendant has an interest, turnover:
- a. Articles of Incorporation.
 - b. Bylaws and all amendments.
 - c. Shareholders Agreement and amendments.
 - d. A specimen of the corporation's Share Holder Certificate including stock transfer restrictions noted on the face of the certificate or referred to thereon.

- e. All records of the original issuance of shares issued by the corporation and a record of each transfer of those shares presented to the corporation for registration of transfer.
 - f. The names and current addresses of all past and current shareholders of the corporation and the number and class or series of shares issued by the corporation held by each.
 - g. A copy of the current share transfer ledger of the corporation showing the certificate number, date of issuance, shareholder name and number of shares represented to be held by the shareholders.
 - h. Any financial statements of the corporation prepared for or issued by the corporation in the previous two years.
 - i. The books and records of accounts of the corporation for the last fiscal year.
 - j. The corporation's annual statements for its last fiscal year showing in reasonable detail its assets and liabilities and the results of its operations and the most recent interim statements that have been filed in a public record or otherwise published.
 - k. The minutes of the proceedings of the owners or members or governing authority of the corporation and committees of the owners or members or governing authority of the corporation.
 - l. The corporation's federal, state, and local information or income tax returns and franchise tax returns for each of the corporation's six most recent tax years.
8. Provide all of the following documents for any limited liability company ("Company") in which defendant has an interest.
- a. The Articles of Organization.
 - b. The Operating Agreement or Company Agreement and all amendments and modifications.
 - c. The Regulations and all amendments and restatements.
 - d. The Company's books and records of accounts for the last three years.
 - e. The Company's minutes of the proceedings of the owners or members or governing authority of the Company and committees of the owners or members or governing authority of the Company.
 - f. The current list of each member's name, mailing address, percentage or other interest in the Company owned by each member, and if one or more classes or groups are established in or under the articles of organization or regulations, the names of the members who are members of each specified class or group.

- g. Copies of the federal, state and local information or income tax returns and franchise tax returns for each of the Company's six most recent tax years.
 - h. Copies of any document that creates, in the manner provided by the articles of organization or regulations, classes or groups of members.
 - i. Unless contained in the Articles of Organization or regulation, a written statement of:
 - (1) the amount of a cash contribution and a description and statement of the agreed value of any other contribution made or agreed to be made by each member;
 - (2) the dates any additional contributions are to be made by a member;
 - (3) any event the occurrence of which requires a member to make additional contributions;
 - (4) any event the occurrence of which requires the winding up of the Company; and
 - (5) the date each member became a member of the Company.
 - j. A specimen of the Company's Member Unit or Share Certificate including any transfer restrictions noted on the face of the certificate or referred to thereon.
 - k. The current unit or share transfer ledger of the Company showing the certificate number, date of issuance, unit holder or shareholder name and number of shares represented to be held by any owner of the Company.
 - l. The income and expense statement for the Company for the past three years if they are not contemplated under No. 4 above.
 - m. Any financial statements of the Company prepared for or issued by the Company in the previous two years.
9. Provide all documents for any limited partnership in which defendant has an interest:
- a. A current list that states:
 - (1) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;
 - (2) the last known street address of the business or residence of each general partner;
 - (3) the percentage or other interest in the partnership owned by each partner; and
 - (4) if one or more classes or groups are established under the partnership agreement, the names of the partners who are members of each specified class or group.

- b. A copy of:
 - (1) the limited partnership's federal, state, and local information or income tax returns and franchise tax returns for each of the partnership's six most recent tax years;
 - (2) the partnership agreement and certificate of formation; and
 - (3) all amendments or restatements.
- c. Copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners.
- d. An executed copy of any powers of attorney under which the partnership agreement, certificate of formation, and all amendments or restatements to the agreement and certificate have been executed.
- e. Unless contained in the written partnership agreement, a written statement of:
 - (1) the cash contribution and a description and statement of the agreed value of any other contribution made by each partner;
 - (2) the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make as an additional contribution;
 - (3) the date on which additional contributions are to be made or the date of events requiring additional contributions to be made;
 - (4) events requiring the limited partnership to be dissolved and its affairs wound up; and
 - (5) the date on which each partner in the limited partnership became a partner.
- f. The records of the accounts of the limited partnership.
- g. The income and expense statement for the limited partnership for the past three years if they are not contemplated under No. 6 above.
- h. Any financial statements of the limited partnership prepared for or issued by the limited partnership in the previous two years.

End of Document

