**NO. 01-17-00181-CV**

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**IN THE FIRST COURT OF APPEALS**
**OF TEXAS AT HOUSTON**

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**RAIDEN COMMODITIES, LP AND ASPIRE COMMODITIES, LP,**

**Appellants,**

**V.**

**PATRICK DE MAN,**

**Appellee**

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**APPEAL FROM CAUSE NO. 2016-59771 IN THE 125TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS HONORABLE KYLE CARTER, PRESIDING JUDGE**

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# APPELLANTS' REPLY BRIEF

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## CITATIONS TO THE APPELLATE RECORD

In this brief, Appellants will cite to the appellate record as follows:

- "CR" indicates the clerk's record filed on March 27, 2017.
- "SCR" indicates the First Supplemental Clerk's Record filed on July 31, 2017.
- "App. Tab __" indicates a part of the record reproduced in the Appendix to the Appellants' Brief filed May 30, 2017.

## SUMMARY OF THE ARGUMENT

A decision holding that Texas courts lack personal jurisdiction to adjudicate the validity of a claim of partnership in a Texas limited partnership that had its principal place of business in Texas, and a foreign partnership that also had its principal place of business in Texas, which is alleged to have arisen out of "sweat equity" work delivered to those partnerships in Texas, would be a shocking development in this state's jurisprudence on personal jurisdiction. Yet, that is exactly what Mr. De Man urges this Court to hold.

Mr. De Man attempts to distract the Court from the reality of his position by focusing on the fact that the partnerships moved their principal place of business out of Texas after the seminal events that he claims gave rise to his partnership interest. At most, however, that fact may establish that another court also could exercise personal jurisdiction over Mr. De Man to adjudicate the claim. There is no rule, however, that only one court can have personal jurisdiction over a given claim. This case arises squarely out of Mr. De Man's purposeful contacts with Texas, and the fact that subsequent events also connect the case to Puerto Rico can never change that fact.

Moreover, Mr. De Man does not present that question honestly. Rather, he attempts to mislead the Court with brazenly false statements about what events he

claims gave rise to his partnership interest, and the location of the partnerships at that time. Such tactics should not withstand this Court's careful scrutiny.

## ARGUMENT AND AUTHORITIES

### I. Mr. De Man Misstates The Relevance Of The District Court's Findings Of Fact And Conclusions Of Law.

In his statement of facts, Mr. De Man argues incorrectly that the Appellants ask this Court to "disregard the trial court's fact-finding (and the facts that it refused to find) in considering this appeal."[1] In truth, Mr. De Man misstates the procedural posture, relevance, and applicable standard regarding this Court's review of the district court's findings of fact.

As Appellants' stated in their opening brief, the material facts are largely undisputed, and the central question at issue in this appeal is whether the district court correctly applied the law to the facts.[2] This Court reviews the district court's application of the law to the facts *de novo. BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

Moreover, it is Mr. De Man, not Appellants, who asks this Court to consider facts not found by the district court. Appellants discuss those supposed facts at length below, but one example clearly illustrates this point. Mr. De Man's core argument rests on the assertion that the Appellants *always* had their principal place of business in Puerto Rico, but the district court made no such finding. At most, the

[1] *See* Appellee's Br. at 2.
[2] Appellants' Br. at 16.

district court found that the Appellants had their principal place of business in Puerto Rico in 2013 through 2015. Mr. De Man proposed no finding, and the district made no finding, regarding where the Appellants had their principal place of business in 2010 through 2012, when Mr. De Man commenced his relationship with them and performed much of the work that he claims was a "sweat equity" capital contribution that entitles him to a partnership interest.

Mr. De Man has not explicitly requested that this Court imply the factual findings that are not included in the district court's findings of fact and are essential to his argument. Moreover, express findings in a district court's findings of fact "cannot be extended by implication to cover further independent issuable facts." *Jones v. Smith*, 291 S.W.3d 549, 554 (Tex. App.—Houston [14th Dist.] 2009, no pet.). In any event, this Court can only imply findings that are supported by factually and legally sufficient evidence. *See* TEX. R. CIV. P. 299; *Morales v. Rice*, 388 S.W.3d 376, 381-82 (Tex. App.—El Paso 2012, no pet.) (holding that implied findings of fact are subject to same legal and factual sufficiency review as express findings of fact). Thus, even if it were possible for this Court to imply the findings that Mr. De Man asserts, the Court would have to consider the entire record to determine whether such implied findings withstand sufficiency review. They do not.

Finally, Mr. De Man is wrong that the district court's failure to adopt the findings of fact proposed by the Appellants renders them conclusive. "No findings or conclusions shall be deemed or presumed by the failure of the court to make any additional findings or conclusions." TEX. R. CIV. P. 298. In any event, the district court's judgment must be reversed because its findings of fact do not support its conclusions of law, and the additional facts that Mr. De Man asserts to support that judgment cannot be implied and are unsupported by sufficient evidence.

## II. The Court Has Personal Jurisdiction Over Mr. De Man Regarding Appellants' Declaratory Judgment Claim.

Mr. De Man's argument that he is not subject to jurisdiction regarding the declaratory judgment claim rests on several blatant falsehoods, most significantly regarding where the Appellants were based at the relevant times and the connection between his own contacts with Texas and the declaratory judgment claim. These are the very same falsehoods that led the district court astray, as Appellants pointed out in their opening brief.[3] In his brief, Mr. De Man repeats his calculated mischaracterization of the facts, hoping to lead this Court astray as well.

[3] Appellants' Br. at 20-21.

### A. Appellants Were Based in Texas Prior to Mid-2013.

In his brief, Mr. DeMan asserts that the Appellants "are not 'Texas-Based Entities.'"[4] This carefully-worded assertion continues Mr. De Man's misleading focus on the present, in a blatant attempt to ignore the indisputable fact that Appellants were Texas-based entities at the time relevant to this claim (2010-2013).

As Appellants explained in their opening brief, Aspire has always been a Texas limited partnership (to this day), and had its principal place of business in Texas from its formation until its principal (Mr. Sinn) moved to Puerto Rico in 2013.[5] Likewise, Appellants explained in their opening brief that Raiden was a U.S. Virgin Islands limited partnership that had its principal place of business in Texas from its formation until Mr. Sinn moved to Puerto Rico in 2013.[6] Appellants called these facts undisputed, and cited extensive record evidence supporting them.[7]

In his brief, Mr. De Man cites no evidence to contradict these facts, because there is none. Rather, Mr. De Man points exclusively to the district court's findings of fact that "Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Raiden is located in Puerto Rico," and a similar finding that "Schedule K-1 tax

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[4] Appellee's Br. at 13.
[5] Appellants' Br. at 1, 7, 20.
[6] *Id.*
[7] *Id.*, citing CR 62 ¶ 4, CR 63 ¶ 8, CR 64 ¶ 13, CR 65 ¶¶ 14-16, App. Tab 2; CR 77, App. Tab 4; CR 152, App. Tab 5; CR 395 ¶ 19, App. Tab 13.

forms provided by Raiden to Sinn and De Man show that Raiden was located in the Virgin Islands and Puerto Rico."[8] These narrow and vague findings of fact do not say what Mr. De Man claims they say, and the meaning that Mr. De Man wants to attribute to them is not supported by any evidence.

First, the district court made no finding at all regarding where Aspire was organized.[9] To the extent that Mr. De Man seeks to imply a finding that Aspire has ever been organized anywhere other than Texas, there is no evidence whatsoever to support such a finding. The undisputed evidence in the record shows that Aspire has always been a Texas limited partnership.[10]

Second, the district court's findings that Aspire and Raiden are "located in" the Virgin Islands and Puerto Rico are plainly limited in time to 2013-2015. The sole evidence cited for those findings are Schedule K-1 tax forms from 2013, 2014, and 2015.[11] To the extent that Mr. De Man seeks to extend this finding by implication to the time period before 2013, there is no evidence whatsoever to support such a finding. The undisputed evidence shows that Appellants had their

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[8] Appellee's Br. at 13.
[9] *See* SCR 3-7.
[10] CR 62 ¶ 4, CR 65 ¶¶ 14-16, App. Tab 2; CR 151, App. Tab 5; CR 395 ¶ 19, App. Tab 13.
[11] SCR 5 ¶¶ 15-16, citing De Man Decl. Exs. 2, 3, 9. 12.

principal place of business in Texas, and had no connection to Puerto Rico, until 2013.[12]

The fact that Appellants moved their principal place of business during the parties' relationship in no way lessens Mr. De Man's contacts with this forum. In the one case Appellants found addressing this issue, the fact that a plaintiff moved its residence during the course of the business relationship with the defendant did not deprive the forum state of jurisdiction:

> Additionally, the fact that the business relationships between plaintiff and defendants started outside of Pennsylvania does not prevent the exercise of jurisdiction. What matters in determining the existence of jurisdiction is whether a defendant creates minimum contacts with a state, regardless of whether those contacts arise at the beginning, middle, or end of a business relationship.

*Comerota v. Vickers*, 170 F. Supp. 2d 484, 488-89 (M.D. Pa. 2001), citing *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 479 (1985). The facts here are even stronger than in *Comerota*, because the defendants in that case began their business relationship with the plaintiff outside the forum state, and only had contacts with the forum state when they voluntarily continued the relationship after the plaintiff unilaterally moved there. Here, Mr. De Man consciously began the business relationship giving rise to this dispute when the Appellants were based in Texas.

[12] CR 62 ¶ 4, CR 64 ¶ 13, CR 65 ¶¶ 14-16, App. Tab 2; CR 152, App. Tab 5; CR 395 ¶ 19, App. Tab 13; CR 643-44 ¶¶ 9-11, App. Tab 16.

The reason Mr. De Man goes to such lengths to obfuscate the fact that the Appellants were based in Texas up to 2013 should be plain: he had extensive, purposeful contacts with those companies while they were based in Texas, and performed services for those companies in Texas, which he claims gave rise to a partnership interest in those companies while they were in Texas. He cannot negate those facts, so he attempts to conflate the location of the companies in 2010-2013 with their principal place of business now. This Court should not countenance such blatant distortion of the facts.

### B. Mr. De Man's Negotiations With Appellants Support Personal Jurisdiction.

Mr. De Man's argument that his negotiations with Appellants leading up to the formation of their business relationship do not support jurisdiction are wrong for three reasons.

First, Mr. De Man's assertion that his negotiations with the Appellants are "not at issue" is another blatant falsehood.[13] Mr. De Man argues in his brief that his claim to a partnership interest is based solely on his alleged capital contributions and "sweat equity" work, which he asserts "took place long after De Man's employment negotiations. As such, De Man's employment negotiations do not form the basis of any claim or defense."[14] In support of this assertion, Mr. De

[13] Appellee's Br. at 16.
[14] *Id.*

Man cites paragraphs 40-44 of his complaint in the Puerto Rico Lawsuit, which indeed describe his alleged sweat equity and capital contributions. Mr. De Man, however, simply ignores paragraphs 31-37 of that complaint, which cites numerous facts from his negotiations with the Appellants leading up to the formation of their relationship in support of his claim to a partnership interest, including (1) "serious" telephone and email conversations in 2010 regarding "the viability of a joint company," (2) the allegation that Mr. Sinn invited Mr. De Man to choose the name of Raiden, and (3) the explicit allegation that Mr. Sinn persuaded Mr. De Man to take the risky step of quitting his existing job in exchange for a promise of equity partnership:

> De Man left Sempra to join Sinn in April 2011. Sinn finally managed to persuade De Man to join him and to take the aforementioned risks, using as his big guns the promise of equity interest in the company that De Man had already named. Thus, De Man, confident and relying on Sinn's promises, accepted the risks in exchange for the expectation of becoming an equity partner and to be materially compensated to the extent that the company was successful or was sold.
>
> Sinn and De Man agreed that Sinn would provide the capital required for the electricity trading business, while De Man would contribute his knowledge, efforts, experience and skills. In addition, they initially agreed that De Man would receive (as his initial compensation) 30% of the profits generated by his own trading in the electricity market. Sinn also promised De Man that he could buy up to a 50% equity interest in Raiden LP.[15]

[15] CR 348-50 ¶¶ 31-37, App. Tab 12.

Mr. De Man cites all of these facts in support of his claim of partnership.[16] Mr. De Man's argument that his claim to a partnership interest is in no way based on his negotiations with Mr. Sinn is obviously wrong, not to mention highly deceptive.

Second, Mr. De Man again attempts to confuse the Court with his suggestion that the relevant negotiations "took place in New York and elsewhere outside of Texas."[17] Mr. De Man cites the district court's findings that five in-person meetings took place at restaurants and hotels in New York between August 2009 and December 2010, implying that those were the only negotiations.[18] The district court, however, made no finding that those were the only negotiations, and any such implied finding is contrary to undisputed evidence. Mr. De Man's own allegations in the Puerto Rico Lawsuit state that the "serious" conversations regarding the nature of the business relationship happened by phone and email.[19]

Third, Mr. De Man misstates the legal significance of these phone and email negotiations. The cases that he cites stand for the unsurprising proposition that long-distance negotiation with someone in Texas is not "by itself" sufficient to establish personal jurisdiction. The court also must look at the substance of the

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[16] CR 358-364 ¶¶ 66, 71, 79, 88, 91, and 95, App. Tab 12 ("incorporating paragraphs 1 to 22 and 25 to 65 of the complaint" in every count).
[17] Appellee's Br. at 14.
[18] *Id.*
[19] CR 63 ¶ 8, App. Tab 2; CR 348 ¶ 32, App. Tab 12.

negotiations and how they relate to the claim at issue. Here, the substance of the negotiations concerned Mr. De Man obtaining either a job with or a partnership interest in Aspire and Raiden, two companies based in Texas doing business in Texas, to deliver services to those companies in Texas. None of the cases cited by Mr. De Man involve such facts.

### C. Mr. De Man Performed Services Directed at Texas, Including the Services That He Claims Were "Sweat Equity" for His Partnership Interest.

Mr. De Man asserts that he performed "no services 'directed at' Texas," and argues that "Plaintiff's contention appears to be that merely trading power commodities over a Texas market gives rise to jurisdiction over claims unrelated to those trades."[20] That is most certainly not the Appellants' contention. Rather, Appellants argued very plainly in their opening brief that Mr. De Man formed an employment relationship with the Appellants, pursuant to which he delivered services to the Appellants in Texas for years, including (but not limited to) his trades on the ERCOT market, *as well as the very services that he claims were "sweat equity" for a partnership interest*.[21] Mr. De Man does not respond to that assertion because he has no response. His entire argument on this point thus attacks a strawman.

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[20] Appellee's Br. at 17.
[21] Appellants' Br. at 26-33.

Moreover, Mr. De Man's argument that his trades on the ERCOT market are irrelevant to the jurisdictional analysis because he was trading on the Appellants' behalf misses the point entirely. He cites three cases which hold that when an agent transacts business in Texas on behalf of a principal, those contacts only establish personal jurisdiction over the principal, not the agent, in a suit by the counterparty to the transaction.[22] Those cases say nothing about whether Texas would have personal jurisdiction over an agent in a suit *between the principal and the agent* arising out of the agent's services for the principal. Thus, Mr. De Man's argument is worse than a red herring. It is precisely because Mr. De Man performed trades on the ERCOT market on behalf of the Appellants that those services are relevant to this Court's personal jurisdiction analysis. *See TexVa, Inc. v. Boone*, 300 S.W.3d 879, 889-90 (Tex. App.—Dallas 2009, pet. denied) (rejecting "fiduciary shield" objection to personal jurisdiction in suit between corporate officers for breach of contract and fiduciary duty).

Finally, Mr. De Man's argument that his partnership claims do not arise out of his ERCOT trades miscomprehends the relevance of that activity. The fact that Mr. De Man traded routinely on the ERCOT market is but one fact among many establishing that the entire relationship that he claims gave rise to a partnership

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[22] Appellee's Br. at 17, *citing Mort Keshin & Co., Inc. v. Houston Chronicle Pub. Co.*, 992 S.W.2d 642, 647 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *Hotel Partners v. Craig*, 993 S.W.2d 116, 121 (Tex. App.—Dallas 1994, pet. denied); *Ross F. Meriwether & Assocs., Inc. v. Aulbach*, 686 S.W.2d 730, 731 (Tex. App.—San Antonio 1985, no writ).

interest was centered on Texas. The market on which Mr. De Man traded daily was in Texas.[23] Mr. De Man's boss, with whom he liaised constantly about those trades, was located in Texas.[24] The other traders to whom Mr. De Man provided analytical support were in Texas.[25] Mr. De Man obtained health insurance for the company's Texas employees from a broker in Texas.[26] Mr. De Man received his salary from a Texas bank account.[27] Mr. De Man worked out of the Houston office on several occasions.[28] The Appellants' entire business was in Texas. In short, while Mr. De Man did not move his home to Texas and performed his job remotely, he nevertheless delivered his job services to Texas every single day. He thus should not be surprised that a Texas court would assert jurisdiction to determine whether that job for those Texas-based companies was just a job, or in fact was a partnership interest as he contends.

Mr. De Man's reliance on *Gonzalez v. AAG Las Vegas, L.L.C.*, 317 S.W.3d 278 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) is misplaced for exactly this reason. In *Gonzalez*, the defendant was hired by a Nevada-based company to manage a car dealership in Nevada. The only connection to Texas was the fact that his employer's parent company was based in Houston. The dispute arose out of the

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[23] CR 65 ¶¶ 13-15, App. Tab 2; Appellants' Br. at 7.
[24] CR 62 ¶ 4, CR 63 ¶ 7; App. Tab 2; Appellants' Br. at 7.
[25] CR 65 ¶ 15, App. Tab 2; CR 644 ¶ 10, App. Tab 16.
[26] CR 65 ¶ 16, App. Tab 2; Appellants' Br. at 7.
[27] CR 65 ¶ 16, App. Tab 2.
[28] CR 65 ¶ 15, App. Tab 2; CR 644 ¶ 11, App. Tab 16; Appellants' Br. at 7.

defendant's actions while managing the car dealership in Nevada. Thus, unlike in this case, the defendant in *Gonzalez* did not deliver any services to Texas at all. His job was entirely in Nevada, and his limited contacts with his employers' parent company in Texas were too attenuated to support personal jurisdiction. That is not this case, which involves an *interstate* business relationship in which Mr. De Man routinely delivered his services to Texas.

Rather, this case is much more similar to *Smart Call LLC v. Genio Mobile*, 349 S.W.3d 755 (Tex. App.—Houston [14th Dist.] 2011, no pet.), which did involve an interstate business relationship like this one. Mr. De Man attempts to distinguish *Smart Call* on the basis that the defendant delivered customized products to Texas, but that's a facile distinction. Mr. De Man delivered his services to Texas, and customized those services for the Texas market (trading on ERCOT). Moreover, the shipment of physical product to Texas was not the key factor in the court's decision. Rather, the *Smart Call* court focused on the fact that "the parties contemplated a long-term agreement, the goal of which was to provide cell-phone service on an ongoing basis exclusively to Texans." *Id*. at 762. Here, the parties likewise contemplated a long-term agreement, the goal of which was to provide various employment services exclusively to Texans (which the Defendant then delivered to Texas for several years, much longer than in *Smart Call*).

Additionally, the offer letter pursuant to which Appellants offered employment to Mr. De Man is further evidence that his job was to be performed in Texas, and thus that Mr. De Man purposefully availed himself of the privilege of doing business in Texas.[29] Mr. De Man's only response to that letter is that it is unsigned, but while that may make the letter unenforceable as an independent basis for jurisdiction, it does not render the letter irrelevant as evidence of the parties' expectations in a purposeful availment analysis. In *Smart Call*, for example, the court held that "[t]he existence of the forum-selection clause in the unsigned service agreement is to be considered in a purposeful-availment analysis, but it is not dispositive." *Id* at 766, *citing Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 792 (Tex. 2011).

Finally, this case is very similar to *Lobell v. Capital Transport, LLC*, 2015 WL 9436255 (Tex. App.—Austin 2015), in which the Austin Court of Appeals held that personal jurisdiction did exist over a nonresident member of a Texas-based business. The plaintiff in that case, Capital Transport LLC, was a Louisiana limited liability company that had its principal place of business in Texas. *Id.* at *1. The plaintiff alleged that it formed a partnership for a new business called Capital Lodging with the defendant – Lobell, a resident of Louisiana – through a

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[29] CR 63-64 ¶ 9, App. Tab 2; CR 75 ¶ 11, App. Tab 3 (stating that "[t]his agreement is performable in whole or in part in Harris County, Texas," and that legal action pertaining to the agreement would be "commenced and prosecuted in the courts of Harris County, Texas…."

combination of meetings in Louisiana, phone calls, texts, and emails. *Id*. at *2. The new partnership was never formalized in a written agreement, but Lobell subsequently operated the Capital Lodging business for about a year, providing oilfield services in North Dakota. *Id.* Following a dispute, Lobell froze Capital Transport out of the business, and Capital Transport brought suit in Texas for breach of partnership agreement and various tort claims. *Id.* Lobell objected to personal jurisdiction on the ground that all the pertinent events occurred in Louisiana or North Dakota, but the court of appeals found that Lobell's decision to affiliate himself with a Texas-based business constituted sufficient minimum contacts for personal jurisdiction:

> [T]he record reflects that Lobell "most certainly knew that he was affiliating himself with" a business based in Texas when he created continuing relationships with and obligations to Texas citizens Denton and Baker and that the alleged partnership had a substantial connection with Texas….
>
> Capital Transport's pleadings and evidence show that Lobell's contacts with Texas were his and not the unilateral conduct of another person; were purposeful and ongoing, not random, isolated, or fortuitous; and were taken in an effort by Lobell to avail himself of the privilege of conducting business in Texas by establishing an ongoing relationship with and obligations to Texas residents in order to profit from a business operated out of Texas.

*Id.* at *6, citing *Burger King*, 471 U.S. at 479–80.

As in *Capital Transport*, Mr. De Man's decision to affiliate himself with two Texas-based businesses was purposeful and ongoing, and not random, isolated,

fortuitous, or the result of the unilateral conduct of the Appellants. This dispute arises directly out of those purposeful contacts, and thus personal jurisdiction is proper.

## III. Texas Courts Have Personal Jurisdiction Over Mr. De Man Regarding Appellants' Alternative Claim for Breach of Partnership Agreement.

Mr. De Man asserts that there is no personal jurisdiction in Texas over the Appellants' alternative claim for breach of partnership agreement based on one lone argument:

> Plaintiffs muddle the jurisdictional analysis by lumping their declaratory judgment actions with their claims for breach of their partnership agreements. Despite Plaintiffs' attempt to focus on De Man's negotiations with Sinn in 2010 and 2011, those negotiations have nothing to do with Plaintiffs' claims for breach of partnership agreement. Plaintiffs' allegations about what happened during the breakdown of the parties' relationship form the factual basis of their claims for breach.[30]

This argument borders on absurd. Appellants' claim for breach of partnership agreement relates directly to De Man's negotiations with Mr. Sinn and other contacts with Texas because the very existence of the alleged agreement and the terms thereof relate directly to those contacts. To determine whether Mr. De Man breached a partnership agreement, the district court must first determine whether Mr. De Man was a partner, and if so, the terms of the agreement. Mr. De Man cites no authority for the proposition that the breaching conduct must occur in

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[30] Appellee's Br. at 22.

Texas for a court to exercise personal jurisdiction over a claim for breach of contract, and the Appellants are aware of none. Indeed, there are numerous cases finding jurisdiction over nonresident members of a Texas-based business for suits alleging breaches of contract and fiduciary duty that occurred out of state. *See*, *e.g.*, *Boone*, *supra*, and *Lobell*, *supra*.

## IV. Texas Courts Have Personal Jurisdiction Over Mr. De Man Regarding Appellants' Claim for Misappropriation of Trade Secrets.

In attempting to distinguish *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142 (Tex. 2013), Mr. De Man misstates the relevant facts regarding the basis for Appellants' claim of misappropriation of trade secrets, and the connection between that claim and Texas. That claim arises from Mr. De Man's misappropriation of trade secrets that were created primarily in Texas for the purpose of doing business in Texas, which Mr. De Man obtained from the Appellants while they were based in Texas. While the misappropriation occurred in Puerto Rico, the claim nonetheless is closely related to Texas.

Moreover, the *Moncrief* decision does not hold that the misappropriation must occur in Texas in order for personal jurisdiction to exist over a nonresident defendant. The defendant in *Moncrief* did not have the kind of long-standing relationship with Texas-based companies that Mr. De Man has here. Personal jurisdiction is proper on the trade secret misappropriation claim because Mr. De Man had a purposeful, long-standing relationship with two Texas-based

companies, obtained the trade secrets in Texas, which were created in Texas for the purpose of doing business in Texas.[31]

Finally, Mr. De Man also misstates the holding in *Delta Brands, Inc. v. Rautaruuki Steel*, 118 S.W.3d 506 (Tex. App.—Dallas 2003, pet. denied). The court in *Delta Brands* did not base its decision to exercise personal jurisdiction on the existence of a written confidentiality agreement. The court only considered the terms of the confidentiality agreement in that case to determine whether the claim encompassed data that emanated from Texas, and found that it did. *Id.* at 511. The court then conducted its personal jurisdiction analysis, basing its holding primarily on the fact that the information emanated from Texas and the defendant knowingly obtained it from Texas. *Id.* at 511-12. Nothing in *Delta Brands* suggests that a written confidentiality agreement is required to assert personal jurisdiction over a nonresident defendant who receives and misappropriates trade secrets that were created in Texas, emanated from Texas, and involve doing business in Texas.

## V. Texas Courts Have Personal Jurisdiction Over Mr. De Man Regarding Appellants' Conversion Claim.

Mr. De Man relies on a federal decision, *Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214 (5th Cir. 2012), for the proposition that personal jurisdiction can only exist over a conversion claim against a non-resident defendant when the conversion occurred in Texas. Texas case law establishes no such bright

[31] CR 67 ¶ 20, App. Tab 2.

line rule. Mr. De Man does not address the two cases that Appellants cited in their opening brief, *Lensing v. Card*, 417 S.W.3d 152 (Tex. App.—Dallas 2013, no pet.) and *Navasota Resources, Ltd. V. Heep Petroleum, Inc.*, 212 S.W.3d 463 (Tex. App.—Austin 2006, no pet.), exercising jurisdiction over conversion claims when the alleged conversion itself occurred outside of Texas. The proper jurisdictional analysis examines whether the claim is substantially connected with the defendant's purposeful contacts with Texas. It is, because the computers at issue were purchased in Texas, and/or paid for from Aspire's bank account in Texas;[32] the most significant software on the computers (the trade secrets discussed above) emanated from Texas;[33] Mr. De Man obtained the computers and software in the course of his business relationship with the Appellants (which was centered in Texas) for the purpose of facilitating his commodities trades in the Texas market;[34] and Mr. De Man knew that the job offer he accepted contemplated that litigation related to the employment relationship would be conducted in Texas.[35]

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[32] CR 67 ¶ 21, App. Tab 2; CR 256-67, App. Tab 7; CR 269-72, App. Tab 8; CR 274-76, App. Tab 9.
[33] CR 67 ¶ 21, App. Tab 2.
[34] *Id.*
[35] CR 63-64 ¶¶ 9-11, App. Tab 2; CR 75 ¶ 11, App. Tab 3.

## VI. The Exercise of Personal Jurisdiction Comports With Traditional Notions of Fair Play and Substantial Justice.

Mr. De Man does not meet the high burden to show that exercising personal jurisdiction would offend traditional notions of fair play and substantial justice. "Only in rare cases … will the exercise of jurisdiction not comport with fair play and substantial justice when the nonresident defendant has purposefully established minimum contacts with the forum state," and the defendant must present "'a compelling case that the presence of some consideration would render jurisdiction unreasonable.'" *Spir Star AG v. Kimich*, 310 S.W.3d 868, 878-79 (Tex. 2010). The relevant factors include (1) the burden on the defendant, (2) the interests of the forum in adjudicating the dispute, (3) the plaintiff's interest in getting convenient and effective relief, (4) the international judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interests of the several nations in furthering fundamental substantive social policies. *Id* at 878.

Mr. De Man relies principally on the fact that he lives in Puerto Rico. But traveling burdens all nonresidents, and "[d]istance alone cannot ordinarily defeat jurisdiction." *Moncrief*, 414 S.W.3d at 155 (noting that "modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity").

Mr. De Man also relies on the fact that related litigation is pending in Puerto Rico court. Mr. De Man, however, filed that lawsuit after this lawsuit was pending.

His decision to file a lawsuit in Puerto Rico, rather than assert his mirror-image claims as counterclaims in this action (as required by TEX. R. CIV. P. 97(A)), is a burden of his own making.

Moreover, other factors in this analysis plainly support the exercise of jurisdiction. The Puerto Rico courts conduct proceedings in Spanish, which frustrates the plaintiff's (and defendant's) interest in getting convenient and effective relief, since none of the parties and principal witnesses speak Spanish.[36] Likewise, the Texas courts have a much greater interest in adjudicating this dispute than the Puerto Rico courts, because the case centers on the management of a Texas partnership, the business at issue is Texas-centric, and the parties' contacts with Puerto Rico are the fortuitous result of their relocation there in the middle of their relationship for tax reasons.

**PRAYER AND REQUEST FOR RELIEF**

For the reasons set out above, Appellants ask the Court to reverse the judgment below and render a judgment that the exercise of personal jurisdiction is proper over Appellants' claims against the Appellee and to remand the case with instructions to proceed in accordance with this ruling. Appellants seek such other and further relief to which they are entitled.

Dated: August 17, 2017

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[36] CR 65 ¶ 16, App. Tab 2.

Respectfully submitted,

*/s/ Kevin D. Mohr*

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3) and relying on the word-count function of the computer program used to prepare this document, I certify that the total number of words in this document is 5,481 words. This count excludes the sections allowed to be excluded from the word count under TRAP 9.4(i)(1). This document uses 14-point typeface for all body text, while footnotes are in 12-point typeface.

/s/ Kevin D. Mohr
Kevin D. Mohr

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellants' brief has been served in accordance with the Texas Rules of Appellate Procedure on all the counsel of record listed below by electronic service, on August 17, 2017.

/s/ Kevin D. Mohr
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