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PATRICK A.P. DE MAN, *et al.*,

Demandantes,

v.

ADAM C. SINN, *et al.*,

Demandados.

CIVIL NÚM.: D AC2016-2144 (702)

SOBRE:

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

SEGUNDA MOCIÓN SUPLEMENTANDO OPOSICIÓN A SOLICITUD DE PARALIZACIÓN DE LOS PROCEDIMIENTOS, Y REITERANDO SOLICITUD DE ORDEN DIRIGIDA A LOS DEMANDADOS

AL HONORABLE TRIBUNAL:

COMPARECEN los Demandantes, Patrick A.P. de Man (“De Man”), Mika de Man (t/c/c Mika Kawajiri o Mika Kawajiri-de Man) (“Sra. De Man”) y la Sociedad Legal de Bienes Gananciales De-Man-Kawajiri, representados por los abogados que suscriben, y muy respetuosamente exponen y solicitan:

1. La *Demanda* se presentó el 16 de diciembre de 2016, y los Demandados fueron debidamente emplazados **hace casi cinco (5) meses**, el **3 de enero de 2017**. Increíblemente, hoy se cumplen **ciento catorce (114) días** desde que los Demandados fueron emplazados y todavía **no** han contestado o de otra forma alegado contra la *Demanda*.

2. Sin la pronta intervención del Honorable Tribunal sobre los escritos pendientes en este caso, se continuará materializando y perpetuando el plan orquestado por los Demandados de dilatar indebidamente los procedimientos al extremo posible y evitar a toda costa enfrentar las alegaciones de la *Demanda*. Este Tribunal **no** debe permitir que el tiempo siga transcurriendo sin que los Demandados contesten la *Demanda* y sin que se calendaricen los procedimientos.

3. En síntesis, el presente caso está prácticamente detenido debido a una *Solicitud de Paralización de los Procedimientos* (“Solicitud de Paralización”), presentada por los Demandados el 8 de marzo de 2017. Los Demandados plantean incorrectamente que existe una demanda pendiente ante la Corte de Texas y/o que los aquí codemandados Aspire Commodities LP (“Aspire LP”) y Raiden Commodities LP (“Raiden LP”) presentaron una Notificación de Apelación “Acelerada” ante la Corte de Apelaciones de Texas. Bajo esos supuestos errados, los

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Demandados solicitan que este Honorable Tribunal “paralice los procedimientos de epígrafe hasta tanto la Corte de Texas resuelva formal y finalmente el asunto jurisdiccional ante sí en el caso que fue radicado por los demandados previo a que la parte demandante radicara el caso de epígrafe”. *Id.*, a la pág. 5. Pero muy conscientes de la improcedencia de su reclamo, solicitan alternativamente que se les conceda un término de “20 días, a partir de la notificación de la determinación de este Honorable Tribunal, para presentar su alegación responsiva”. *Id.*

4. A su vez, el 10 de marzo de 2017, los Demandados presentaron un *Suplemento a Solicitud de Paralización de los Procedimientos* (“Suplemento”) para intentar rectificar ciertas representaciones incorrectas vertidas en la *Solicitud de Paralización*, las cuales se apartaban de lo requerido bajo la Regla 9.1 de Procedimiento Civil, 32 L.P.R.A. Ap. V, R. 9.1.

5. El 15 de marzo de 2017, los Demandantes presentaron una *Oposición a “Solicitud de Paralización de los Procedimientos”, y Solicitud de Orden Dirigida a los Demandados* (“Oposición”). En la misma, argumentaron las múltiples razones por las cuales la *Solicitud de Paralización* debe ser rechazada de plano.¹ En consecuencia, los Demandantes solicitaron que se ordene a los Demandados a contestar la *Demanda* dentro del término de diez (10) días, independientemente de que presenten mociones dispositivas.

6. El 24 de marzo de 2017, los Demandados presentaron una *Réplica a la Oposición de los Demandantes a la Solicitud de Paralización de los Procedimientos* (“Réplica”). En la misma, los Demandados trataron de desligarse de las imputaciones serias esbozadas en la *Oposición*, pero **no** atendieron los múltiples planteamientos meritorios de la *Oposición*.

7. El 7 de abril de 2017, los Demandantes presentaron una *Moción Suplementando Oposición a “Solicitud de Paralización de los Procedimientos”, y Solicitud de Orden Dirigida a los Demandados* (“Moción Suplementando Oposición”). Mediante dicho escrito, se suplementó la *Oposición* y se enfatizó que la Orden dictada y publicada el 7 de marzo de 2017 por la Corte de Texas era una determinación **final** y, por tanto, la apelación en Texas **no** cualificaba ni podía ser caracterizada como un “proceso apelativo acelerado”, según erróneamente sostienen los aquí

¹ En la *Oposición* se demostró, entre otras cosas, que (i) este Tribunal **no** debe tener deferencia alguna sobre un caso de otra jurisdicción estatal que fue **desestimado** por falta de jurisdicción sobre la persona de uno de los codemandantes del caso de epígrafe; (ii) los Demandados **no** han expuesto argumentos jurídicos ni han citado fuente de derecho alguna que provea para la paralización de los procedimientos en este caso; (iii) aún si este Tribunal decidiese entender en las representaciones acomodaticias de los Demandados, deben rechazarse aquellas que pretenden sostener que la apelación pretendida ante las Cortes de Texas cualifica para un proceso apelativo “acelerado”; (iv) el caso de epígrafe es sustancialmente distinto al que se presentó ante la Corte de Texas, puesto que el presente caso incluye múltiples partes (demandantes y demandados) y causas de acción que **no** estaban pendientes ante la Corte de Texas; y (v) resulta improcedente el remedio alternativo solicitado por los Demandados.

Demandados en el párrafo 4 del *Suplemento*. En apoyo de lo anterior, se acompañó la determinación de la Corte de Apelaciones de Texas, en la cual expresó claramente que la apelación se conducirá por el cauce ordinario, y no el “proceso apelativo acelerado” implicado por los Demandados en este caso. Por lo tanto, los Demandantes reiteraron que debían descartarse de plano las representaciones incorrectas de los Demandados sobre la caracterización del proceso apelativo.

8. Mediante el presente escrito, los Demandantes suplementan su *Oposición* con cierto pronunciamiento reciente de la Corte de Texas que solidifica la postura de los Demandantes en cuanto a que no existe razón alguna por la cual este Honorable Tribunal deba tener deferencia sobre el caso que la Corte de Texas desestimó por falta de jurisdicción sobre la persona.

9. Específicamente, el 20 de abril de 2017, estando desestimado el caso, la Corte de Texas celebró un *Status Conference* por vía telefónica y solicitó que las partes sometieran proyectos de determinaciones de hechos y conclusiones de derecho. Al día siguiente, el 21 de abril, el aquí codemandante señor De Man presentó un escrito titulado *Defendant’s Proposed Findings of Fact and Conclusions of Law*, el cual se acompaña y se hace formar parte de la presente moción como **Anejo A**. Ese mismo día, los aquí codemandados Aspire LP y Raiden LP presentaron un escrito titulado *Plaintiffs’ Proposed Alternative and Supplemental Findings of Fact*, el cual se acompaña y se hace formar parte de la presente moción como **Anejo B**.

10. Así las cosas, el 24 de abril de 2017, la Corte de Texas adoptó en su totalidad el escrito sometido por el señor De Man, al punto que solamente eliminó (tachando con una línea) las palabras “Defendant’s Proposed” en el título del escrito sometido y dictó *Findings of Fact and Conclusions of Law*, el cual se acompaña y se hace formar parte de la presente moción como **Anejo C**. De modo que la Corte de Texas coincidió completamente con el escrito propuesto por el señor De Man, y rechazó totalmente el escrito sometido por las aquí codemandadas Aspire LP y Raiden LP. En fin, la Corte de Texas entendió que no había que modificar, alterar o añadir nada a las determinaciones de hechos y conclusiones derecho propuestas por el señor De Man.

11. Lo anterior simple y sencillamente reitera y fundamenta lo resuelto hace más de dos (2) meses por la Corte de Texas, lo cual claramente conocen los Demandados: el caso ante la

Corte de Texas fue desestimado desde el estrado el 17 de febrero de 2017 y luego mediante Orden ratificatoria dictada y publicada el 7 de marzo de 2017.

12. En definitiva, **no** existe razón alguna para que el caso de epígrafe no continúe su curso ordinario. Resulta irrisoria la pretensión de los Demandados de tener al Honorable Tribunal y a los Demandantes cruzados de brazos esperando perennemente por un pleito en Texas que fue indebidamente radicado y propiamente desestimado por falta de jurisdicción sobre la persona del único demandado en ese caso. Por lo tanto, procede denegar la *Solicitud de Paralización* y ordenar a los Demandados a que contesten la *Demanda* en un término de diez (10) días, independientemente de que se propongan presentar alguna moción dispositiva.

POR TODO LO CUAL, los Demandantes solicitan muy respetuosamente que este Honorable Tribunal declare **No Ha Lugar** la *Solicitud de Paralización de los Procedimientos* presentada por los Demandados, y ordene a los Demandados a contestar la *Demanda* en un término de diez (10) días, independientemente de que presenten alguna moción dispositiva dentro de dicho término.

CERTIFICAMOS: Que en esta misma fecha hemos notificado, por correo ordinario y electrónico, copia fiel y exacta del presente escrito al **Lcdo. Alfredo F. Ramírez Macdonald** y la **Lcda. Ana Margarita Rodríguez Rivera**, O'Neill & Borges LLC, Ave. Muñoz Rivera 250, Suite 800, San Juan, Puerto Rico 00918-1813; alfredo.ramirez@oneillborges.com, ana.rodriguez@oneillborges.com. Se certifica, además, que conforme a la Regla 67.5 de Procedimiento Civil, 32 L.P.R.A. Ap. V, R. 67.5, hemos notificado copia de cortesía del presente escrito a la **Hon. Enid Rodríguez Molina**, mediante entrega a la mano por mensajero.

RESPECTUOSAMENTE SOMETIDA.

En San Juan, Puerto Rico, hoy 28 de abril de 2017.

Ferraiuoli LLC

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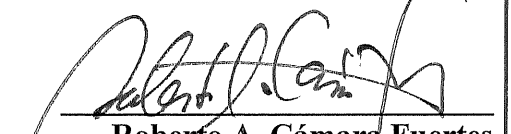
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CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, &
ASPIRE COMMODITIES, LP,

Plaintiffs,

vs.

PATRICK DE MAN,

Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

DEFENDANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

FINDINGS OF FACT

1. Patrick de Man (“De Man”) lives in Dorado, Puerto Rico.¹ At all times material to this case he was a citizen of the Netherlands.²
2. After the Lehman Brothers bankruptcy in September 2008, De Man moved to New York City, New York, and he lived there until 2010.³
3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.⁴
4. From 2010 to 2013, De Man lived in Stamford, Connecticut.⁵
5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.⁶

¹ De Man Declaration ¶ 1.

² First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 8.

³ De Man Declaration ¶ 13.

⁴ *Id.*

⁵ De Man Declaration ¶¶ 13, 18.

⁶ De Man Declaration ¶ 18.

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

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

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

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

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

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

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

⁷ De Man Declaration ¶ 14.

⁸ *Id.*

⁹ *Id.*

¹⁰ De Man Declaration ¶ 15.

¹¹ *Id.*

¹² De Man Declaration ¶ 17 and Exhibits 20–25.

¹³ De Man Declaration at Exhibits 2, 3, and 9.

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

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

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

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

CONCLUSIONS OF LAW

I. Specific Jurisdiction

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

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

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

¹⁴ De Man Declaration ¶ 16.

¹⁵ De Man Declaration ¶ 6 and Exhibits 10 and 11.

¹⁶ De Man Declaration at Exhibits 2, 9, and 12.

¹⁷ De Man Declaration ¶ 7 at Exhibits 3 and 12.

¹⁸ De Man Declaration ¶ 18.

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

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

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

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

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

II. General Jurisdiction

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

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

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

Signed this the _____ day of _____, 2017

JUDGE PRESIDING

²⁰ De Man Declaration ¶ 18.

Respectfully submitted,

REYNOLDS FRIZZELL LLP

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CERTIFICATE OF SERVICE

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

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/s/ Chris Reynolds
Chris Reynolds

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, &
ASPIRE COMMODITIES, LP,

Plaintiffs,

vs.

PATRICK DE MAN,

Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

**PLAINTIFFS' PROPOSED ALTERNATIVE
AND SUPPLEMENTAL FINDINGS OF FACT**

As directed by the Court at the status conference conducted telephonically on April 20, 2017, and having reviewed the Defendant's Proposed Findings of Facts and Conclusions of Law, the Plaintiffs submit the following proposed alternative and supplemental findings of fact. Plaintiffs reserve all objections to the Defendant's Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Patrick de Man ("De Man") lives in Dorado, Puerto Rico.¹ At all times material to this case he was a citizen of the Netherlands.²
2. During 2008, the Defendant worked at Lehman Brothers in Houston under the supervision of Adam Sinn ("Sinn").³ After the Lehman Brothers bankruptcy in September 2008, De Man moved from Houston, Texas to New York City, New York, and he lived there until 2010.⁴

¹ De Man Declaration ¶ 1.

² First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 8.

³ First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 4.

⁴ De Man Declaration ¶ 13; First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 4.

3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.⁵ Sinn helped him obtain that job and encouraged him to learn a different trading strategy that he might one day use while working with Sinn.⁶

4. From 2010 to 2013, De Man lived in Stamford, Connecticut.⁷

5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.⁸

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

7. In 2009, Adam Sinn (“Sinn”) approached De Man about the possibility of working with one of the trading companies affiliated with Sinn⁹ located in Houston, Texas.¹⁰

8. During the entire time that Sinn was having those discussions with De Man, De Man lived in New York or Connecticut, and De Man never set foot in Texas.¹¹

9. In 2009 and 2010, Sinn met with De Man in New York on at least five occasions for personal reasons and on these personal trips, discussed the possibility of a working relationship.¹² Sinn and De Man primarily discussed the possibility of a working relationship, and the structure and terms of that relationship, by email or telephone between Sinn in Texas and De Man in New York/Connecticut.¹³

10. At the time of those meetings, De Man felt that he had a job at a well-established and reputable institution, Sempra, and the thought of leaving that job to work with a Sinn-

⁵ *Id.*

⁶ First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 4.

⁷ De Man Declaration ¶¶ 13, 18.

⁸ De Man Declaration ¶ 18.

⁹ De Man Declaration ¶ 14.

¹⁰ First Sinn Declaration ¶ 4.

¹¹ *Id.*

¹² *Id.*; Second Sinn Declaration ¶ 4.

¹³ First Sinn Declaration ¶ 8; Second Sinn Declaration ¶ 4.

affiliated company seemed risky to him.¹⁴ De Man's wife had recently given birth to his son, and Sinn sought to persuade De Man to take the risk of working with him.¹⁵

11. But in late 2010 Sempra's financial situation worsened and De Man contacted Sinn to accelerate their discussions about working together.¹⁶ Sempra was soon sold to Royal Bank of Scotland, which closed the Samford, CT office less than a year later, but after De Man had left the company to work with Sinn.¹⁷

12. In April 2011, De Man was hired by Plaintiff Aspire Commodities LP ("Aspire") to work as a commodities trader.¹⁸ Aspire was a Texas limited partnership and its office and personnel were located in Houston.¹⁹ De Man was physically located in Connecticut, as evidenced by numerous employment documents from the State of Connecticut.²⁰ De Man primarily traded power on the Texas power trading market run by ERCOT, and his job responsibilities were all directed toward Aspire's operations in Texas.²¹

13. In 2013, De Man moved to Puerto Rico, and he was subsequently described as a partner on Schedule K-1 tax forms (IRS Form 1065) for Plaintiffs Raiden Commodities LP ("Raiden") and Aspire Commodities LP.²²

14. All of the trading in which De Man engaged in on behalf of Raiden and Aspire

¹⁴ De Man Declaration ¶ 15.

¹⁵ *Id.*

¹⁶ Second Sinn Declaration ¶¶ 6-7 and Exhibit C-1.

¹⁷ *Id.* ¶ 7.

¹⁸ First Sinn Declaration ¶ 14.

¹⁹ First Sinn Declaration ¶¶ 4, 10, 15.

²⁰ De Man Declaration ¶ 17 and Exhibits 20-25.

²¹ Second Sinn Declaration ¶ 7; First Sinn Declaration ¶¶ 5, 14-15.

²² De Man Declaration at Exhibits 2, 3, and 9.

was executed from outside of Texas.²³ But the majority of that trading was conducted on the Texas power market.²⁴ And De Man worked out of the Houston office on several occasions.²⁵

15. While Raiden's principle place of business was Houston, TX from its inception in 2011 until Sinn moved his personal residence to Puerto Rico in 2013,²⁶ Raiden was originally incorporated in the Virgin Islands, and it was incorporated there at all times prior to and including the date on which this lawsuit was filed.²⁷

16. The Schedule K-1 tax forms provided by Raiden to Sinn and De Man show that Raiden was a Virgin Islands partnership at all times prior to and including the date on which this lawsuit was filed and was located in Puerto Rico since 2013.²⁸

17. The Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Aspire is located in Puerto Rico,²⁹ though Aspire is and has always been a Texas limited partnership and had its principle place of business in Houston, TX from its inception until Sinn moved his personal residence to Puerto Rico in 2013.³⁰

18. Even after the move to Puerto Rico, many of Aspire's and Raiden's administrative functions, such as payroll, legal, and human resources, were and still are

²³ De Man Declaration ¶ 16.

²⁴ First Sinn Declaration ¶ 5; Second Sinn Declaration ¶ 7.

²⁵ Second Sinn Declaration ¶ 11.

²⁶ First Sinn Declaration ¶¶ 4, 13.

²⁷ De Man Declaration ¶ 6 and Exhibits 10 and 11.

²⁸ De Man Declaration at Exhibits 2, 9, and 12.

²⁹ De Man Declaration ¶ 7 at Exhibits 3 and 12.

³⁰ First Sinn Declaration ¶ 4. Aspire was initially formed as Aspire Capital Management LLC in 2009 and subsequently reformed as Aspire Commodities, LP, one of the Plaintiffs in this case. *Id.*

conducted from Houston.³¹

Signed this the _____ day of _____, 2017

JUDGE PRESIDING

³¹ First Sinn Declaration ¶ 16.

Respectfully submitted,

KING & SPALDING LLP

By: /s/ Kevin D. Mohr

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

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on this 21st day of April, 2017 a true and correct copy of the foregoing has been served upon counsel of record of all parties to the trial court proceeding using the Court's electronic case filing system, addressed as follows:

Chris Reynolds
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/s/ Kevin D. Mohr
Kevin D. Mohr

CAUSE NO. 2016-59771

Pgs-7

FFCLX

RAIDEN COMMODITIES, LP, &
ASPIRE COMMODITIES, LP,

Plaintiffs,

vs.

PATRICK DE MAN,

Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

FINDINGS OF FACT

1. Patrick de Man ("De Man") lives in Dorado, Puerto Rico.¹ At all times material to this case he was a citizen of the Netherlands.²
2. After the Lehman Brothers bankruptcy in September 2008, De Man moved to New York City, New York, and he lived there until 2010.³
3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.⁴
4. From 2010 to 2013, De Man lived in Stamford, Connecticut.⁵
5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.⁶

¹ De Man Declaration ¶ 1.

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⁴ *Id.*

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

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

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

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

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

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

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

⁷ De Man Declaration ¶ 14.

⁸ *Id.*

⁹ *Id.*

¹⁰ De Man Declaration ¶ 15.

¹¹ *Id.*

¹² De Man Declaration ¶ 17 and Exhibits 20–25.

¹³ De Man Declaration at Exhibits 2, 3, and 9.

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

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

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

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

CONCLUSIONS OF LAW

I. Specific Jurisdiction

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

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

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

¹⁴ De Man Declaration ¶ 16.

¹⁵ De Man Declaration ¶ 6 and Exhibits 10 and 11.

¹⁶ De Man Declaration at Exhibits 2, 9, and 12.

¹⁷ De Man Declaration ¶ 7 at Exhibits 3 and 12.

¹⁸ De Man Declaration ¶ 18.

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

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

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

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

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


II. General Jurisdiction

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

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

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

Signed this the _____ day of _____, 2017

Signed: 
4/24/2017

JUDGE PRESIDING

²⁰ De Man Declaration ¶ 18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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