

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DANIEL PORTER, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:25-CV-00744-O
	§	
CARL ALLEN, ET AL.,	§	
	§	
Defendants.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs Daniel Porter (“Dan Porter”) and Maritime Research & Recovery, LLC (“MRR”) and Defendants Carl Allen (“Allen”) and Allen Exploration, LLC (“AEX”) undertook a multi-year relationship to locate and recover artifacts from the *Nuestra Señora de las Maravillas* (the “*Maravillas*”), a Spanish galleon that sank on the Little Bahama Bank in January 1656. The relationship soured and both parties now claim they are entitled to the recovered treasure. Plaintiffs seek judgment against Defendants for breach of written contract, breach of implied contract, breach of fiduciary duty, and defamation. Defendants seek judgment against Plaintiffs for fraud in the inducement, breach of written contract, breach of implied contract, breach of Confidentiality Agreement, and violation of the Texas Uniform Trade Secrets Act (“TUTSA”).

Beginning June 22, 2026, the Court held a bench trial on all issues. Upon consideration of the relevant authorities and the facts presented during trial, and pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court finds and concludes that MRR¹ succeeds on its breach

¹ At the motion to dismiss stage the Court held that only MRR has standing to sue for breach of the written services agreement. *See* Order Granting in Part and Denying in Part Motion to Dismiss 3–5, ECF No. 196 (“The terms of the Services Agreement demonstrate that it was intended for the mutual benefit of MRR and AEX, not Dan Porter. Because Dan Porter is only an incidental beneficiary, he is not entitled to bring suit

of contract claims and is entitled to its share of the treasure. Further, AEX succeeds on its breach of Confidentiality Agreement and TUTSA claims and is entitled to have its information returned or destroyed.

I. PENDING MOTIONS

The Court deferred ruling on Defendants' Motion to Strike and Exclude Plaintiffs' Non-Retained Expert Karen McKee (ECF No. 255). During trial, Plaintiffs filed a Brief and Request Regarding Inadvertently Disclosed Attorney-Client Communications (ECF No. 342). Because the motions disputed the admissibility of evidence not relied on by the Court's decision, the Court **DENIES** the Motions (ECF Nos. 255, 342) as **MOOT**. Any other deferred motions for sanctions stemming from discovery issues are **DENIED**.

II. BACKGROUND²

This case begins in the Bahamas but was tried in the Northern District of Texas pursuant to a forum selection clause. It is a bitter dispute between a treasure hunter and a benefactor over the decision to fund a treasure hunt and share the recovered treasure.

The Bahamas is a treasure hunter's paradise. For generations, the coral reefs in the area have caused a number of shipwrecks that remain underwater today. Plaintiff Dan Porter has been a treasure hunter almost all his adult life, save the 63 months during his 30s he spent in federal prison for money laundering and cocaine trafficking. He has more than forty years of experience treasure hunting, having trained under famed explorer Mel Fischer, where he learned the art of shallow shipwreck recovery. *See City Confidential, Key West: Pirates in Paradise*. Plaintiff MRR

to enforce it.”). Because the Court finds that the terms of the implied agreement were the same terms as the written agreement, Dan Porter cannot sue for breach of the implied agreement.

² For purposes of this Order, any finding of fact that also constitutes a conclusion of law is adopted as such, and any conclusion of law that constitutes a finding of fact is likewise adopted as such. The findings of fact are based on the exhibits and testimony admitted into evidence during trial.

is a Delaware LLC, managed by Dan Porter, whose members invest capital in exchange for a share of Dan Porter's recovered artifacts. MRR also operates specialized salvage vessels.

A. The *Maravillas*

The Spanish salvaged the *Maravillas* shortly after it sank in 1656. Several other salvage operations occurred over the next 350 years, with an unknown amount of treasure and cargo recovered. As of today, just how much of the *Maravillas* cargo remains undiscovered and unrecovered is unknown. In local bars in the Bahamas and Key West, patrons debate how much treasure remains, and per witness testimony, you may even receive a proposition to go search for it.

In the 1600s, the king of Spain commissioned the making of a golden Madonna. Legend has it that the golden Madonna was transported on the *Maravillas*, would have been kept in the sterncastle as the vessel's single most valuable item, and has yet to be discovered. The sterncastle was a high section of the rear end of the vessel that could have easily been separated from the main part of the ship and drifted for miles. The parties intended the sterncastle to be an object of their treasure hunt.

B. Bahamian Treasure Regulations

The Bahamas regulates who may search for treasure within its jurisdiction, and few treasure hunters may keep the treasure they recover. Under Bahamian law, all shipwrecks and artifacts on the seabed within its jurisdiction are property of the Bahamian Government. To search for treasure requires an Exploration License and to recover treasure requires a Recovery License, each respectively issued by the Bahamian Antiquities, Monuments & Museum Corporation ("AMMC"). An "Exploration License" permits the licensed individual to search for a shipwreck or artifacts but, if he finds anything, he is legally required to report the find(s) to the AMMC. The

Recovery License has stringent requirements. For instance, the license applicant must show he is trustworthy, qualified, capitalized, and will only use contractors and crew who have similar credentials and qualities. Additionally, recovery licensees are required to have a secure facility to house and conserve any recovered artifacts, which remain property of the Bahamas until they are divided between the government and the license holder.

C. The Parties Contract Formation

Defendant Carl Allen—a successful businessman and philanthropist who resides in both Dallas, Texas and the Bahamas—received his Exploration Permit on July 25, 2019. He did not receive a Recovery License until July 15, 2020. Allen first met Dan Porter during the Hurricane Dorian relief campaign, when they both aided the Bahamian community after the devastating storm. Allen and Dan Porter joined forces in the treasure hunting contract at the heart of this case largely due to some behind-the-scenes work by James Sinclair (“Sinclair”).

Sinclair is a marine biologist and a long-time friend of Dan Porter who has worked with him on various shipwrecks since the 1980s. He is also a founding member of MRR but, by 2019, had sold most of his interest in MRR to Dan Porter and another shareholder, Mike McDowell. In the summer of 2019, AEX engaged Sinclair to assist with a project to recover treasure from the *Maravillas*. In the late summer and early fall of 2019, Sinclair forwarded AEX documents about the *Maravillas* project to Dan Porter and blind copied him on AEX internal communications. In late October 2019, Dan Porter met with Sinclair, Allen and AEX company management—including its president, Preston Paine (“Paine”)—in the Bahamas to talk about the *Maravillas* project.

At this meeting, Allen and Paine were impressed by Dan Porter. Afterwards, Sinclair sent a message to Paine and Allen touting Dan Porter and MRR, encouraging AEX to hire them. AEX

informed Sinclair that it was going to retain MRR. As soon as Sinclair learned that AEX was going to hire Porter and MRR in early November 2019, Sinclair sent Dan Porter an email stating that, because he had been the “biggest promoter” of MRR getting the AEX contract, he wanted Dan Porter to agree to carve out a percentage of MRR’s share of future artifacts for him.³ Dan Porter responded that he would “make it happen.”⁴ Neither Dan Porter, MRR, nor Sinclair disclosed this arrangement to AEX before the Services Agreement was executed.

On November 13, 2019, AEX entered into two contracts with MRR: a Services Agreement and a Confidentiality Agreement. The Services Agreement provided MRR with expense reimbursement, charter fees, monthly compensation for Dan Porter and his crew, and a 30% share of recovered artifacts after the Bahamian Government’s division. The Confidentiality Agreement prevented MRR from sharing confidential information.

During this time, Dan Porter bought a house (the “House”) in the Bahamas for his daughter—Allie Fulton—which AEX agreed would be used as the operations base for the recovery. AEX initially offered to use their island—Walker’s Cay—for the base of MRR’s operations because it had a marina, an electrical generation station, and was owned by Allen and his wife. Dan Porter convinced Allen that the island was not the right choice because there were no convenience, grocery, auto parts, or marine equipment stores on it, and it was not that much closer to the *Maravillas* than the House.

D. The Treasure Hunting Process

The treasure hunting process has evolved since the days of Mel Fischer in the 1980’s and is now incredibly sophisticated. It is technical and requires serious know-how. It involves magnetometers (both proton and cesium), complex software, interfaces, GPS, bathymetries, and

³ Defs.’ Trial Exhibit 45 (Emails between Jim Sinclair and Dan Porter re: Project dated November 5, 2019).

⁴ Defs.’ Trial Exhibit 45 (Emails between Jim Sinclair and Dan Porter re: Project dated November 5, 2019).

its developments move swiftly. New technologies emerge every year, enhancing data collection capabilities.

The process of treasure hunting involves designing plans for the treasure hunting trips and preparing the survey boats. An area that is one mile by three miles may have over 9,000 magnetometer hits—*i.e.*, potential treasure. Treasure hunters build site plans by putting these magnetometer anomalies, along with AutoCAD, and gamma strength sizes into a well-organized database. Since the seabed sand moves so frequently, plans to search at certain sites must rapidly change. The more hunters dig, the more their searches cost.

To execute a site plan, the hunters use survey boats, which are usually 17-foot Boston Whalers. The boats drag the necessary equipment behind them. They must be properly positioned, which requires good visibility and calm waters. Three 400-pound commercial anchors, typically used to secure oil rigs, hold each boat in place while the hunters conduct the excavation. The hunters use winches to tighten their boats to the anchors. Once tightened, the boats are positioned for the search.

Attached to the boats are commercial engines, or large blowers, which move sand and mud around on the seabed so the hunters can reach the bedrock below. The Bahamian seabeds are so thickly coated in sand, that artifacts can be buried as low as 30 feet below the surface. After all the sand is moved, the blowers rotate underneath the boat and a remote sensing survey is conducted. Next, two divers go into the water and proceed around the excavation from opposite directions. They go back and forth with the current, searching the whole site. This lengthy process causes significant wear and tear to the survey boats, which require frequent repairs. These expenses cause the treasure hunting process to require significant site analysis to avoid wasting time, effort, and days with good weather.

Treasure hunting operates in seasons and is heavily dependent on the weather and its impact on sub-surface water strata. Sometimes the current, tide, and wind work against each other and create dangerous conditions, which may make forecasting difficult. In this case, witnesses testified to dangerous conditions they experienced on other missions, some even involving deaths. All the witnesses' testimonies indicated that treasure hunting work in the Bahamas is inherently dangerous.

On July 15, 2020, AEX obtained a Recovery License from the Bahamian government. This was the first time in 18 years that the Bahamas had issued a recovery license for any shipwreck in any part of its jurisdiction. Under the license, AEX agreed to share approximately 25% of any recovered artifacts with the Bahamian Government.

Pursuant to the parties' agreement, Dan Porter and MRR performed extensive salvage operations, including more than 100 trips to sea and excavation of thousands of search areas, recovering gold, silver, gemstones, and other valuable artifacts in the 2020 season. Despite the operations' successes, the parties began to have disagreements.

In April 2021, Dan Porter threatened to quit because AEX attempted to reduce his recovery percentage. AEX represented to Dan Porter that a foundation established to benefit middle school children on behalf of the Allen family would take a cut of the treasure. Dan Porter, acting on behalf of MRR, agreed to a reduction from 30% to 25%. On April 21, 2021, the Services Agreement was amended to reflect this modification.⁵ As of the trial date, not only has the foundation never taken any of the treasure, the foundation does not exist.

By 2021, the first yield of treasure recovered during the 2020 season was divided. On August 10, 2021, AEX and the Bahamian Government completed the division and AEX conveyed

⁵ Defs.' Trial Exhibit 3 (Page 2 of Services Agreement between AEX and MRR dated November 13, 2019 with amendments from April 2021).

a share of the 2020 artifacts pursuant to the Services Agreement, with a then-value of approximately \$400,000.

D. The Parties Terminate the Services Agreement

On August 19, 2021, Defendants terminated the Services Agreement with MRR. The context for this termination dates back to 2015. On August 13, 2015—before MRR contracted with AEX—Dan Porter and MRR entered into an agreement with E. Lee Spence (“Spence”) concerning shipwreck exploration in Bahamian waters, including an area that overlapped a portion of Allen’s later acquired AMMC-licensed territory. Spence is an underwater archeologist and shipwreck explorer. Dan Porter met him while working on a separate excavation and agreed to dive with him for treasure during the winter season in South Carolina. MRR and Spence signed a Confidentiality Agreement (the “Spence Agreement”) under which MRR agreed to be Spence’s primary contractor for the exploration. The agreement did not last long. By the year 2016, Spence emailed Dan Porter and terminated their agreement.⁶ But the agreement contained non-compete, non-circumvention, and confidentiality provisions that continued to restrict MRR until September 2021, which overlapped with the 2019 Services Agreement between MRR and AEX.

On August 16, 2021, Spence emailed Dan Porter and MRR, asserting that they were violating the Spence Agreement’s non-compete, non-circumvention, and confidential provisions. When Dan Porter received this email, he forwarded it to Paine the following day.

⁶ The email reads: “Dan, as you know, Maritime Research and Recovery LLC (MRR) is in material breach of the *Exclusive Confidential Agreement*, which we signed on August 13, 2015. As a result of MRR’s failure to meet the minimum performance requirements as set forth under Paragraph 13 of said Agreement, I have lost a year and I am hereby terminating said Agreement for cause, effective on this date, September 16, 2016. If MRR has any objections to this termination, please let me know in writing within one week of today. You are a very talented person and I sincerely hope we can work together in the future. With both respect and friendship, I am, Sincerely, Lee.” Pls.’ Trial Exhibit 7 (Email from Dr. E Lee Spence to Dan Porter, Subject: Termination of Agreement; 09/17/2016).

On the AEX side of things—Paine and Allen saw this coming. At some point they learned that Spence posed two potential problems. First, Spence obtained a default judgment that he believed entitled him to any recoveries made, past and present, in a specific five-mile radius within the longitudes and latitudes of Allen’s Bahamian permit (the “Admiralty Claim”).⁷ Next, Dan Porter and MRR were under contract with Spence to search within that five-mile radius exclusively in partnership with him. But Allen’s licenses covered an expansive area of the Bahamian waters, the *Maravillas* was not within Spence’s five-mile radius, and the Spence Agreement expired September 2021, so AEX and MRR were not concerned about any Spence litigation. Paine forwarded the Spence email to David Concannon (“Concannon”)—an experienced treasure hunter and lawyer⁸—for review. Concannon instructed Dan Porter not to respond to the email.

The strategy that emerged to deal with Spence was to execute a “paper” termination of the written Services Agreement between Dan Porter and MRR and AEX while the parties continued

⁷ On June 1, 2020, Dan Porter forwarded Paine an email regarding the Admiralty Claim. Pls.’ Trial Exhibit 53 (Email from Dan Porter to Preston Paine, Subject: Bahama Waters and Spence’s Docs). On June 2, 2020, Dan Porter emailed David Concannon with documents relating to Spence’s admiralty claims and thanked Concannon for taking a look at it. Pls.’ Trial Exhibit 57 (Email thread beginning with email from Dan Porter to David Concannon, Subject: Allen X Bahamas Project). Concannon responded inter alia “Spence is a cutie, He obviously filed this admiralty action to lay claim to the *Maravillas* after doing as little work as possible.” *Id.* Concannon also told Dan Porter he “need[s] to have a strategy in place to deal with Spence, which is not difficult, and Spain, which will be a tougher opponent.” He also suggested that Dan Porter “think around corners[,]” telling him that “when [he] organized and led the Apollo F-1 Recovery Project for Jeff Bezos, Jeff directed” him to do the same. *Id.* On June 5, 2020, Dan Porter, Paine, and Concannon engaged in several back-and-forth emails regarding Spence’s claim over the 5-mile area in the Bahamas. Pls.’ Trial Exhibit 58 (Email thread beginning with email from Anthony Maillis to Dan Porter, Subject: What we’ve been working on.). Spence’s partner, Anthony Mallais, sent an email to Dan Porter which included a veiled threat: “I do hope you discuss any attempt at removing artifacts within the claim area I alerted you about with whom ever you may be dealing with. We are easy going guys and a talking position is better in pleasant times than across a court room.” *Id.* Mallais also threatened to tip off Spain. *Id.* Ultimately, Paine relayed that Allen wanted to ignore the claims for now, and Concannon concludes that “[t]his is completely bogus.” *Id.*

⁸ See generally Transcript 60:11–63:25, ECF No. 354 (Concannon introducing demonstrative photos of himself aiding in exploration and recovery projects for Apollo 11—which searched 400 square miles of ocean, 14,500 feet deep, three times—to find and recover the Apollo engines and the Titanic).

their working relationship and artifact-sharing arrangement under a continuing understanding until a new written agreement could be executed.

Pursuant to this strategy, Paine sent Dan Porter an email on August 19, 2021, with an attached letter terminating the Services Agreement.⁹ The termination letter provided no grounds for the for-cause termination and provided no written notice of the breach as the contract required. AEX intended the parties' relationship to continue through a successor entity the parties referred to as Newco. Newco was the term the parties used to refer to an anticipated newly formed entity to shield their relationship from Spence. This plan was described in emails during the weeks following the termination.¹⁰

Notwithstanding the termination letter, the parties' relationship continued with business as usual, meaning Dan Porter continued the same preparation and maintenance of detailed recovery spreadsheets, cataloguing every artifact recovered from the *Maravillas* by tag number, category, recovery date, quantity, assigned "points," and valuing each point at \$50. Per AEX's records, MRR's share also remained the same after the 2021 termination. The Bahamian Government received 25% of the points, and the post-government pool (75%) was allocated among AEX, MRR, and Sinclair.

Beginning in late September 2021, Ocean Recovery LLC ("OR" or "Ocean Recovery") began to submit the charter invoices instead of MRR. Ocean Recovery is a Florida corporation owned by Mike McDowell, Art Schweizer ("Schweizer") (both MRR members) and Dan Porter, not MRR or its other members. Expenses were fronted by Ocean Recovery and then reimbursed

⁹ Defs.' Trial Exhibit 9 (Letter from Preston Paine to Dan Porter dated August 18, 2021 re: Termination of Services Agreement).

¹⁰ Pls.' Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL).

as usual by AEX. During the *Maravillas* operation, different employees rotated in and out, and different vessels were chartered from different captains and companies. But throughout the entire operation, Dan Porter was operations manager, and the same boats, the Sea Reaper and the Sea Trepid, were chartered. The parties dispute the reason Ocean Recovery became involved, but the reasonable inference from the evidence is it occurred to further shield the *Maravillas* treasure hunt from any potential Spence claim.

In July 2024, Dan Porter believed that he was mapping the *Maravillas* debris trail to the sterncastle and that he was getting closer to the fabled golden Madonna. Right after finding three silver bars (which he believed to be a trail leading to the sterncastle) within the strike zone of the season, Dan Porter was called to a mandatory meeting.

During the July 9, 2024, mandatory meeting, Allen accused Dan Porter of mistreating the crew and using the crew to build the House. Allen told him he had friends in the Department of Justice who had reports that Dan Porter stole gold coins in Florida. This was the first Dan Porter had heard of these allegations. Until this time, no one at AEX ever notified MRR that it believed MRR misappropriated or stole funds. Allen refused to offer any artifact division and demanded that Dan Porter accept only 60% of MRR's contractual share. Dan Porter rejected the demand, but by the end of the 2.5 hour meeting they agreed Dan Porter would continue working and that he would send AEX an accounting of what division of artifacts he thought was fair.

On August 1, 2024, Paine emailed Dan Porter informing him that they would no longer need his services as of September 30, 2024.¹¹ On September 5, 2024, Allen gave Dan Porter an ultimatum: release the boats he used to AEX by 10:00 a.m. or he would get no division. Schweizer,

¹¹ Pls.' Trial Exhibit 843 (Composite Emails regarding draft termination letters).

one of MRR's largest investors, and his son attempted to negotiate a deal between the parties. Ultimately, these efforts to reach an agreement were unsuccessful.

By September 8, 2024, the relationship had collapsed. Allen decided that "the only way the Maravilla Treasure [would] be broken up [was] over [his] dead body."¹² He wrote, "[t]hey will have to sue in Texas . . . I am personal friends with the Governor, the Lieutenant Governor, and the Attorney General Ken Paxton. I can assure you this will go to the top. All three are big followers and support what we do. Ahh I do love a good Home Game. Stay tuned."¹³

III. ANALYSIS¹⁴

Plaintiffs "ask the Court to hold every document and every witness against this question: Did this relationship really end in August 2021, or did it continue on the same terms while Mr. Allen held a paper termination as a weapon?"¹⁵ All of Plaintiffs' claims stem from the post 2021 termination interaction. Plaintiffs contend that the agreement to divide artifacts at 25% was never truly terminated, accordingly they seek the 25% share owed to them. They assert claims for breach of contract and breach of fiduciary duty related to this time period. Dan Porter also brings a claim for defamation related to statements made about him.

Defendants contend that Plaintiffs are owed nothing. They argue Dan Porter lied to them from the beginning, there was no agreement to share artifacts after 2021, and they demand the return of their confidential information. They claim Dan Porter was being paid to look, but not to

¹² Pls.' Trial Exhibit 847 ("Email thread beginning with email from Sean Kingsley to Carl Allen, Michael Pateman, James Sinclair Subject: Re: Greater Abaco Lost Ships").

¹³ Pls.' Trial Exhibit 847 ("Email thread beginning with email from Sean Kingsley to Carl Allen, Michael Pateman, James Sinclair Subject: Re: Greater Abaco Lost Ships").

¹⁴ For purposes of this section, any conclusion of law that also constitutes a finding of fact is adopted as such, and any finding of fact that constitutes a conclusion of law is likewise adopted as such. In addition, the Court quotes from email evidence throughout this Order without correcting for misspellings, typographical, or grammatical errors.

¹⁵ Transcript 15:22–12:1, ECF No. 351.

find, and he was constantly proposing more ways for him to be paid more money. Defendants' argument is that "[t]he business of MRR is actually Dan Porter selling shares of future treasure recoveries to investors, mostly middle-aged men from the Midwest who have had boring careers in either mining, dentistry, real estate developments, trash bags, plastics, that's why the sterncastle is so sexy, so interesting, so shiny."¹⁶ Defendants assert claims or affirmative defenses of fraud in the inducement, breach of contract, and violations of the TUTSA. They assert these as a basis to avoid any agreement with Plaintiffs, but notably do not affirmatively seek to recover damages.

Each party has the burden of proof on their affirmative claims. Each party must prove the essential elements of those claims by a preponderance of the evidence and, if the evidence at trial fails to establish any essential part of the claim, the trier of fact should find for the defendant. *See* Fifth Circuit Pattern Jury Instructions, Civil (2020) § 3.20.

The Court begins with Defendants' claims/affirmative defenses because, should they prevail on one or more of them, Plaintiffs' claims may be negated.

A. Defendants' Claim for Fraud in the Inducement

Defendants allege Plaintiffs made several material misrepresentations which induced them to sign the Services Agreement, and thus, seek to void that agreement. They claim Dan Porter and MRR concealed or misrepresented material facts concerning the following: 1) MRR's vessel ownership; 2) MRR's assets and employees; 3) Dan Porter's criminal history; 4) Sinclair's undisclosed financial interest; 5) Sinclair's transfer of AEX information to Dan Porter before the 2019 agreements; and 6) the Spence Agreement.

Fraudulent inducement "is a particular species of fraud that arises only in the context of a contract and requires the existence of a contract as part of its proof. That is, with a

¹⁶ Transcript 28:19–24, ECF No. 351.

fraudulent inducement claim, the elements of fraud must be established as they relate to an agreement between the parties.” *Haase v. Glazner*, 62 S.W.3d 795, 798–99 (Tex. 2001). It shares the same elements as a claim for fraud which requires: “(1) a material misrepresentation, (2) made with knowledge of its falsity or asserted without knowledge of its truth, (3) made with the intention that it should be acted on by the other party, (4) which the other party relied on and (5) which caused injury.” *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). “Fraudulent inducement may be asserted as an independent cause of action or as an affirmative defense—the elements are the same.” *Haddad v. JP Morgan Chase Bank, N.A.*, No. 01-20-00283-CV, 2021 WL 5056651, at *3 (Tex. App.—Houston [1st Dist.] Nov. 2, 2021) (mem. op). “In fraudulent inducement cases, the plaintiff must show that he would not have entered into the contract in the absence of the misrepresentation.” *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 277 (5th Cir. 2012); *see Williams v. Dardenne*, 345 S.W.3d 118, 126 (Tex. App.—Houston [1st Dist.] 2011). That is, the representations relied upon must be a “material factor” in the plaintiff’s decision to enter into a contract. *See Coffel v. Stryker Corp.*, 284 F.3d 625, 636 (5th Cir. 2002); *see also* Restatement (Second) of Torts § 546.

As an initial matter, Defendants never explicitly proffer which statements are omissions and which were affirmative misrepresentations. So, the Court first turns to statements it finds that Dan Porter affirmatively made, and then considers which were omissions.

1. Affirmative Misrepresentations

a. *MRR’s Vessel Ownership*

Defendants argue Plaintiffs fraudulently induced AEX to contract with Plaintiffs because Plaintiffs represented MRR owned vessels, when the vessels were actually owned by Ocean Recovery. As a result, Plaintiffs claims related to their agreements are void. The Services

Agreement affirmatively represented that MRR owned the vessels that would be used. It provided that “[i]n performing services hereunder, MRR shall use its own vessels, i.e., the Sea Reaper and the Sea Trepid . . . [.]”¹⁷

At trial Defendants explained why vessel ownership was material. Paine testified that he thought Ocean Recovery was one of the LLCs under MRR—hence, he thought MRR owned the boats. Further, he testified that AEX wanted to contract with the company that actually owned the boats because if they were owned by a shell company with no assets then there would be no recourse if problems arose. And, if they were owned by another then they could have been taken away at any time by that entity.

The credible evidence shows there was no material misrepresentation. Before the agreement was signed, Dan Porter told Paine that Ocean Recovery owned the boats. In a November 5, 2019, email from Paine to Dan Porter seeking information about MRR being an inactive LLC, Paine explained that “[o]ur attorney advises us to contract with the entity that owns the two vessels. If that is okay with you, what is the name of that entity.”¹⁸ Dan Porter responded: “Hey Preston, Maritime Research & Recovery LLC. (Delaware LLC) . . . is the parent and operating entity. The other LLC’s were operating entities for a PPM model that funded the operations side with investor funds on a yearly basis.”¹⁹ He also responded to the second question (*i.e.*, who owns the boats?): “[t]he vessels are [o]wned by, Ocean Recovery (LLC Delaware LLC)”²⁰ He continued “Preston, what I would like to see is a basic charter agreement for the vessels that would be paid

¹⁷ Defs.’ Trial Exhibit 1 (Services Agreement between AEX and MRR dated November 13, 2019).

¹⁸ Pls.’ Trial Exhibit 19 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: Carl Allen, Subject: Services Agreement; 11/05/2019).

¹⁹ Pls.’ Trial Exhibit 19 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: Carl Allen, Subject: Services Agreement; 11/05/2019).

²⁰ Pls.’ Trial Exhibit 19 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: Carl Allen, Subject: Services Agreement; 11/05/2019).

to (Ocean Recovery LLC.) . . .” and discussed pricing and which boats needed servicing.²¹ Dan Porter ended the email with “[l]et me know your thoughts.”²²

Moreover, emails after the contract was signed indicate that Paine knew MRR did not own the boats but nevertheless continued the contractual relationship, thereby ratifying the agreement. “Under Texas law, ratification occurs when one, induced by fraud to enter into a contract, continues to accept benefits under the contract after he becomes aware of the fraud, or if he conducts himself in such a manner as to recognize the contract as binding.” *LHC Nashua P’ship., Ltd. v. PDNED Sagamore Nashua, L.L.C.*, 659 F.3d 450, 461 (5th Cir. 2011) (cleaned up). One seeking to prove ratification “has the burden to prove knowledge of the fraud or breach and to prove a voluntary, intentional choice to ratify the contract in light of that knowledge.” *McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 759 (N.D. Tex. 2017) (Boyle, J.) (cleaned up). That has occurred here.

For instance, in an email from Concannon to Paine on September 5, 2021, Concannon provided “recommended next steps” to avoid the Spence problem by suggesting “Porter signs employment agreement with either Newco or company that owns the boats currently operating at the *Maravillas* site.”²³ He also suggested that AEX “[c]ontinue to employ Porter individually or through contract with his employer (Newco or vessel owner).”²⁴

These emails indicated that Paine was aware that Dan Porter did not own the boats, and yet AEX continued to contract with MRR until 2024. Accordingly, the Court finds and concludes that

²¹ Pls.’ Trial Exhibit 19 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: Carl Allen, Subject: Services Agreement; 11/05/2019).

²² Pls.’ Trial Exhibit 19 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: Carl Allen, Subject: Services Agreement; 11/05/2019).

²³ Pls.’ Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

²⁴ Pls.’ Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

Defendants knew of the ownership structure and presented no evidence to indicate that Dan Porter should have understood that Paine misunderstood him. Even so, Defendants ratified the parties' relationship. Accordingly, this asserted fraud provides Defendants no relief.

b. MRR's Employees and Assets

Next, Defendants claim Dan Porter misrepresented MRR's employees and assets because it had no employees and no assets. Allen testified that he did not recall if Dan Porter or MRR ever disclosed that they had employees on the payroll or assets.²⁵ But, even if Dan Porter did at some point misrepresent MRR's employees and assets, AEX knew the composition of MRR and continued to contract with it.²⁶ The evidence shows MRR submitted invoices to AEX, they were approved, often by several AEX employees, including Paine, and the payments to MRR were for employees and assets working on the *Maravillas* expedition. Moreover, Allen testified that he and his crew were out on the water with Dan Porter at least 60% of the time. The employment structure and assets that MRR actually had were obvious.

MRR provided the operational personnel; vessels, through its affiliated entities; and management expertise that drove AEX's artifact recoveries. AEX paid charter fees for five years because those vessels and personnel performed under the contract. Even in 2021, when Defendants claim they terminated the Services Agreement for cause, issues with assets and employees were not the proffered reason. Therefore, the Court concludes that there were no material

²⁵ At trial, Allen was unable to recall numerous relevant facts and events, even when presented with contemporaneous emails. At times, he could not recall the relationships between individuals involved in the dispute. For example, Allen testified that he did not know the relationship between Anthony Mallais and Lee Spence, despite its significance to the Admiralty Claim and Confidentiality Agreement. Accordingly, the Court does not fully credit Allen's testimony, given his inability to recall events and circumstances documented in the record.

²⁶ See *Section infra—Section.B.1.*

misrepresentations about assets and employees, and even if there were, Defendants ratified the relationship. Accordingly, this assertion provides Defendants no basis for relief.

2. Fraud by Omission

Some of Defendants' claims are better characterized as claims of fraud by nondisclosure or by omission, because they contend that Dan Porter omitted rather than affirmatively misrepresented his criminal history, Sinclair's role with the parties, and the Spence claim.

A claim of fraud by nondisclosure or fraud by omission, requires a claimant to show (1) the party failed to disclose facts to the claimant when the party had a duty to disclose such facts; (2) the facts were material; (3) the party knew of the facts; (4) the party knew that the claimant was ignorant of the facts and did not have an equal opportunity to discover the truth; (5) the party was deliberately silent and failed to disclose the facts with the intent to induce the claimant to take some action; and (6) the claimant suffered injury as a result of acting without knowledge of the undisclosed facts. *Horizon Shipbuilding, Inc. v. Blyn II Holding, LLC*, 324 S.W.3d 840, 850 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

The main difference between liability for affirmative disclosures²⁷ and liability for nondisclosures is that for non-disclosures Dan Porter/MRR must have owed an affirmative duty to speak or disclose information. *See Hoggett v. Brown*, 971 S.W.2d 472, 487 (Tex. App.—Houston [14th] 1997) (“For there to be actionable nondisclosure fraud, there must be a duty to disclose.”); *see also Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d at 435 (“When the particular circumstances impose on a person a duty to speak and he deliberately remains silent, his silence is equivalent to a false representation.”). “A duty to disclose may arise in four situations: (1) when there is a fiduciary relationship; (2) when one voluntarily discloses information, the whole truth must be

²⁷ *See supra*—Section II.A.1.

disclosed; (3) when one makes a representation, new information must be disclosed when that new information makes the earlier representation misleading or untrue; and (4) when one makes a partial disclosure and conveys a false impression.” *Brown & Brown of Tex., Inc. v. Omni Metals, Inc.*, 317 S.W. 3d 361, 384 (Tex. App.—Houston [1st Dist.] 2010). In this case, the Court finds no evidence in the record supporting the notion that a duty arose from situations (2)-(4) set out above.

Defendants must therefore show Plaintiffs owed AEX a fiduciary duty. “[W]hether such a duty exists is ‘entirely a question of law.’” *Hoggett v. Brown*, 971 S.W.2d 472, 487 (Tex. App.—Houston [14th] 1997) (citing *Ralston Purina Co. v. McKendrick*, 850 S.W.2d 629, 633 (Tex. App.—San Antonio 1993, writ denied)). “A fiduciary duty requires the fiduciary to place the interest of the other party before his or her own.” *Id.* “There are two types of fiduciary relationships—a formal fiduciary relationship that arises as a matter of law, such as principal/agent or partners [or joint venturers], and an informal fiduciary relationship arising from a confidential relationship ‘where one person trusts in and relies upon another, whether the relation is moral, social, domestic or merely personal.’” *Hoggett*, 971 S.W.2d at 487 (internal citation omitted). The parties’ agreement does not establish a fiduciary duty. The parties were not in either an agency relationship or a partnership.²⁸ The Court concludes no formal fiduciary duty exists. Accordingly, the Court evaluates whether an informal fiduciary relationship exists.

“Texas law does not recognize a fiduciary relationship lightly, especially in the commercial context[.]” *Jacked Up, L.L.C. v. Sara Lee Corp.*, 854 F.3d 797, 809 (5th Cir. 2017) (quoting *Willis v. Donnelly*, 199 S.W.3d 262, 278 (Tex. 2006)) (cleaned up). Under Texas law, “[t]o impose an [informal fiduciary duty] in a business transaction, the [special relationship] of [trust and confidence] must exist prior to, and apart from, the agreement made the basis of the suit.” *Id.*

²⁸ See also *infra*—Section II.C. (finding no joint venture, and thus no fiduciary duty).

(quoting *Associated Indem. Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276, 288 (Tex. 1998). Arm’s-length transactions *do not* create fiduciary relationships. “Neither do NDAs or other agreements requiring confidentiality.” *Id.* (collecting cases). “Additionally, mere subjective trust alone is not enough to transform arm’s length dealing into a fiduciary relationship.” *Id.* (internal citation omitted).

“[T]he existence of a confidential relationship is ordinarily a question of fact . . .” *Hoggett*, 971 S.W.2d at 488. “A confidential relationship exists where influence has been acquired and abused, and confidence has been reposed and betrayed.” *Id.* “A person is justified in placing confidence in the belief that another party will act in his or her best interest only where he or she is accustomed to being guided by the judgment or advice of the other party, and there exists a long association in a business relationship, as well as personal friendship.” *Id.* “However, the fact that the relationship has been a cordial one, of long duration does not necessarily constitute a confidential relationship.” *Id.* “[S]omething apart from the transaction between the parties is required.” *Id.*

Here, nothing establishes a fiduciary relationship. The relationship between the parties appears to be nothing more than a normal commercial services contract. The contract itself identifies Dan Porter as an independent contractor and is called a Services Agreement.²⁹ At trial, Allen testified about over-trusting Dan Porter, and how he relied on Sinclair’s recommendation to work with Dan Porter. But this is nothing more than a normal business dealing.

Even so, out of an abundance of caution the Court addresses each alleged fraudulent omission and explains why there is no duty—or why the claim otherwise fails—even assuming there was a duty.

²⁹ Pls.’ Trial Exhibit 1 (Services Agreement between Allen Exploration, LLC and Maritime Research & Recovery, LLC; 11/13/2019).

a. Criminal History

Even if Dan Porter had a duty to disclose his criminal history, to prevail on this theory Defendants must show it was a material misrepresentation. Under the facts of this case, this disclosure was not. Dan Porter was never asked to fill out forms to allow AEX to conduct a background check, nor did he thwart any background check. Dan Porter was never asked about his criminal history, and AEX never ran a background check before hiring him. Neither did AEX inform him that a prior conviction may cause them not to employ him.³⁰

Still, Allen testified that Dan Porter's criminal history was material because he could have been denied a work permit from the Bahamas. However, there is no proof that Dan Porter misrepresented anything to the Bahamas to obtain his work permit, and nevertheless, he obtained one. The only time that Defendants ran a background check was *after* they terminated Dan Porter in 2024 to substantiate their claims to the Bahamas officials.

Despite Defendants' current concern about Dan Porter's criminal history, their failure to ask indicates that it was not a material fact. This is substantiated by the fact that Sinclair, who also has felony convictions and knew of Dan Porter's criminal history, continued as an AEX employee until two months before trial. Defendants never inquired about his criminal history, and he was not fired for it. Thus, Defendants failed to establish this claim justifies relief.

b. Sinclair

Defendants also make two fraudulent omission claims related to Dan Porter's relationship with Sinclair. The first is Sinclair's undisclosed financial interest with Dan Porter, and the second is Sinclair's transfer of AEX information to Dan Porter before the 2019 agreements were reached.

³⁰ Transcript 44:1–45:17, ECF No. 354.

AEX claims that Sinclair's undisclosed financial interest consisting of Dan Porter's promise to give Sinclair a percentage is fraud. One example of this interest Defendants point to is this email from Sinclair to Dan Porter:

Dan,
As we discussed and shook on, I would like MRR to carve out a small percentage out of what it will receive from Allen EX as the operations group. I would think 1% would be fair. Don't you? I think that this has the potential to be a very lucrative project and since I was the biggest promoter of MRR getting the contract with Allen EX, it should be recognized in a percentage coming my way from MRR, I will be getting a small percentage from the Allen EX group, I would like to get a small percentage from the MRR side also. Would like it to be in writing after the initial contract is signed with Allen EX. Let me know.
Jim.³¹

It is undisputed that AEX promised Sinclair a percentage from any recovery, but it is not credible that AEX would care about Dan Porter giving a portion of his share to Sinclair. At trial, Paine emphasized the dishonesty and lack of integrity this arrangement revealed about Sinclair. Sure, AEX ultimately fired Sinclair, but not until a year and a half after finding out about his arrangement with Dan Porter. This does not support a fraudulent omission claim against Dan Porter.

The second omission Defendants rely on is Sinclair's transfer of AEX information to Dan Porter before the 2019 Services Agreement. Allen testified he would not have hired Dan Porter if he knew that he had all the answers to the test beforehand. These email exchanges reveal that Sinclair was shoring up support for hiring Dan Porter and sharing AEX emails with Dan Porter, as well as some information about the project to find the *Maravillas*.³² Defendants failed to show how this information was material. Instead, the record and testimony show AEX hired Dan Porter

³¹ Defs.' Trial Exhibit 9 (Letter from Preston Paine to Dan Porter dated August 18, 2021 re: Termination of Services Agreement).

³² Defs.' Trial Exhibits 36–46 (Jim Sinclair Emails).

for his independent knowledge and extensive experience and his ability to productively use the AEX information. Accordingly, Defendants failed to prove Dan Porter had a duty to disclose.

c. Spence Confidentiality Agreement

Next, Defendants contend Dan Porter never disclosed the Spence Agreement and when they learned of it, they terminated the agreement. The facts highlight that Defendants knew about the Spence Agreement well before they terminated the contract. On August 16, 2021, Spence sent an email to Dan Porter which says, “you have also been violating Section 32 of the Exclusive Confidential Agreement.”³³ Paine and Allen testified that this was the first time they heard about the Confidentiality Agreement. Allen also testified that Paine sent the notice of termination to Plaintiffs because the Spence Agreement meant that Spence was the owner of artifacts found within the same area they were hunting. This testimony is not credible.

A full review of the email evidence demonstrates that Defendants had knowledge of the Spence Agreement before the August 16, 2021, Spence email. The Spence email mentioned *inter alia*, the Admiralty Claim and Dan Porter’s violation of Section 32 of their Exclusive Confidential Agreement.³⁴ The next paragraph of the email mentions Dan Porter “and MRR still being in a *non-compete/non-circumvention status* with regards to the wreckage covered by the ORDERS.”³⁵ On August 17, Dan Porter forwarded the email to Paine: “Hey Preston, We all knew he would raise his head as soon as there was a division. I have not shown this to anyone and have not replied. I

³³ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021).

³⁴ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021).

³⁵ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021) (emphasis added).

think Dave will have a lot of input about this one but I wanted to send to you first. The whole paragraphs about him wanting me to talk to Mr A is complete BS. Also notice who he copied.”³⁶

Within an hour Paine responded, looping in Concannon and Allen: “We knew this was coming. See the email below that Lee Spence sent to Dan [Porter]. I have a strong opinion about this, but David, what say you?”³⁷ So AEX acknowledged that it knew Spence intended to claim a violation of the Confidentiality Agreement before Spence sent the August 16 email. The same email thread continued discussing the Spence matter into mid-September 2021, after the Services Agreement termination.³⁸ That AEX “knew this [was] coming” shows it was not fraudulently induced to enter the Services Agreement.

The Court also finds that even if Dan Porter had a duty to disclose the Spence Agreement, and even if he did fail to tell Defendants about it, it was not material, and Defendants otherwise ratified the relationship.

First, materiality. Spence terminated the 2015 Agreement for cause in September 2016.³⁹ Any non-competition or non-circumvention obligation was set to expire in September 2021 and there was no ongoing, undisclosed non-compete of the character Defendants allege.

Next, Allen testified to the lack of materiality at trial. On direct examination he was asked, “[d]uring the period of 2019, from the time the services agreement was executed until that

³⁶ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021).

³⁷ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021).

³⁸ Pls.’ Trial Exhibit 95 (Email thread beginning with email from Dr. E. Lee Spence to Dan Porter, Cc: Anthony Maillis, Subject: Shipwrecks, with attached Signed Agreement Spence Dan Porter MRR for Bahamas; 08/16/2021).

³⁹ Pls.’ Trial Exhibit 7 (Email from Dr. E Lee Spence to Dan Porter, Subject: Termination of Agreement; 09/17/2016).

termination letter in August of 2021, you and AEX received every benefit of the bargain that you negotiated in the serves agreement, didn't you?"⁴⁰ He responded, "[y]es."⁴¹

It is also doubtful that Allen and AEX cared about the fact that Dan Porter could not search in the five-mile area under the Confidentiality Agreement. That is because AEX also could not recover from the five-mile area under the Admiralty Claim.⁴² Spence's five-mile circle was a small portion of the vast expanse that AEX's exploration license covers. The geographic coverage was limited to less than 80 square miles—far narrower than Allen's 6,545-square-mile licensed territory. And most importantly, based upon the evidence and testimony at trial, Spence's coordinates did not interfere with the location at which *Maravillas* purportedly lay. This reveals that this was not material.

Next, even if the Spence Agreement was material, or even if Dan Porter had a duty to disclose it, Defendants ratified the continued relationship with MRR as they continued to contract with Dan Porter on all the same terms following notification of the Spence claim.⁴³ After learning of the Spence relationship in 2021, Defendants terminated the Services Agreement, accepted the benefits of it, completed the 2021 division, and continued their relationship with Plaintiffs on the same terms, with the same artifact division for three more years, ratifying the Agreement and waving any rescission. Even Defendants' Answer concedes this. It contends that:

After the termination of AEX's agreement with MRR, Porter was able to convince Allen that it was unfair for him to be personally penalized by the onerous provisions of a 6-year old contract he claimed he signed only in his official capacity, for a project that never came to fruition, and that contractually barred him from working in only a miniscule portion of the area covered by Allen's permits (within a 5-mile

⁴⁰ Transcript 64:16–20, ECF No. 352.

⁴¹ Transcript 64:21, ECF No. 352.

⁴² Pls.' Trial Exhibit 869 (Email from Preston Paine to David Concannon, Subject: Re: PRIVILEGED & CONFIDENTIAL, AEX040618 40620, 09/09/2021) ("Evaluate artifacts recovered in 2020-21 seasons to determine which were recovered from Spence's claim area . . . Expect Lee Spence to file litigation in South Carolina and then evaluate merits of claims upon filing.").

⁴³ For a full discussion of the continued implied agreement *see infra*—Section.II.B.1.

radius of a geographic point compared to an area covering 6,545 square nautical miles). Porter claimed he had not learned anything during the course of MRR's contractual relationship with Spence, which comprised of only one trip to the site in the admiralty claim and one brief reconnaissance dive on one day. Moreover, by the time AEX received Spence's letter, it had invested two years and millions of dollars into searching for the Maravillas with Porter as part of its day-to-day team. Consequently, AEX agreed to rehire Porter on the same terms as those spelled out in Exhibit B to the 2019 Services Agreement.⁴⁴

Any fraud or omission is ratified by Defendants when in light of the Spence Agreement they chose to rehire MRR/Dan Porter on the same terms. Thus, the Court finds that AEX did not establish that it would not have entered the Services Agreement had it known more about the Spence matter.

B. Breach of Contract

1. Terms of Implied Agreement

Defendants contend that Plaintiffs' claims for a percentage of artifacts are barred because there were no oral or implied agreements promising Plaintiffs a share of any artifacts recovered after August 19, 2021. Plaintiffs argue that an implied-in-fact contract arose from conduct showing mutual intent between the parties to be bound. *Haws & Garrett Gen. Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607, 609 (Tex. 1972).

The evidence demonstrated that after the termination of the written Services Agreement, nothing changed. In fact, when Plaintiffs' counsel asked Allen, "during those five years, AEX continued to take the benefit of all of those vessels and all of that know-how and all of that risk from Mr. Porter and the boats he brought, correct?" Allen answered, "yes."⁴⁵ Because nothing changed, Plaintiffs claim the termination was a "paper" or illusory termination devised as a

⁴⁴ Defs.' Ans. ¶ 65, ECF No. 201. Defendants' Answer claims the new terms of the agreement did not include an artifact division, which the Court finds it did. *See infra—Section.II.B.1.*

⁴⁵ Transcript 69:5–9, ECF No. 352.

litigation management strategy (*i.e.*, a way to avoid Spence) by AEX's counsel, Concannon. AEX did not terminate MRR based on *genuine* concern about the Spence Agreement.

As stated, Defendants conceded in their answer and counter claims that an implied agreement took the place of the written agreement, so the parties agree on that point. But Defendants argue there was never a meeting of the minds on how to share artifacts following the termination of the contract. Nevertheless, for the first time in trial Paine claimed there was no implied agreement at all because Dan Porter never formed Newco. Newco was the term the parties used for an anticipated new LLC that would be created to avoid any claim by Spence. At trial, Paine seemed confused about the terms of the agreement. He stated that MRR was not legally able to enter into an agreement (due to the Spence contract) which is why Dan Porter never formed Newco. Defendants stated in their opening statement that the Spence agreement was a minor issue, but the bigger issue was when they found out on August 18, 2026, that MMR was a shell corporation with no money, no employees, and no assets, so they no longer agreed to share artifacts.⁴⁶ During trial, Allen and Paine testified that they terminated the agreement because of the Spence claim.

The Court does not find Defendants' testimony credible on this issue and finds that most of the evidence contradicts the "no Newco, no contract" theory. To explain, the Court walks through the events as they unfolded.

a. There was an implied contract.

One day before the Services Agreement termination Dan Porter contacted Mike McDowell saying: "give me a call asap. We need to do a call with David on the Spence matter. He has another appointment at 5:00 o'clock his time, central time."⁴⁷ On Thursday August 19, 2021, at 1:07 PM,

⁴⁶ Transcript 33:9–20, ECF No. 351.

⁴⁷ Pls.' Trial Exhibit 97 (Email from Dan Porter to Mike McDowell, Subject: Call with Dave; 08/18/2021).

two days after Dan Porter notified Paine, Allen, and Concannon about the newest Spence threat, Paine sent Dan Porter the termination notice, copying Concannon. He wrote: “Dan, Please reply acknowledging receipt of the attached Termination of Services Agreement. Thank you, Preston.”⁴⁸ Dan Porter responded three minutes later, “Preston and David, I have received the Termination of services agreement.”⁴⁹ Four days after the termination, on August 23, 2021, Dan Porter wrote to Concannon and McDowell “Guys when do you think we can do another call. I am back from the site and have a couple of ideas to run by you both.”⁵⁰ Concannon responded five hours later, “I am on a motorcycle ride through the Rockies this week. Availability is tough because we are traveling through some extremely remote terrain. I am back next Monday.”⁵¹ Dan Porter responded the next day, “Copy Dave, Mike and I have been strategizing and look forward to talking soon.”⁵² Ten minutes later Concannon responded, “I am with a guy who can help you.”⁵³ Thirty minutes later Dan Porter wrote, “Great. Just let us know our next move. I will be talking with Mike tonight.”⁵⁴ Then on Saturday, September 4, 2021, Concannon messaged Paine and said “I have not forgotten about you. I wanted to connect you with Mike McDowell, Dan’s majority owner/partner, before I

⁴⁸ Pls.’ Trial Exhibit 99 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: David Concannon, Subject: Termination of Services Agreement, with attached Termination of Services Agreement; 08/19/2021).

⁴⁹ Pls.’ Trial Exhibit 99 (Email thread beginning with email from Preston Paine to Dan Porter, Cc: David Concannon, Subject: Termination of Services Agreement, with attached Termination of Services Agreement; 08/19/2021).

⁵⁰ Pls.’ Trial Exhibit 100 (Email thread beginning with email from Dan Porter to David Concannon, Mike McDowell, Subject: Availability; 08/23/2021).

⁵¹ Pls.’ Trial Exhibit 100 (Email thread beginning with email from Dan Porter to David Concannon, Mike McDowell, Subject: Availability; 08/23/2021).

⁵² Pls.’ Trial Exhibit 100 (Email thread beginning with email from Dan Porter to David Concannon, Mike McDowell, Subject: Availability; 08/23/2021).

⁵³ Pls.’ Trial Exhibit 100 (Email thread beginning with email from Dan Porter to David Concannon, Mike McDowell, Subject: Availability; 08/23/2021).

⁵⁴ Pls.’ Trial Exhibit 100 (Email thread beginning with email from Dan Porter to David Concannon, Mike McDowell, Subject: Availability; 08/23/2021).

sent the email you requested. Mike and I finally connected last night, I will send you an outline tomorrow, but most of this is best discussed in person or over the phone.”⁵⁵

The outline that Concannon referred to had several recommended next steps which revealed the plan to avoid Spence through the termination: “Terminate MRR (done)”; “Continue to employ Porter individually or through contract with his new employer (Newco or vessel owner)”; “Expect Lee Spence to file litigation in South Carolina and then evaluate merits of claims upon filing”; “Prepare to assist Porter/MRR in defense of Spence’s claims, with the goal being to protect AllenX”; “Stay very quiet about AllenX’s relationship with Porter (past and present) and knowledge of the potential claim by Spence”; “Evaluate artifacts recovered in 2020–2021 seasons to determine which were recovered from Spence’s claim area”; “In the future, distribute MRR’s share of artifacts from 2020–2021 season to entity designated by Porter’s majority shareholder in MRR”; “Consider redeploying Porter to vessel(s) searching/working other areas outside of *Maravillas* site to avoid claims by Spence that Porter is personally liable under their 2015 contract, and therefore, Porter’s personal work at the *Maravillas* site going forward belongs to Spence.”⁵⁶ The outline also recommended that Dan Porter/MRR: “Form a new offshore company”; “Distribute existing store of artifacts from other projects to partners/shareholders”; “[P]ursue options for dissolution of MRR”; and “Porter signs employment agreement with either Newco or company that owns the boats currently operating at the *Maravillas* site.”⁵⁷

⁵⁵ Pls.’ Trial Exhibit 874 (Email from David Concannon to Preston Paine, Subject: Follow up, AEX040614, 09/04/2021).

⁵⁶ Pls.’ Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

⁵⁷ Pls.’ Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

Dan Porter testified that although everyone was confident that Spence's claims were not valid, no one wanted to deal with litigation while they were finding treasure.⁵⁸ The goal was to keep Dan Porter and MRR's names out of sight so as to avoid drawing Spence's attention.⁵⁹ Schweizer—one of MRR's largest shareholders—testified that Concannon's advice to them was to move things from MRR to Ocean Recovery as a pass-through entity and set up an offshore account. Schweizer did not want to get involved with the tax implications of an offshore account, so they instead closed the bank account and started moving things to Ocean Recovery.

Further, AEX's behavior right after the termination indicates the termination was just a litigation strategy, not a true breakup. On August 27, 2021—less than 10 days after the paper termination—Paine emailed Michael Pateman and copied Dan Porter: “Michael, will you please work with Dan to separate his share of the artifacts and package them for delivery to him. I have attached a FINAL spreadsheet of the division with Dan's share highlighted in yellow. Please let me know if you have any questions.”⁶⁰ If concealment of the Spence situation was truly fraud, as they claim, then AEX otherwise had no need to divide artifacts with Dan Porter, but 10 days after the termination AEX was discussing divisions with Dan Porter.⁶¹ This weakens the reliability of Paine's testimony because the evidence shows that business was “as usual” and operating under an implied agreement. Additionally, these spreadsheets refer to “OR” which demonstrates that

⁵⁸ Transcript 164:9–14, ECF No. 350.

⁵⁹ Transcript 168:8–15, ECF No. 350.

⁶⁰ Pls.' Trial Exhibit 102 (Email from Preston Paine to Michael Pateman, Cc: Dan Porter, Subject: CONFIDENTIAL Division with Dan; AEX002056-2057, with attached Final OR AEX Division; 08/27/2021).

⁶¹ Pls.' Trial Exhibit 102 (Email from Preston Paine to Michael Pateman, Cc: Dan Porter, Subject: CONFIDENTIAL Division with Dan; AEX002056-2057, with attached Final OR AEX Division; 08/27/2021).

MRR—and later Ocean Recovery standing in MRR’s shoes—was a party to the agreement; it was never Dan Porter alone.⁶²

Defendants’ theory about *needing* Newco is in stark contrast with other facts in the case. After the August 2021 termination, the parties continued their relationship on substantively the same terms, with Dan Porter providing vessels and operations management and AEX paying stipends, charter fees, and expenses. This was consistent with the “paper termination” plan and the formation of a successor arrangement as documented by counsel’s contemporaneous communications. For example, Concannon emailed Paine on September 5, 2021 (a little under 3 weeks after the paper termination) and laid out next steps for AEX “to solve its contractor problem(s)” and explained how they planned to keep Dan Porter onboard using another LLC.⁶³ After the termination, payments were made to Ocean Recovery, acting like Dan Porter’s Newco, effectively stepping into the shoes of MRR as it relates to the vessels. Further, Paine’s insinuation that Porter was legally unable to enter into the implied agreement (hence, the need for a Newco) is unpersuasive because Dan Porter was no longer bound by the Spence Agreement as early as September 2021, and thus could contract with AEX.⁶⁴ Thus, the Court is not persuaded by Paine’s testimony that there was no implied agreement at all because Dan Porter never formed Newco and concludes that there was an implied agreement with all the same terms.

⁶² Defendants asked questions at trial relating to the issue of whether Dan Porter had the authority to enter into an implied contract on behalf of MRR. Allen also testified at trial that they only continued working with Dan Porter but not MRR. Whether or not Dan Porter had authority under MRR’s operating agreement is not an issue that any MRR members have contested. In fact, at trial the main members of MRR, Mike McDowell and Schweizer, ratified MRR’s entry into an implied contract. Thus, Dan Porter validly entered the implied agreement on behalf of MRR.

⁶³ Pls.’ Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

⁶⁴ Defs.’ Trial Exhibit 5 (“Exclusive Confidential Agreement between Edward Lee Spence and MRR dated August 13, 2015”); Pls.’ Trial Exhibit 7 (Email from Dr. E Lee Spence to Dan Porter, Subject: Termination of Agreement; 09/17/2016).

b. The implied contract's percentage was fixed at 25%.

Having concluded there was an implied contract, the Court turns to Defendants' argument that the parties never agreed on a percentage. The Court first addresses the evidence proffered by Defendants—the "Concannon notes" and the fact that Porter helped others draft written agreements but never insisted on a new one for MRR—then turns to Plaintiffs' evidence.

First, during trial, Defendants offered a series of notes taken by Concannon. These notes are from his phone calls with Dan Porter, Mike McDowell, and Allen over several years. These notes were the subject of significant motion practice. They were partially produced during briefing relating to an attorney-client privilege issue and were not fully produced until close to trial.⁶⁵

The notes were originally produced in a redacted form, and despite the fact that their contents strike at the heart of some of the issues in this case, the reason for the late production was that the notes were in storage. Because of their late production, and the fact that they slightly contradict other statements made by Defendants in this case, the Court is skeptical of their reliability. Concannon produced handwritten notes from a conference call he had with Mike McDowell, Dan Porter, Paine, and himself that read "3/30 . . . Dan – 'I want to come work for AEX and have MRR stay the same.' Preston – 'Why would we do that?' Dan says he doesn't know how to do this otherwise and he doesn't know what a 'discretionary percentage' is[.] Dan rejects 2.5%."⁶⁶ Dan Porter testified that he rejected the offer, said they should continue everything the same way with the same 25% artifact share, and that is what they agreed to do.

Although Defendants use this to show that a percentage amount was never agreed to, the Court finds and concludes that Dan Porter rejected Defendants' offer to buy him out of their

⁶⁵ This is due only in part to the compressed scheduling order.

⁶⁶ Pls.' Trial Exhibit 930 ("David Concannon's Notes of Pertinent Telephone Conversations regarding Spence matter"). The notes are presumably from March 2022.

existing agreement. This is corroborated by emails from February 2022 between Allen, Paine, and Concannon. Paine emailed Allen and Concannon on February 19, 2022, and provided that Dan Porter wanted to work directly for AEX before the season started. Dan Porter's salary would increase, as would some other underpaid individuals. Dan Porter's percentage would be discretionary based on Allen's assessment of expenses and team performance. Dan Porter would also take on a more active role in the lab.⁶⁷

Concannon responded to this email, cautioning against the proposal for two reasons. First, he believed it would trigger a response from Spence if AEX formally announced the *Maravillas* find and second, he believed incorporating Dan Porter into AEX operations would create greater liability exposure until AEX established a scientific diving program.⁶⁸ Paine agreed to hold off. Concannon was surprised by Paine's email because he had spoken with Dan Porter and Mike McDowell two days earlier, and this proposal did not come up. Paine explained that having Dan Porter work for AEX would allow them to keep Newco's costs down and make Dan Porter's percentage of the division discretionary, with his share directly affected by the overall expenses of the operation. Paine further suggested that, if they did not bring Dan Porter on, "we should restructure our agreement with Newco such that Newco's percentage of the division is after Newco expenses are reimbursed to AEX."⁶⁹ Neither arrangement, however, was ever finalized. Dan Porter

⁶⁷ Pls.' Trial Exhibit 979 ("Email thread beginning with email from Preston Paine to David Concannon, Carl Allen, Subject: Re: Hiring Dan Porter as AEX Employee - PRIVILEGED & CONFIDENTIAL, AEX044314-44316, 02/20/2022").

⁶⁸ Pls.' Trial Exhibit 979 ("Email thread beginning with email from Preston Paine to David Concannon, Carl Allen, Subject: Re: Hiring Dan Porter as AEX Employee - PRIVILEGED & CONFIDENTIAL, AEX044314-44316, 02/20/2022").

⁶⁹ Pls.' Trial Exhibit 979 ("Email thread beginning with email from Preston Paine to David Concannon, Carl Allen, Subject: Re: Hiring Dan Porter as AEX Employee - PRIVILEGED & CONFIDENTIAL, AEX044314-44316, 02/20/2022").

ultimately testified that he could not accept a position with AEX because he could not abandon the members of MRR, who he understood remained entitled to their 25% share.

Second, Dan Porter helped draft Bonnie Schubert (“Schubert”) and CJ Dimmick’s services agreements with AEX. Defendants ask the Court to draw the conclusion that Dan Porter chose not to enter into a new written agreement with AEX because he knew he would get a smaller percentage. But the Court does not draw that inference. Just because Dan Porter helped others draft a written contract does not negate the existence of his own agreement. Also, Schubert’s testimony corroborates that AEX entered oral contracts to hunt for treasure. Although she had a written contract for years 1 and 3 of her charter, she did not have a written contract for 2022, year 2. In 2022 she had a handshake agreement that renewed her services agreement and changed none of its terms.

Turning to Plaintiffs’ evidence, the Court finds that AEX internal documents and communications reflect the fact that a division was part of the implied contract. In April 2023, Michael Pateman sent Dan Porter a 2022 artifact spreadsheet to get Dan Porter’s opinion before dividing the treasure with the government.⁷⁰ The only reasonable inference for this is that Dan Porter also had an interest in the recovery. On June 25, 2024—almost a year later—Paine forwarded an email from Michael Pateman regarding 2021 and 2022 divisions to Allen, and in that email, he discussed a percentage for MRR.⁷¹ Specifically, Paine writes:

Mr. A,
the total value of the 2021 and 2022 divisions is \$8.86 mil. The Bahamas got the \$3 mil pendant (33.8% of the total), AEX got \$5.86 mil (66.2% of the total). Half of \$5.86 mil “goes to the foundation” so Dan gets 30% of \$2.93 = \$879,000 and Jim gets 2% of \$2.93 = \$58,600. In artifacts of course. I think we should tell Dan

⁷⁰ Pls.’ Trial Exhibit 149 (Email thread beginning with email from Michael Pateman to Dan Porter, Subject: 2022 Division sheet for review, with attached (1) 2022 Spreadsheet working sheet (1).xls, (2) 2022 Spreadsheet working sheet (1).xls [revised]; 04/07/2023).

⁷¹ Pls.’ Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024).

and Jim which artifacts they get. Last split Dan took all of the easily salable items. Michael, can you help us determine what Dan gets. Michael also has some ideas about a replacement for Dan. Not that we would replace him, but so we can at least have some leverage. I think he should reimburse us for most of the expenses he incurs before he gets his cut. To be continued....⁷²

Allen, seemingly out of nowhere, responded, “Dan is getting zero.”⁷³ A year later, and just 2 days before the July 9 meeting, Michael Pateman emailed Paine about giving Dan Porter a 30% division.⁷⁴ The subject line is “2021 and 2022 division” and the body says:

I’ve updated the 2021 and 2022 master spreadsheet to include a section for Dan (MMR) and Jim (JS). The spreadsheet is set up to keep track of the total division as artifacts are selected from each category. I calculated the percentages as we previously discussed. After AEX and the government’s division, AEX and the foundation divide the remaining in half. Then based on the new total for AEX, Dan receives a 30% share of that collection and Jim a 2% share of that collection.⁷⁵

⁷² Pls.’ Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024).

⁷³ Pls.’ Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024).

⁷⁴ Pls.’ Trial Exhibit 982 (Email thread beginning with email from Preston Paine to Spencer Gregg, Subject: Re: 2021 and 2022 division, AEX044444-44445, 08/19/2024).

⁷⁵ Pls.’ Trial Exhibit 982 (Email thread beginning with email from Preston Paine to Spencer Gregg, Subject: Re: 2021 and 2022 division, AEX044444-44445, 08/19/2024).

A few days later, on July 11, 2024, after the July 9 meeting, Paine emailed Michael Pateman and said “check my formulas.”⁷⁶ The formulas show⁷⁷:

TREASURE	
2020	
\$	1,817,947
\$	454,487 Bahamas
\$	681,730 Foundation
\$	470,394 AEX
\$	204,519 Dan Porter
\$	6,817 Jim Sinclair
	-\$1,600,000 does not include AXIS
	<u>\$470,394</u>
AEX LOSS	-\$1,129,606

2021 & 2022	
\$	8,860,000
\$	3,000,000 Bahamas
\$	2,930,000 Foundation
\$	2,021,700 AEX
\$	879,000 Dan Porter
\$	29,300 Jim Sinclair
	-\$3,200,000 does not include AXIS
	<u>\$2,021,700</u>
AEX LOSS	-\$1,178,300

2023	
\$	1,436,757
\$	359,189 Bahamas
\$	538,784 Foundation
\$	371,761 AEX
\$	161,635 Dan Porter
\$	5,388 Jim Sinclair
	-\$1,246,076 does not include AXIS
	<u>\$371,761</u>
AEX LOSS	-\$874,315

Michael Pateman testified on cross examination that the purpose of this email was to merely create options for Paine. Perhaps that would be persuasive if it were not for the fact that

⁷⁶ Pls.’ Trial Exhibit 968 (AEX Deposition Exhibit 15: Email from Preston Paine to Michael Pateman, Subject: Divisions, AEX032420, 07/11/2024).

⁷⁷ Pls.’ Trial Exhibit 968 (AEX Deposition Exhibit 15: Email from Preston Paine to Michael Pateman, Subject: Divisions, AEX032420, 07/11/2024).

these are Paine's numbers; Paine is asking Michael Pateman to check *his* calculations, thus they reveal his understanding of the agreement.

Additional documents support the same inference. AEX's internal spreadsheet for the division years 2021 and 2022 shows that MRR was to receive 30% of the recoveries.⁷⁸ On the spreadsheet, all finds are listed and totaled. There is a green column titled AEX share, a red column titled MRR share, and a yellow column titled JS share.⁷⁹ Some typed notes in the left-hand corner say "Foundation receives 50% . . . Both MRR and JS receive their shares based on the total received by AEX after a share to the foundation. MRR receives 30% and JS receives 2%."⁸⁰ Paine testified that this was a typo. But Paine's "typo" excuse is not credible; a typo does not explain the time, effort, and painstaking detail with which AEX divided treasure to Porter in the spreadsheets.

Further, on August 16, 2024, Paine forwarded Micheal Pateman's email to one of AEX's accountants which discussed the division. In the email he said "[t]he Bahamas get 25%. The remaining 75% is split 37.5% Allen Foundation, 25.5 Allen Exploration, 11.25% Dan Porter and .75% Jim Sinclair. We have no formal agreement to grant anything to the Allen Foundation and have not made a formal grant yet, but we could depending on your tax advice."⁸¹ Paine testified that the email merely sought information about potential tax consequences, reflected a hypothetical division, and followed up on a prior phone call, but maintained that Dan Porter was not entitled to any payment.. But nothing in the body of the email indicated this, and none of the AEX tax returns were introduced. It appears from these emails that there were internal communications on the AEX

⁷⁸ Pls.' Trial Exhibit 848 (Spreadsheet titled "AEX Total Recoveries - Division 2021 and 2022", AEX020314).

⁷⁹ Pls.' Trial Exhibit 848 (Spreadsheet titled "AEX Total Recoveries - Division 2021 and 2022", AEX020314).

⁸⁰ Pls.' Trial Exhibit 848 (Spreadsheet titled "AEX Total Recoveries - Division 2021 and 2022", AEX020314).

⁸¹ Pls.' Trial Exhibit 982 (Email thread beginning with email from Preston Paine to Spencer Gregg, Subject: Re: 2021 and 2022 division, AEX044444-44445, 08/19/2024).

side of the bargain about changing Dan Porter's split, but Dan Porter was never a party to these discussions.⁸²

Further, emails from 2024 reveal that AEX treated the implied agreement as having a 25% division. On September 6, 2024, Paine sent Allen an email with the subject line "Termination of Services Agreement." The body of the email read: "I am going to send you the Services Agreement and division info next. I would focus on the terminating the contract, not 25% of our 75% vs 25% of what AEX receives after Foundation share because we have not made a distribution to the Foundation. We also paid Dan 25% of our 75% in 2020."⁸³

Paine rationalizes these division conversations as mere presentations of options to the Allens for a potential division. The context discredits Paine's testimony. All of the evidence shows termination was "just for show," *i.e.*, strategy, to deal with the Spence claim and the parties agreed to continue on the same terms.

Instead, the evidence establishes that the percentage was never dependent on the formation of a Newco. Dan Porter's return to work was not on reduced terms; AEX's internal spreadsheets continued to calculate MRR's 25% share, and AEX, through its president (Paine) confirmed as late as June 2024 that MRR was owed approximately \$879,000 in artifacts.⁸⁴ AEX's internal proposals to reduce Porter's share to 2.5%, or "zero,"⁸⁵ were one-sided demands that Porter rejected, or were discussed in the context of bringing Dan Porter on as an AEX employee. The Court finds that AEX never reached a meeting of the minds with Dan Porter or MRR on any

⁸² See *infra*—Section II.B.3 (discussing the "squeeze out").

⁸³ Pls.' Trial Exhibit 846 (Email from Preston Paine to Carl Allen, Subject: Termination of Services Agreement, with attached Termination of Services Agreement, 09/06/2024, AEX020315-20316).

⁸⁴ Pls.' Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024) (calculated at a 30% share).

⁸⁵ Pls.' Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024).

reduction from the 25%. AEX's attempts to reduce the share further confirm that the 25% obligation existed and that AEX was trying to negotiate it away. The parties had a clearly defined continuing agreement at 25%, and any increases up to 30% on behalf of Paine were voluntary and unilateral. Thus, the Court finds that the implied agreement continued with the same terms as the Service Agreement of a 25% artifact division. The essential terms of the implied agreement are established: the parties are AEX and MRR (with Dan Porter as managing member), the percentage is 25% of the post-government share, the recoveries covered all seasons from August 2021 through termination, and the timing is at each seasonal division.

2. AEX's Breach of Contract Claim

Having concluded that a valid implied contract existed following the termination of the written Services Agreement, the terms being identical to that of the 2019 Services Agreement, the Court turns to each parties' breach claims, starting with Defendants' claims. AEX claims that MRR⁸⁶ breached both the written Services Agreement and the implied agreement.

To recover for breach, AEX must show that "(1) a valid contract exists; (2) [AEX] performed or tendered performance as contractually required; (3) [Dan Porter] breached the contract by failing to perform or tender performance as contractually required; and (4) [AEX] sustained damages due to the breach." *Pathfinder Oil & Gas, Inc., v. Great Western Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019).

AEX claims that MRR breached by 1) failing to perform obligations; 2) diverting money from expenses to Dan Porter for his personal use; 3) diverting employees to work for Dan Porter's personal benefit; 4) misappropriating funds paid by AEX for employee time, bonuses and work permits; 5) using vessels rented by AEX for Dan Porter's personal use and circumventing

⁸⁶ AEX sued Dan Porter, but the Court determined that the implied contract is between AEX and MRR.

Bahamian customs and import duties; and 6) using AEX credit cards to pay for goods for Dan Porter's personal use. AEX seeks compensatory damages, disgorgement, and rescission.⁸⁷

The Court first addresses the failure to perform contractual obligations under the parties' agreement and then the diversion and misuse claims.

a. Porter did not fail to perform his contractual obligations.

First, the Court finds that Dan Porter fulfilled his obligations. At trial, Allen testified that for the year following 2021, Dan Porter performed satisfactorily, but in 2023 he received complaints from "people" that the weather was not as bad as Dan Porter made it out to be when he stayed ashore for weather reasons.⁸⁸ Allen also testified that his team found about half of the treasure. But Allen never complained, in writing,⁸⁹ before this lawsuit about the quality or the cost of Dan Porter's services.⁹⁰ Thus, Defendants claim that Porter was not working full time on their project and never submitted a single pro-rated invoice, despite the contract's requirement that an invoice be prorated if time was not spent conducting activities for AEX.⁹¹

To prove this allegation, Defendants introduced evidence of Dan Porter's poor performance through AEX's field activity sheets—which were based on data recorded by Dan Porter and the crew while at sea. According to the field sheets, there are months when OR's vessels

⁸⁷ The Court cannot award disgorgement because while it may be available where there is a breach of fiduciary duty, "[d]isgorgement of profits is not a measure of damages available in a breach of contract action. 'The normal measure of damages in a breach of contract case is the benefit of the bargain, the purpose of which is to restore the injured party to the economic position it would have been in had the contract been performed.'" *Henry v. Masson*, 333 S.W.3d 825, 849 (Tex. App.—Houston [1st], 2010) (quoting *City of the Colony v. North Texas Mun. Water Dist.*, 272 S.W.3d 699, 739 (Tex. App.—Fort Worth, 2008). Further, in Defendants' Proposed Findings of Fact and Conclusions of Law, they elect to rescind the contract (which they did not seek previously). Rescission is available only when a plaintiff can show that a defendant materially breached the contract and there is no other adequate remedy at law. *In re Antone's Records, Inc.*, 445 B.R. 758, 778 (Bankr. W.D. Tex. 2011).

⁸⁸ Transcript 69:17–24, ECF No. 352.

⁸⁹ Allen testified that he complained orally for the first time in 2024 after speaking to his accountants about the cost of Porter's services.

⁹⁰ Transcript 70:17–25, ECF No. 352.

⁹¹ Transcript 29:24–30:19; Pls.' Trial Exhibit 1.

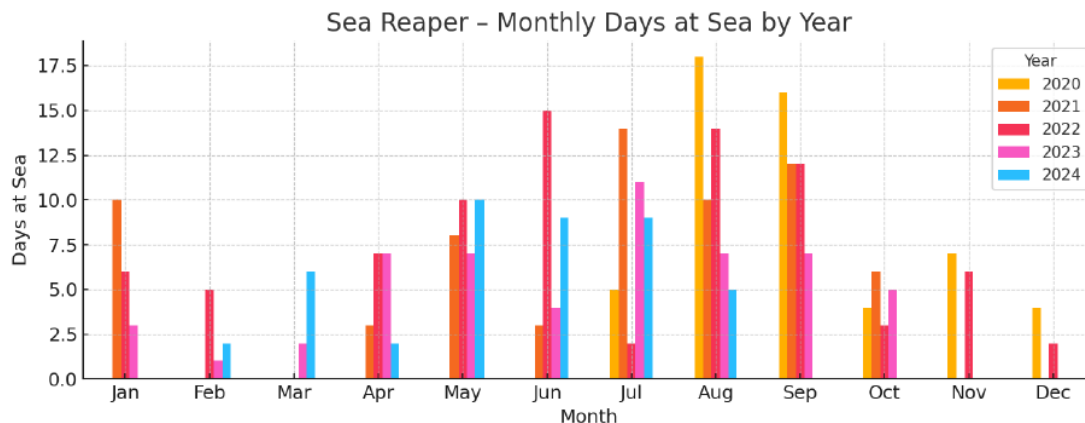
did not go to sea at all. And Defendants introduced evidence that there are no or limited field activity sheets for the Sea Hunter, Sea Reaper, and New World Explorer.

But Dan Porter explained that the Sea Hunter was a was a 28-foot Parker survey and support vessel that does not conduct excavation activities. It went to site to support or survey if the weather was good enough to survey, and the daily field activity sheets do not record survey trips. The survey data was stored elsewhere. It was put into survey fields and stored on the AEX operation files for each year. Per Dan Porter, that survey data is stored in AutoCAD. Similar questions were raised in relation to the Sea Ranger. But it was only on charter for three months and Dan Porter contended that these were only days when excavations were able to take place.⁹² The same goes for the New World Explorer for the two years it was on site. So, the lack of activity sheets for the support vessels does not prove Defendants' point.

Next, AEX showed that there are some years where in the months of February and March the Sea Reaper does not record a day at sea.⁹³ And in August 2020, the Sea Reaper spent only 17 days at sea.⁹⁴ Dan Porter was questioned about the Sea Trepid data as well. The daily field activity sheets indicate that although the Sea Trepid came on charter February 4, 2020, it did not go to sea

⁹² Defs.' Trial Exhibit 29 (Boat Monthly Comparison from 2020 to 2024).

⁹³ Defs.' Trial Exhibit 29 (Boat Monthly Comparison from 2020 to 2024).

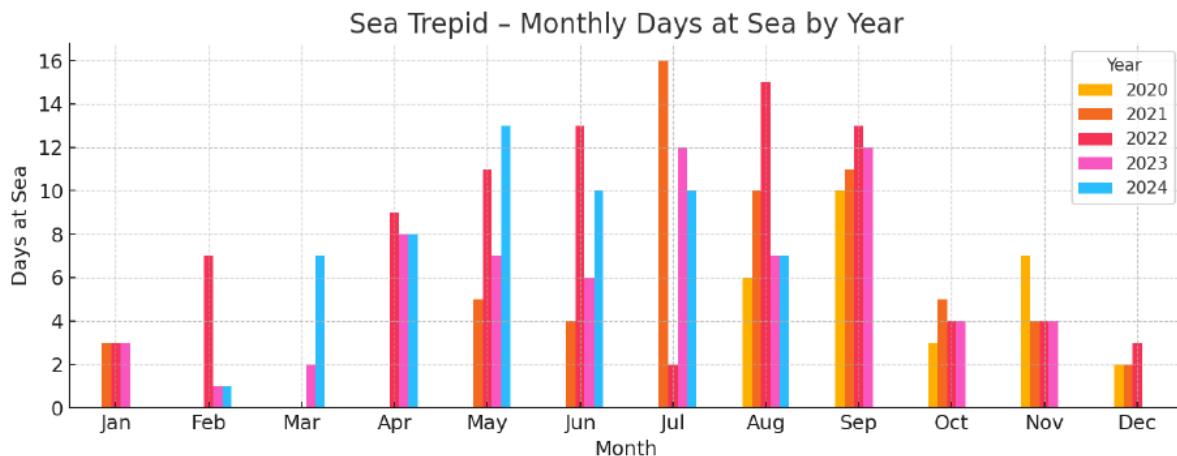


⁹⁴ Transcript 28:1–14, ECF No. 350; *see also* Defs Ex 29.

in until July 2020.⁹⁵ Dan Porter denied that the Sea Reaper did not go out until July 2020, but explained at trial that not every day that a vessel went to sea is noted in the field activity sheets because the field activity sheets were their excavation logs; they only related to activity that occurred during recovery. Days at sea doing tasks other than recovery were not recorded as excavation data.

As it relates to the nonexistence of pro-rated invoices, Dan Porter's charters were contrasted with Schubert's who did not invoice during November, December, January, February,

⁹⁵ Defs.' Trial Exhibit 29 (Boat Monthly Comparison from 2020 to 2024).



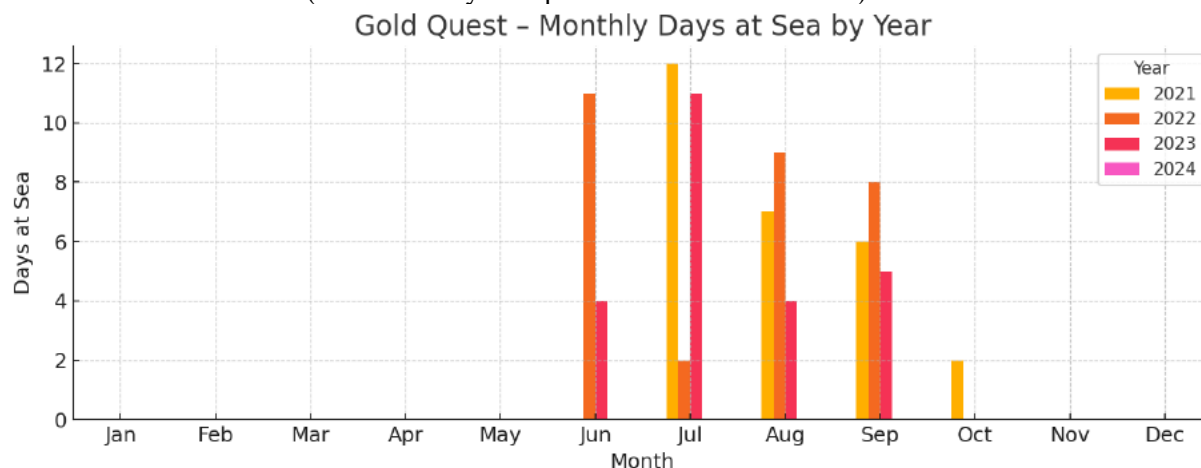
and March for her vessel, the Gold Quest.⁹⁶ But Dan Porter explained the difference. Schubert wasn't on charter, and she wasn't even in the Bahamas.

When he was not at sea, Dan Porter was working on vessels, preparing or working in the laboratory, or doing whatever else needed to be done. Dan Porter explained that they “were 100 percent committed in the Bahamas living outside of the U.S. not conducting activities for anyone else in the Bahamas. So we were on site available to go to the site whenever weather permitted, 24/7, 365 days a year.”⁹⁷

The fact that Porter was constantly working is corroborated by the expert testimony of John Brandon. John Brandon has 58 years of experience finding treasure and was a captain under Mel Fischer. Although he has a familial relationship with Dan Porter, the Court finds his depth of knowledge and expertise outweighs the risk that he is prejudiced. John Brandon testified that there are

all kinds of months when the weather is bad, when storms are going by, even storms that happen away at sea, hurricanes, but they're ground swells that will hit the east coast of the United States or the Little Bahama Bank and that can mess up the weather. . . . Even though it might be a bright sunny day, you've still got big, giant ground swells coming in and you can't put people in the water in those conditions.

⁹⁶ Defs.' Trial Exhibit 29 (Boat Monthly Comparison from 2020 to 2024).



⁹⁷ Transcript 30:15–19, ECF No. 350.

What you can do is make sure that the salvage vessels are ready, that the crews are ready. That as soon as the weather breaks, you can get back out in site.

Transcript 240:11–22, ECF No. 350. Regardless of how nice the water may look, underwater conditions may also compromise a plan to excavate.

Other contractors attested to Dan Porter’s committed performance. James Parker, an MRR member who worked on the *Maravillas* site from February 2023 through December 2024, testified that Dan Porter was always working 7 days a week. Schubert,⁹⁸ who captained the *Gold Guest* and was on charter about half of the year from 2021–2023, testified that she worked when the sun came up and until it went down. Schubert also explained that unlike her, it makes sense that Dan Porter would have work to do in the off months because he was the Operations Manager. She testified that when he was not at sea, he was preparing vessels, doing maintenance, and planning the best route for excavation of treasure. As Schubert explained, Dan Porter did everything such that her only job was to take care of her own boat.

And these were not easy tasks; they took time. Schubert, Dan Porter, and Allie Porter all testified to the difficulties related to obtaining parts, fuel, and managing vessels. Schubert also explained that even during the peak season, excavation operations were at the whim of the weather. She recounted times when she could not even lower the *Gold Quest*’s blowers because of the difficult conditions at sea.

AEX’s expert, Brent Bisben, disagreed. Brent Bisben believed that Dan Porter did not perform his duties as an operations manager. His opinion comes from his experience on other projects. Typically, he said, the Operations Manager would be responsible for overseeing archeologists, marine biologists, reporting artifacts, dealing with finances, reporting to the

⁹⁸ Although Bonnie Schubert has a close working relationship and friendship with Dan Porter, the Court finds her testimony credible. She has extensive experience and her testimony was consistent with other witnesses.

government, overseeing the conservation facility, coordinating with numismatists and mapmakers and cartographers. But several of these duties were handled by Michael Pateman at the AMMC.

Despite Brisben's testimony, the Court finds that Dan Porter complied with his contractual obligations because the parties did not contract him to do the things that Michael Pateman was hired to do. Brent Bisben's testimony mostly reflected that he believes it is unfair for someone with Dan Porter's obligations to receive the high percentage of artifacts that he contracted for, not that Dan Porter failed in some way. Brent Bisben also testified that when he worked with Dan Porter on the 1715 fleet there were good weather days where Porter and the crew would hang out at the bar. The Court finds that these vague references to Dan Porter's actions in the past do not change the fact that Dan Porter largely complied with his obligations under this contract.

Sure—not every waking minute was Porter working—but he was not required to, and Allen did not seem to expect him to. Schubert explained that the crew constantly had family and girlfriends over at the House; overall, it was an exciting environment. And Allen and his wife would sometimes come to the House and Allen attended about 60% of the diving operations. James Parker testified that they worked daily, ate, and sometimes partied. The bulk of the testimony looked back on these events fondly and reflected that the Allens ratified this type of culture, and even hosted meetings and drinks on their yacht for the crew. There are no corroborated allegations that Dan Porter not working as expected.

Lastly, Defendants point to Dan Porter's use of "honey holes" as an example of his failure to perform under the contract. Honey holes were spots on the Maravillas site where Dan Porter found artifacts and after multiple times "go[ing] over a spot" they "still find more."⁹⁹ "So, it was a spot [they] knew [they] can get something from."¹⁰⁰ At trial Leah Hall explained that these were

⁹⁹ Transcript 107:1–6, ECF No. 353.

¹⁰⁰ Transcript 107:1–6, ECF No. 353.

spots they knew contained artifacts and Dan Porter would use a honey hole when he needed to make Allen happy with the work. Dan Porter denies he maintained honey holes. Even if the honey holes did exist—which the Court is unsure the evidence establishes—the Court does not find this to be a failure to perform. It appears the purpose of the honey holes, according to Leah Hall’s testimony, was to save them for days when Allen brought guests to dive, search, and recover treasure.

After reviewing all the evidence, the Court finds that Dan Porter adequately directed field operations and applied his expertise to identify and recover artifacts. Dan Porter and MRR performed extensive salvage operations, including over 100 trips to sea and excavation of thousands of search areas, recovering gold, silver, gemstones, and other valuable artifacts. Thus, Defendants have not carried their burden to show that he did not adequately perform under the Services Agreement or implied agreement.

b. Dan Porter did not materially breach the contract by diverting or misusing funds and crew, and even if there were minor breaches, the Court cannot award damages.

Remaining are Defendants claims that Dan Porter 1) diverted money from expenses for his personal use; 3) diverted employees to work for his personal benefit; 4) misappropriated funds paid by AEX for employee time, bonuses and work permits; 5) used vessels rented by AEX for his personal use and circumvented Bahamian customs and import duties; and 6) used AEX credit cards to pay for goods for his personal use. In short, AEX claims that Dan Porter stole money for himself, used the crew for himself, and asked the crew to aid in illegal smuggling.

Not all breaches are treated the same—the remedy for the breach is dependent on its severity. “Under Texas law, if a contracting party materially breaches a contract, the non-breaching party is no longer obligated to perform and may seek damages as if the entire contract had been breached.” *Simms v. Jones*, 296 F.R.D. 485, 502 (N.D. Tex. 2013) (Lynn, J.). “Whether

a breach is material depends on many factors, including the extent to which the non-breaching party would be deprived of the benefit he could have reasonably anticipated from full performance; the less the non-breaching party is deprived of the expected benefit under the contract, the less material the breach.” *Simms v. Jones*, 296 F.R.D. 485, 502 (N.D. Tex. 2013) (Lynn, J.).

Texas courts follow the framework outlined in the Restatement to determine whether a breach is material. *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 199 (Tex. 2004) (per curiam) (citing Restatement (Second) of Contracts § 241 (1981)). “A breach is material if the injured party does not receive the substantial benefit of the bargain” under the contract.” *Balfour Beatty Rail, Inc. v. Kansas City Southern Railway Co.*, 173 F. Supp. 3d 363, 407 (N.D. Tex. 2016) (Lindsay, J.). “By contrast, when a party commits a nonmaterial breach, the other party is not excused from future performance but may sue for the damages caused by the breach.” *O’Brien’s Response Mgmt, L.L.C. v. BP Exploration & Production, Inc.*, 24 F.4th 422, 434–35 (5th Cir. 2022) (internal quotation marks and citation omitted). “The goal in measuring damages for a breach-of-contract claim is to provide just compensation for any loss or damage actually sustained as a result of the breach.” *Parkway Dental Assocs., P.A. v. Ho & Huang Props., L.P.*, 391 S.W.3d 596, 607 (Tex. App.–Houston [14th Dist.] 2012, no pet.).

Starting with the Services Agreement’s reimbursement provision, it provides that MRR shall be reimbursed for “[a]ll other reasonable, proper and necessary monthly operating expenses incurred by MRR in performing its duties under this Agreement, subject to the presentment by MRR of appropriate vouchers and/or invoices in accordance with the Company’s normal policies for expense verification, including, without limitation, food, lodging, fuel costs and expenses.”¹⁰¹ Further, “[f]or the avoidance of doubt, the Company shall be required to reimburse the foregoing

¹⁰¹ Pls.’ Trial Exhibit 1 (Services Agreement between Allen Exploration, LLC and Maritime Research & Recovery, LLC; 11/13/2019).

expenses only in the event and to the extent that such expenses are incurred and accrue during monthly periods when MRR's vessels are at sea and being used solely in connection with MRR providing its services to the Company hereunder."¹⁰² Although Paine personally approved all of the now-contested expenses submitted to AEX, doing so does not automatically equate to ratification.¹⁰³ Thus, the Court considers all of the claims of misappropriated expenses.

The Court begins with "Tellis," whose appearance on the payroll Defendants now dispute. Multiple witnesses testified that Tellis was a friend of Dan Porter's who often stayed at the House and did odd jobs for \$2,500 a month. Allie Porter testified that Tellis was "her Bahamian uncle."¹⁰⁴ Neal Albury (employee and neighbor) testified that Tellis ran errands—for example, to the store to get supplies for the boats—but Gavin Roberts (employee) testified that Tellis did nothing *Maravillas* related. The Court is not convinced that Defendants met their burden to show that Tellis was not a valid employee. But even if they did, payment to him would be a minor breach, because this does not alter the bulk of Defendants' benefit of the bargain.

Defendants also claim that Dan Porter improperly used money that was intended to be used to pay the Government for multiple work permits. Their only evidence in support is that the permits were not obtained until they brought in a consultancy firm—Bahamas Nautical Group—to get the permits instead. That consultancy firm is owned by Neal Albury, who provided payroll services to AEX, operated out of Nassau, and dealt with immigration. He testified that the reason he was

¹⁰² Pls.' Trial Exhibit 1 (Services Agreement between Allen Exploration, LLC and Maritime Research & Recovery, LLC; 11/13/2019).

¹⁰³ "To prove ratification, Porter must establish that AEX (1) had full knowledge of the breach of duty or wrongdoing at the time of ratification; and (2) intentionally chose to ratify the conduct in spite of this knowledge." *McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Policy*, 241 F. Supp. 3d 737, 759 (N.D. Tex. 2017) (Boyle, J.) (internal citation and quotation marks omitted). "The party relying on the ratification has the burden to prove knowledge of the . . . breach and to prove a voluntary, intentional choice to ratify the contract in light of that knowledge." *Id.* (internal citation and quotation marks omitted).

¹⁰⁴ Transcript 300:8–9, ECF No. 350.

brought on was not attributed to Dan Porter. Instead, it was AEX complaining about the time it was taking to obtain permits. Moreover, Neal Albury was never contacted by AEX to investigate any of the allegations related to work permits. Because there is no further evidence in support, Defendants failed to meet their burden on this issue.

Next, Defendants claim Porter pocketed some of the crew's pay during the time he was responsible for dividing the pay amongst the crew until Bahamas Nautical Group got involved. Alex Barrett (employee) testified that his pay under Dan Porter was \$1,500 per month, and when Bahamas Nautical Group stepped in, he was paid \$2,500 a month. Defendants assert the inference is Dan Porter was pocketing money. Gavin Roberts testified that once the Bahamas Nautical Group took over payroll, he started receiving health insurance, which he should have received before. Kenton Dickerson (employee and Dan Porter's replacement) testified that Dan Porter would sometimes withhold pay to keep the project afloat until the next charter, but not to pay Dan Porter's expenses. Even if Dan Porter acted improperly, these acts do not rise to a material breach—because AEX received their benefit of the bargain.

Defendants also raise concern about systematic overcharging. They point to a few receipts with small charges on them. It was anything but systematic. Dan Porter's daughter, Allie Porter, testified that there were only minor discrepancies in billing, and everything else was ratified.¹⁰⁵ She testified: "There was a steak situation that happened that dad ate the bill on" but that was because "the shopping was done by someone who doesn't typically do the shopping. That got corrected, and [she] resubmitted it for approval."¹⁰⁶ "There was one time they asked [them] not to buy butter, to find an alternative. So he said, okay."¹⁰⁷ There is one example of a less than \$40

¹⁰⁵ She also testified that Dan Porter has dyslexia and she would correct the inadvertent mistakes he would make in documents. Transcript 317:16–21, ECF No. 350.

¹⁰⁶ Transcript 278:25–279:8, ECF No. 350.

¹⁰⁷ Transcript 279, ECF No. 350.

charge for hard liquor even though Dan Porter was told to only stock the boats with beer.¹⁰⁸ The only other example of unapproved expenses are shown in the AEX monthly expense books as “Canceled” or “Paid by Dan” for things such as \$465.39 at Bahamian Brewery or \$595.84 at Restaurant Depot.¹⁰⁹ Leah Hall also testified that Dan Porter’s girlfriend at the time, Angie, would occasionally join Leah Hall on grocery shopping trips and would charge personal items along with the cost for the rest of the crew.¹¹⁰ But, MRR fronted the bills. And there is no other indication in evidence that MRR submitted any of Angie’s expenses to AEX.

Next, Defendants claim that Porter submitted a false invoice. In September 2021, Dan Porter submitted an invoice to AEX for \$1,000 for database services that was supposedly generated by Armstrong,¹¹¹ and Armstrong testified at deposition that he did not create or submit this invoice to Dan Porter. His deposition testimony reflected that the first invoice he created and sent to Dan Porter for submission to AEX was in October 2021. Even if Dan Porter did submit this invoice, this does not rise to a material breach—because AEX received their benefit of the bargain.

Defendants also allege that Dan Porter used boats and fuel paid for by AEX to run electricity to the House. Kenton Dickerson testified that the Sea Reaper powered the House by running the generator 24 hours a day from the months of January 2021 through April 2021, consuming fuel and oil charged to AEX. Kenton claimed this was to build the House.¹¹² In contrast, Neal Albury testified that the boats were always on shore power. Even if this is true, the Court does not find it is a material breach because AEX received their benefit of the bargain.

¹⁰⁸ Defs.’ Trial Exhibit 76 (Invoice from New World Explorer dated November 22, 2022 and other invoices for November 2022).

¹⁰⁹ Pls.’ Trial Exhibit 542 (Spreadsheet - MRR Project Expenses).

¹¹⁰ Transcript 104:19–105:11, ECF No. 353.

¹¹¹ Defs.’ Trial Exhibit 98 (Email from Allie Porter to Yvonne Gaylord, Dan Porter, and Preston Paine re: Ocean Recovery Invoices dated September 30, 2021).

¹¹² Defs.’ Trial Exhibit 82 (Email from Allie Porter to Yvonne Gaylord, Dan Porter, and Preston Paine re: MRR April 2021 Invoices dated April 28, 2021).

Next, Defendants allege that the crew built the House using AEX's funds. In support, Gavin Roberts testified that "we've done work on his personal whaler. We've done work on the house itself, putting up windows. We built his guesthouse, including the pool table, the shelving, the laundry room, and even some of the upstairs woodwork."¹¹³ They were not paid by Dan Porter to do any of this work. He said some of this occurred on bad weather days, but not all. Alex Barret¹¹⁴ corroborated these claims, testifying that Dan Porter had them do construction work personally at the house. Alex Barrett testified that he used a Bobcat to get gravel from a neighbor's driveway to turn it into concrete. Both Alex Barrett and Gavin Roberts testified that crew helped work on the dock for a neighbor's house—the Dirkes' house. Alex Barrett testified that under Dan Porter's direction, he dove eight feet down the water column to repair the dock, and that he did not feel safe doing the job. He claimed this ultimately damaged the hydraulic pump on the Sea Reaper.

But Schubert testified that the *Maravillas* crew did not build the House. She testified that Dan Porter hired a full yard crew, a contractor, some other workers, and electricians to work on the House. Meanwhile the crew would merely pick up around the House. Neal Albury, who lives next door to the House, also testified that he would see the boat crew at Dan Porter's home but never saw the dive crew doing work around the House.

Allie Porter testified that her father hired a contractor to renovate the House, and that she knew there was a contractor because he needed a general contractor for the permitting. James Parker, an MRR member, also testified that Haitian contractors took care of the yard and that he never saw any crew doing construction at the House.

¹¹³ Transcript 18:9–12, ECF No. 353.

¹¹⁴ The Court also finds Alex Barrett's testimony to be of limited credibility. When asked on direct whether Leah Hall ever fell off a boat he captained, he said no. But Leah Hall and Dan Porter both testified that one day Alex was driving the boat too fast around a corner and Leah was thrown off. She was bruised as a result. This reveals that his testimony may be self-interested.

Taking the differing testimony into consideration, because Gavin Roberts and Alex Barrett's testimony recounted with great detail how they drove the Bobcat and repaired the neighbor's dock, the Court credits that some if not all of those stories are true. But the stories that are sufficiently corroborated are isolated and are not a material breach because AEX received their benefit of the bargain.

Second to last, Defendants claim that Porter used the crew to aid in smuggling undeclared items into the Bahamas. Gavin Roberts, Kenton Dickerson, and Alex Barrett (crewmembers) all testified that on at least one occasion Dan Porter instructed them to aid in smuggling what they believed to be undeclared items into the Bahamas to avoid paying taxes. Gavin Roberts testified that Dan Porter put the crew on what seemed to be lookout duty to avoid Bahamian customs. At night, they would clear a path for him on the Boston Whalers so he could unload furniture for the guest house, equipment, power tools, and a push mower. Kenton Dickerson testified that they unloaded Bobcat tires and furniture and flooring for the guest house. Alex Barrett's testimony was the same. Both Kenton Dickerson and Gavin Roberts testified that Dan Porter did not check in with Bahamian customs, instead checking in with them afterwards.

But the crew could not testify to where Dan Porter got the items, which matters if they are allegedly undeclared. In fact, Dan Porter would often request items from Allen and would get them from Allen's boat—the Axis—and load them onto his boat. And it is unlikely that Dan Porter was taking the boat to Florida—a seven-or eight-hour trip one way—and back to get undeclared items. It is more likely that he was making trips to Allen's boat. The Court draws two conclusions from this evidence. First, it is unlikely that the furniture was smuggled. Next, it is likely something else was on the boat that caused Dan Porter to place the crew on lookout.

That leads to the final and most scandalous accusation, that Porter used crewmembers and AEX boats to smuggle drugs into the Bahamas. Rob Hill testified that Dan Porter asked crewmembers to bring narcotics into the Bahamas, specifically marijuana and “molly.” He said that he did not agree to do so. Kenton Dickerson testified that he saw marijuana on one of Dan Porter’s boats and that he and Josh Hall helped him smuggle it. Dan Porter’s felonious past, and his surreptitious behavior, tend to corroborate this allegation.

The Court therefore evaluates whether, if true, this would be a material breach. The analysis prescribed by the Restatement for material breach includes consideration of factors outside the text of the contract that bear on the real expectations, benefits, and injuries to the parties. *United States v. Mire*, 838 F.3d 621, 628 (5th Cir. 2016). “For example, courts are to consider ‘the extent to which the injured party will be deprived of the benefit which he reasonably expected.’” *Id.* (citing Restatement (Second) of Contracts § 241(a) (1981)). Materiality is accordingly an issue of fact under Texas law. *Briargrove Shopping Ctr. Joint Venture v. Vilar, Inc.*, 647 S.W.2d 329, 333 (Tex. App.—Houston [1st Dist.] 1982, no writ). In this case, no loss or damage was caused by Dan Porter’s alleged drug smuggling. Because there was no loss or injury caused by the breaching party, the acts cannot exceed the benefit conferred, and thus, this leans in favor of it not being material. AEX was deprived of a benefit in the sense that they expected Dan Porter to comply with the law, but they also received their benefit in the form of receiving Dan Porter’s services from 2019–2024. Dan Porter cannot get that time back and “[t]he purpose of rescission is to place the parties in the position that they would have occupied if no such contract had ever been made.” *In re SeaQuest Diving, LP*, 579 F.3d 411, 419 (5th Cir. 2009). The contract was otherwise fully performed, and treasure was consistently recovered.

To conclude, the myriad of alleged breaches proffered by Defendants are all either not material or not proven by a preponderance of the evidence. AEX's belated scrutiny of Dan Porter's expenses and activities after years without objection does not establish a finding of systematic overcharging or misuse. And the other breaches are minor breaches. These likely total a few thousand dollars in damages, but AEX seeks no monetary relief for any such damages.¹¹⁵

Moreover, even if there are calculable damages, the Court cannot award them because Defendants' complaint sues *Dan Porter* but not *MRR*. And only *MRR* is a party to the contract. Defendants cannot recover for breach of contract against Dan Porter; he is shielded by the corporate form. *Willis v. Donnelly*, 199 S.W.3d 262, 271 (Tex. 2006) ("an individual can incorporate a business and thereby normally shield himself from personal liability for the corporation's contractual obligations.").

In conclusion, because none of the breaches are material even when taken together,¹¹⁶ the Court cannot award rescission or disgorgement. AEX was not "deprived of the benefit of the bargain." *U.S. v. Castaneda*, 162 F.3d 832, 837 (5th Cir. 1998). "The less the non-breaching party is deprived of the expected benefits, the less material the breach." *Id.* AEX bargained for a treasure hunt, and it got a treasure hunt. This situation warrants damages but not an undoing of the contract. Thus, Defendants' have not carried their burden of proof on their breach of contract claim against Dan Porter.

¹¹⁵ In Defendants' answer and counterclaim, they sought damages for the breach of contract action. Defs.' Ans. 57, ECF No. 201. In Defendants' proposed findings of fact and conclusions of law, they elected to rescind the agreement rather than recover damages. Defs.' Proposed Findings of Fact and Conclusions of Law 77, ECF No. 279. At trial, Defendants reaffirmed their election to rescind and stated that they no longer sought any damages and solely wanted rescission and disgorgement.

¹¹⁶ Defendants also claim Dan Porter breached by mistreating crew, but the Court finds the evidence did not prove by a preponderance of the evidence that the crew was mistreated in a way that would constitute a breach of contract, let alone a material breach.

3. Plaintiffs' Breach of Contract Claim

MRR brings two breach of contract claims against AEX. One for the failure to convey pre-August 2021 artifacts (written Services Agreement), another for failure to convey artifacts recovered in 2022, 2023, and 2024 (implied Services Agreement).

First, the Court finds that AEX breached the written Services Agreement. AEX did not convey MRR's 25% share of the 2021 pre-termination recoveries and having found that AEX's fraud in the inducement claims fail, AEX has no basis for withholding MRR's share. Further, internal AEX emails indicate that there was no question that the 2021 division should have happened. An email from Concannon to Paine on September 5, 2021, directs AEX to "distribute MRR's share of artifacts from 2020–2021 season to entity designated by Porter's majority shareholder in MRR."¹¹⁷ Thus, MRR succeeds on its claim against AEX for breach of the written Services Agreement.

Second, the Court considers whether AEX breached the implied agreement by failing to convey artifacts. The unilateral refusal to divide artifacts after the implied agreement and scheme to get rid of Dan Porter is well documented. Even back in September 2021, Concannon suggested to Paine that he "stop looking for crew in the small pool of treasure hunters working in Florida and the Gulf of Mexico. You need to go outside the 'midget market' to companies that do normal offshore survey work. These people are used to getting paid by the day to look at the mud. They don't have aspirations of finding treasure, disgruntled investors, tax problems, and big mouths. They just go to work, do the job and go home at the end of the day."¹¹⁸ The "have aspirations of finding treasure, disgruntled investors, tax problems, and big mouths" refers to Dan Porter's

¹¹⁷ Pls.' Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

¹¹⁸ Pls.' Trial Exhibit 875 (Email from David Concannon to Preston Paine, Subject: PRIVILEGED & CONFIDENTIAL, AEX040615-40616, 09/05/2021).

motivation, because earlier in the email, Concannon suggested taking the search and recovery operations in house, which required cutting Dan Porter loose.

And it appears that, unbeknownst to Dan Porter, AEX was in fact trying to replace him out of distaste for MRR. On January 27, 2023—before Allen learned about any breaches by MRR—Sinclair emailed Allen with the subject: “Black List thoughts (confidential please).”¹¹⁹ The email says: “[p]er our conversation regarding the situation with Dan and MRR, and your request for a ‘blacklist’ I cannot offer much help with the MRR situation per se, however here are some thoughts about Dan.” After going through Dan Porter’s dedication to the project, expertise, and reasons that AEX should not replace him, Sinclair said, “I know the situation with MRR is not tenable, and that Dan can be a little rough around the edges, but I would urge you to try to keep Dan, no matter the outcome of the situation with MRR.”¹²⁰ Other communications provide context for Sinclair’s email. Those communications reveal that Allen was frustrated with MRR’s investors as early as February 20, 2022. In an email thread with the subject “Hiring Dan Porter as AEX Employee – PRIVILEGED & CONFIDENTIAL” Allen writes to Concannon:

The one thing I’ve always struggled with when Dan is concerned, his investors are a burden. . . . Marx, Humphries and even the Fishers had investors that in most cases created huge problems because of the pressure to produce and provide a return. One of the basics that makes our relationship that much better because I have zero pressure being 100 percent private and self funded. Further, Dan has felt this pressure which is unacceptable to me going forward. I have always stated that none of our artifacts are leaving the county for now but that statement is false when Dan receives his cut and it almost immediately leaves the country to pay his investors first, he gets almost nothing. This could create a problem for us in the future when we won’t be able to control the Market of Maravilla artifacts coming out before we do. *Bottom Line, Hook or Crook we absolutely must get rid of Dan’s investors immediately before the start of this season. Please find a solution.*

¹¹⁹ Defs.’ Trial Exhibit 186 (Email from Jim Sinclair to Carl Allen re Black List thoughts dated January 27, 2023).

¹²⁰ Defs.’ Trial Exhibit 186 (Email from Jim Sinclair to Carl Allen re Black List thoughts dated January 27, 2023).

Pls.’ Trial Exhibit 980 (Email thread beginning with email from David Concannon to Carl Allen, Preston Paine, Subject: Re: Hiring Dan Porter as AEX Employee - PRIVILEGED & CONFIDENTIAL, AEX044317-44320, 02/20/2022) (emphasis added). And around two weeks before the July 9 meeting in response to an internal AEX email allocating Dan Porter’s division, Allen responds, “Dan is getting zero.”¹²¹

Allen then refused to convey Porter his entitled share on July 9, 2024. Dan Porter testified that on July 9, 2024, he was called to a meeting with no context. The meeting included Dan Porter, Paine, and Allen. At this meeting Allen informed Dan Porter that he had friends in the Department of Justice who had reports of Dan Porter stealing gold coins in Florida. Allen also accused Dan Porter of abusing his crew, using the crew to build his House, and “everything you could ever imagine.”¹²² Allen threatened to take away his division entirely, communicating that Dan Porter’s pay was based on performance, and then Allen told Dan Porter he would give him 60% of what Allen owed him. At trial Allen denied offering him 60%. Dan Porter said they “had this discussion a half a dozen times or more about the MRR members and how I couldn’t desert them.”¹²³ Dan Porter testified that the roughly 2.5-hour meeting ended with Allen agreeing Dan Porter would send him what Dan Porter believed to be a fair and equitable division. Dan Porter then sent Allen and Paine an email on July 14, 2026, titled “First round of Division (Suggestion/Example) AEX/US.”¹²⁴ The email includes an excel sheet and says “I would suggest that we get on a call or meet to work through to arrive at a final. Hopefully this can happen in the very near future.”¹²⁵

¹²¹ Pls.’ Trial Exhibit 840 (Email thread beginning with email from Preston Paine to Carl Allen, Subject: Re: 2021 and 2022 divisions, AEX033014-33015, 06/26/2024).

¹²² Transcript 238:13–18, ECF No. 351.

¹²³ Transcript 238:4–8, ECF No. 351.

¹²⁴ Defs.’ Trial Exhibit 10 (Email from Dan Porter to Carl Allen and Preston Paine re First round of Division (Suggestion/Example) AEX/US dated July 14, 2024).

¹²⁵ Defs.’ Trial Exhibit 10 (Email from Dan Porter to Carl Allen and Preston Paine re First round of Division (Suggestion/Example) AEX/US dated July 14, 2024).

AEX then terminated the agreement on August 1, 2024, when Paine emailed Dan Porter “Dan, please share the attached letter with all interested parties. Thank you, Preston.”¹²⁶ The email states: “Dear Team: As of September 30, 2024, Allen Exploration will be ending its Exploration and Recovery operation for the season. For next season AEX is considering several options including building and operating our own boats. We will keep you informed as information becomes available.”¹²⁷ Allen and Paine went through several versions of the termination letter before sending to Dan Porter. The first version said:

Pursuant to our meeting in Stuart, Florida, on July 9, 2024, I am writing to confirm that Allen Exploration will no longer need your services as of September 30, 2024. Allen Exploration is considering several options on how we might proceed with our Exploration and Recovery program, *including continuing to work with you, but only if you agree to pay all your expenses in return for a percentage of the artifacts.*

Pls.’ Trial Exhibit 843 (Composite Emails regarding draft termination letters, AEX033046-33054, Beginning 07/30/2024) (emphasis added).

Paine then dangled the idea of an artifact division over Dan Porter’s head. On September 2, 2024, Paine emailed Dan Porter a division spreadsheet and says “[t]his is IF the 2021 Agreement was in place. Our position is there is no Agreement.”¹²⁸

But any chance of a division for all of Dan Porter’s past work went out the window on September 5, 2024. Allen sent a message to Dan Porter via WhatsApp: “I was told last night we had a deal now you are telling people we don’t. So here’s my deal, you have until 10am this morning to release the Ark and Trepid to my team or 21, 22 division and settle agreement is off

¹²⁶ Pls.’ Trial Exhibit 843 (Composite Emails regarding draft termination letters, AEX033046-33054, Beginning 07/30/2024).

¹²⁷ Pls.’ Trial Exhibit 843 (Composite Emails regarding draft termination letters, AEX033046-33054, Beginning 07/30/2024).

¹²⁸ Pls.’ Trial Exhibit 203 (Email thread beginning with email from Preston Paine, Dan Porter, Subject: Division, with attached Dision.JPG; 09/04/2024).

the table for good.”¹²⁹ Shortly after sending this, Allen messaged Dickerson: “Just gave Dan the ultimatum. Either he releases both boats to our team by 10am today, all division and settlement talk will be over for good. A little over an hour from now[.]”¹³⁰

Allen’s position became clear—Dan Porter was not going to get anything. On September 8, 2024, Allen emailed Sean Kingsley (who writes the AEX newsletters) explaining that he terminated Dan Porter, and that weather conditions, people, and equipment issues have reduced their effort this year by 80%.¹³¹ He explains that “as Treasure comes up so does lying, cheating, stealing and the big one Greed.”¹³² He also says that “I have decided the only way that the Maravilla treasure will be broken up is *over my dead body and promise to use every resource I have to make sure that doesn’t happen.*”¹³³

Finally, Paine sent an email to Allen on September 9, 2024, instructing him to terminate the contract and MRR’s division again—the same contract and division they claim they are not in breach of: “I am going to send you the Services Agreement and division info next. I would focus on terminating the contract, not 25% of our 75% vs 25% of what AEX receives after Foundation share because we have not made a distribution to the Foundation. We also paid Dan 25% of our 75% in 2020.”¹³⁴ This shows that Allen was dangling the prospects of a division over Dan Porter’s head to squeeze Dan Porter out of the project out of dislike for MRR’s investors and/or Dan Porter.

¹²⁹ Pls.’ Trial Exhibit 275 (WhatsApp Message Thread between Carl Allen and Dan Porter from 9/22/21 6:23 PM to 9/9/24 6:11 PM; 09/22/2021).

¹³⁰ Pls.’ Trial Exhibit 602 (Carl Allen Deposition Exhibit 9: Message from Mr. Allen, September 5, 2024; 09/05/2024).

¹³¹ Pls.’ Trial Exhibit 847 (Email thread beginning with email from Sean Kingsley to Carl Allen, Michael Pateman, James Sinclair Subject: Re: Greater Abaco Lost Ships, AEX020328-20329, 09/08/2024).

¹³² Pls.’ Trial Exhibit 847 (Email thread beginning with email from Sean Kingsley to Carl Allen, Michael Pateman, James Sinclair Subject: Re: Greater Abaco Lost Ships, AEX020328-20329, 09/08/2024).

¹³³ Pls.’ Trial Exhibit 847 (Email thread beginning with email from Sean Kingsley to Carl Allen, Michael Pateman, James Sinclair Subject: Re: Greater Abaco Lost Ships, AEX020328-20329, 09/08/2024) (emphasis added).

¹³⁴ Pls.’ Trial Exhibit 846 (Email from Preston Paine to Carl Allen, Subject: Termination of Services Agreement, with attached Termination of Services Agreement, 09/06/2024, AEX020315-20316).

This is the same reason that AEX asked Dan Porter to reduce his share from 30% to 25% in 2021, so that 5% of his share could go to an AEX family foundation (which never existed).

AEX has not distributed the treasure and continues to refuse to. This comes as no surprise, because AEX failed to distribute another contractor's artifacts before. Schubert claimed she has been entitled to a division since 2022, but for four years it has never been provided to her. Allen affirmed in his testimony, stating that Schubert has not received her division of treasure even though it had already been divided with the Bahamian government. He said this was because Schubert never asked him for it and Allen did not know how to find her. Allen did see Schubert during a deposition in this case, but he did not think it was an appropriate time to speak to her or ask about giving her the treasure. Allen also said that Schubert could call him anytime if she wants her portion of the treasure. Maybe so, but this circumstance corroborates AEX uses artifact distribution to obtain benefits it is not entitled to.

Having considered all the evidence, Plaintiff has proven AEX is in breach of contract for failure to divide treasure that is past-due. The last treasure division was for the 2020 treasure recoveries and under the contract, MRR is entitled to 30% of the post-government recoveries through April 28, 2021, and 25% thereafter. This entitlement covers (i) the 2020 season and the 2021 pre-termination recoveries under the written Services Agreement, and (ii) all recoveries from the August 2021 termination through the 2024 season under the implied contract. The Court retains jurisdiction to supervise and approve the division and appoint a receiver if necessary.

C. Plaintiffs' Breach of Fiduciary Duty Claim

Plaintiffs allege Defendants breached the fiduciary duty owed to them. They allege Defendants owed a fiduciary duty of loyalty, prohibiting Defendants from pushing out Plaintiffs immediately before the sterncastle recovery because they were part of a joint venture. Before trial

the Court held that even though the Services Agreement explicitly disclaimed a partnership, one could exist if the hallmarks of a joint venture were present.¹³⁵

In Texas, “[a] joint venture is governed by the rules applicable to partnerships,” so courts look to the statutory partnership factors found in the Texas Business Organizations Code to gauge the existence of a joint venture. *MetroplexCore, L.L.C. v. Parsons Transp., Inc.*, 743 F.3d 964, 972–73 (5th Cir. 2014) (applying statutory partnership factors to determine that a joint venture did not exist). Those factors are: (1) Receipt or right to receive a share of profits of the business; (2) Expression of an intent to be partners in the business; (3) Participation or right to participate in control of the business; (4) Agreement to share or sharing: a. Losses of the business; or b. Liability for claims by third parties against the business; and (5) Agreement to contribute or contributing money or property to the business. See Tex. Bus. Org. § 152.052(a). The Court uses a “totality-of-the-circumstances” test, considering all five factors, to determine whether a partnership is present. *Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P.*, 593 S.W.3d 732, 737 (Tex. 2020).

Here, the only part of the contract which has the potential to show that there was profit sharing is the artifact percentage agreement. But the facts show artifact sharing was clearly intended to be “payment of wages or other compensation to an . . . independent contractor,” which cannot satisfy the profit-sharing factor. Tex. Bus. Org. Code § 152.052(b)(1)(B); *Ingram v. Deere*, 288 S.W.3d 886, 898 (Tex. 2009). No other profit-sharing arrangement existed. The second factor is not shown because the Services Agreement expressly disclaimed any intent to form a partnership or joint venture.

Third, under Section 152.052, “[t]he right to control a business is the right to make executive decisions.” *Ingram*, 288 S.W.3d at 901. “Texas courts have held that various facts can

¹³⁵ Order Granting in Part and Denying in Part Motion to Dismiss 7, ECF No. 196.

be relevant to this factor, such as exercising authority over the business's operations, the right to write checks on the business's checking account, control over and access to the business's books, and receiving and managing the business's assets and monies." *Mehta v. Ahmed*, No. 01-20-568-CV, 2022 WL 3720181, at *14 (Tex. App.—Houston [1st Dist.] Aug. 30, 2022, no pet.) (collecting cases). Importantly, the mere right to provide "input" is insufficient where "another person retains ultimate control over business decisions." *Nguyen v. Hoang*, 507 S.W.3d 360, 373 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citation modified). The Court finds that the Services Agreement—which (1) stated that MRR was "retain[ed] . . . to assist [AEX] and its personnel" as an independent contractor; (2) required that MRR "report to Carl Allen and/or to any other [AEX] personnel designated by Mr. Allen from time to time"; and (3) demanded that MRR perform duties "as shall be assigned to MRR from time to time by [AEX]"—clearly structured MRR to be subordinate to AEX's "ultimate control over business decisions." *Nguyen*, 507 S.W.3d at 373. Moreover, even though Dan Porter testified that he had control of daily operations, the when and how of digging when the boats went out was still subject to Allen's approval.

Moving to the fourth factor, Plaintiffs presented no evidence of an agreement to share losses or liabilities between the parties. The expense reimbursement indicates that Plaintiffs bore no risk of loss. Several of Plaintiffs witnesses testified that MRR was losing money on this contract, but that is not a result of anything agreed to by AEX.

Finally, the fifth factor weighs against finding a joint venture because a party "cannot establish [the contribution] factor without evidence that the contribution is distinguishable from the contributions of an employee [or independent contractor]." *Ingram*, 288 S.W.3d at 903. Plaintiffs were paid for their vessels and expertise, which signifies the contribution of an independent contractor, not a partner. *See, e.g.*, Tex. Bus. & Org. Code § 152.203 (c) ("A partner is

not entitled to receive compensation for services performed for a partnership other than [inapplicable exception.]”)

Therefore, the Court finds that the evidence shows there was no joint venture, and therefore, Defendants did not owe Plaintiffs any fiduciary duty. Plaintiffs’ fiduciary breach claim fails.

D. Defendants’ Breach of Confidentiality Agreement and Trade Secret Misappropriation Claim

Defendants allege Dan Porter retained and misused AEX’s confidential search database (including the Marx archives), directed a contractor to retain the data, and retained the ability to generate forged certificates of authenticity. The Court finds these allegations are true.

The Confidentiality Agreement prevented Dan Porter—acting as an agent of MRR—from disclosing confidential information and required him to destroy that confidential information at the request of AEX.¹³⁶ A party may retain the information if done so on advice of counsel.¹³⁷ On October 7, 2024, Paine sent Dan Porter a letter requesting he comply with the Confidentiality Agreement by destroying all Confidential Information.¹³⁸ The same day he also sent a letter to Tyrell Armstrong (who maintains the AEX database) requesting that he comply with the agreement and destroy all Confidential Information.¹³⁹ Dan Porter testified at trial that he was retaining the information pursuant to the advice of his former counsel (he had new counsel at the time of trial).

¹³⁶ Defs.’ Trial Exhibit 4 (Confidentiality Agreement between AEX and MRR dated November 13, 2019).

¹³⁷ Defs.’ Trial Exhibit 4 (Confidentiality Agreement between AEX and MRR dated November 13, 2019).

¹³⁸ Defs.’ Trial Exhibit 11 (Letter from Preston Paine to Dan Porter re Termination of Service Agreement dated October 7, 2024).

¹³⁹ Defs.’ Trial Exhibit 326 (Letter from AEX to T.Armstrong RE Destroy Confidential Information Associated with MRR dated October 7, 2024). Tyrell Armstrong entered into a Confidentiality Agreement with AEX on September 15, 2021. *See* Defs.’ Trial Exhibit 96 (Confidentiality Agreement between AEX and T. Armstrong dated September 15, 2021).

Under the TUTSA, “[t]o prevail on a misappropriation of trade secrets claim, a plaintiff must show that (1) a trade secret existed, (2) the trade secret was acquired through breach of a confidential relationship or discovered by improper means, and (3) the defendant used the trade secret without authorization from the plaintiff.” *M-I L.L.C. v. Q’Max Sols., Inc.*, No. CV H-18 1099, 2019 WL 3565104, at *3 (S.D. Tex. Aug. 6, 2019) (quoting *GE Betz, Inc. v. Moffitt Johnston*, 885 F.3d 318, 325 (5th Cir. 2018)).

Defendants point to a series of emails in support of their claim. On August 18, 2024, Dan Porter sent an email to Gregory Bounds and S. Curtis Johnson with the subject line: “San Antone Anchors.” He wrote: “Check this out. These are the anchors that Bob located in 1971 off Eldorado Shoal. I am going through his logs and have found a lot of information. Let’s three talk soon if possible.”¹⁴⁰ Attached to this email is an image that appears to be taken from a handwritten book—the Marx files.

Two days after Dan Porter sent the San Antone Anchor email, Schweizer—one of MRR’s largest shareholders—texted Dan Porter: “I’ve been thinking about Kenton leaving for Carl. How much does he know where you got the info for new projects. Do you think he will tell him to sue you about using info from Marx files. Why was Kenton so pissed off that he was telling Carl about things you where doing? Obviously he’s been talking to Carl for some time.”¹⁴¹ Kenton, who digitized the Marx files for AEX, also testified that some of the information Dan Porter was sent could not be found online.

By a preponderance of the evidence, Defendants established that Dan Porter used the Marx files in violation of the Confidentiality Agreement in violation of AEX’s trade secrets. Plaintiffs

¹⁴⁰ Defs.’ Trial Exhibit 301 (Email from Dan Porter to Gregory Bounds and Curtis Johnson re: San Antone Anchors dated August 18, 2024).

¹⁴¹ Defs.’ Trial Exhibit 494 (Porter Schweizer WhatsApp).

argued the Marx files were publicly available historical information and thus cannot violate the confidentiality agreement or TUTSA. *See* TEX. CIV. PRAC. & REM. CODE § 134A.002(6) (information must be not generally known or ascertainable); *see also* Defs.’ Trial Exhibit 4 (Confidentiality Agreement between AEX and MRR dated November 13, 2019) (“does not include any information that . . . is . . . known and generally available in the public domain” not because of breach). Dan Porter testified that this information was publicly available on Treasure.net posted by Tony Kopp, who has also talked about the San Antone anchors.¹⁴² He also testified that he received information from Allan Gardner—who worked with AEX—but that the information was his personal information. Per Dan Porter’s testimony, Gardner was a good friend of Bob Marx, received a lot of information from him, and used that information for his surveys and investigations.¹⁴³

But there is no additional evidence in the record to back up these claims about public availability, and the Court finds the Defendant’s evidence more credible. Dan Porter offered no corroborating evidence of these files on Treasure.net or another publicly available forum, and neither Allan Gardener nor Tony Kopp testified.

Based on the foregoing, Defendants established their claim that Dan Porter breached the Confidentiality Agreement and misappropriated a trade secret under TUTSA. Dan Porter, MRR, their subcontractors and representatives are required to immediately return or destroy all of AEX’s confidential material in their possession, custody and control.

E. Plaintiffs’ Defamation Claim

Finally, Dan Porter argues that Defendants defamed him. “Actionable defamation requires (1) publication of a false statement of fact to a third party, (2) that was defamatory concerning the

¹⁴² Transcript 28:16–33:11, ECF No. 354.

¹⁴³ Transcript 34:19–35:12, ECF No. 354.

plaintiff, (3) with the requisite degree of fault, and (4) that proximately caused damages.” *Anderson v. Durant*, 550 S.W.3d 605, 617–18 (Tex. 2018). “Defamation per se refers to false statements so obviously harmful that general damages may be presumed.” *Id.* at 618. Truth or substantial truth is a complete defense to defamation. *See, e.g., Austin v. Inet Techs., Inc.*, 118 S.W.3d 491, 496 (Tex. App.—Dallas 2003, no pet.). A statement is not actionable if the gist is substantially true, even if some details are inaccurate. *See Schirle v. Sokudo USA, L.L.C.*, 484 F. App’x 893, 901 (5th Cir. 2012) (collecting cases).

At a high level, the defamatory statements which survived for trial accused Dan Porter of theft, misappropriation, and violating the law. Dan Porter’s claim relies on five specific statements. They are: 1) An October 18, 2024 email from Michael Pateman to Director of the National Museum of the Bahamas accusing Dan Porter of misappropriating company funds and dishonest conduct;¹⁴⁴ 2) A November 22, 2024 letter from Paine to the Bahamas Chief Immigration Officer accusing Dan Porter of stealing from the company, violating several aspects of Bahamian law, and mistreating his staff;¹⁴⁵ 3) A November 25, 2026 email from Pateman transmitting Paine’s letter to an immigration officer;¹⁴⁶ 4) Concannon’s statements to a Bahamian news outlets;¹⁴⁷ and 5) AEX’s May 2025 Facebook stating that an unauthorized third-party has the ability to counterfeit Certificates of Authenticity.¹⁴⁸

¹⁴⁴ Defs.’ Trial Exhibit 12 (Email from Michael Pateman to Don Cornish re: AllenX termination of Daniel Porter dated October 18, 2024).

¹⁴⁵ Pls.’ Trial Exhibit 226 (Letter from Preston Paine on behalf of Allen Exploration, LLC to Greta Knowles, Chief Immigration Officer, Re: Termination of Daniel J. Porter by Allen Exploration, AEX003290; 11/22/2024).

¹⁴⁶ Pls.’ Trial Exhibit 227 (Email from Michael Pateman to Greta Knowles, Subject: Termination of Daniel J. Porter by Allen Exploration, 2024 11-25 Termination of Porter by AEX AEX003289; 11/25/2024).

¹⁴⁷ Pls.’ Trial Exhibit 237 (Neil Hartnell, Treasure hunter's 'trade secrets' with Gov't under rogue contractor control', The Tribune, Jan.30, 2025, SCHUBERT000754-758; 01/30/2025).

¹⁴⁸ Defs.’ Trial Exhibit 20 (Facebook post from Allen Exploration dated May 1, 2025).

Defendants argue that 1) all claims are barred by the Texas Defamation Mitigation Act because Porter did not request a retraction of the defamatory statement; and 2) the statements are not defamatory because they are true. First, the Court finds that failing to ask Defendants to retract their defamatory statements does not bar total recovery under the Texas Defamation Mitigation Act, it only bars the recovery of exemplary damages.¹⁴⁹ Second, after reviewing all the evidence, the Court finds that Dan Porter cannot maintain any of the claims for defamation because the statements were all true.

The Court already found that by a preponderance of evidence Plaintiffs did misuse company funds, use crew for personal work, and violate Bahamian law, even though they may have been minor or non-material. Moreover, Dan Porter testified that because he retains the data, he does have the ability to make false Certificates of Authenticity—even if he has not actually made one. And regardless, even if these were defamatory statements, Plaintiffs did not prove any damage at trial by a preponderance of the evidence. Therefore, the Court concludes that Dan Porter’s claim for defamation fails.

¹⁴⁹ *Warner Bros. Ent. v. Jones*, 538 S.W.3d 781 (Tex. App.—Austin 2017), *aff’d*, 611 S.W.3d 1 (Tex. 2020) (“We agree that when the statute is read in its entirety, giving effect to all its provisions and considering the purpose of the statute, the consequence for failing to make a request is not dismissal, but rather preclusion of recovery of exemplary damages.”; *see also Hardy v. Communication Workers of Am. Local 6215 AFL-CIO*, 536 S.W.3d 38, 46 (Tex. App.—Dallas 2017, pet. denied) (“if a defendant who did not receive a request for correction, clarification, or retraction could simply seek dismissal of the action, there would be no need for either the limitation of damages or abatement provisions in the statute, and the purpose of the statute would be frustrated.”).

IV. CONCLUSIONS

For the above-mentioned reasons, the Court finds the following:

1. The Court finds in favor of Plaintiff MRR on its claims for breach of contract and breach of implied contract.
2. The Court finds for Plaintiffs on Defendant AEX's claim for fraud in the inducement.
3. The Court finds for Defendants on Plaintiff Dan Porter's claim for defamation.
4. The Court also finds for Defendants on Plaintiffs' claims for breach of fiduciary duty.
5. The Court finds for Defendant AEX on their counterclaim for breach of the Confidentiality Agreement and violation of the TUTSA.

The Parties **SHALL** meet and confer, and then file, a status report on what steps need to be taken in light of this Order **no later than November 8, 2026**.

SO ORDERED on this **21st day of October 2026**.

A handwritten signature in black ink, appearing to read "Reed O'Connor", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Reed O'Connor
CHIEF UNITED STATES DISTRICT JUDGE