IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Case No. 4:13-CV-527**
	§	
BRET L. BOTELER,	§	
	§	
Defendant.	§	
	§	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendant Bret L. Boteler ("Boteler"), alleges:

Summary

1. Between November 2007 and December 2011, Boteler, directly and indirectly, by and through EnerMax, Inc. ("EnerMax"), raised $17.26 million through the fraudulent offer and sale of securities to some 260 investors in more than 40 states without registering any offering. The offers and sales occurred in the course of a nationwide general solicitation to hundreds of prospective investors, directed by Boteler and accomplished through EnerMax's website and interstate telephone "cold calls" by EnerMax's sales force. The securities, in the form of investment contracts, represented interests in what were essentially 16 limited partnerships styled as "joint ventures." The ventures were formed to drill nine oil-and-gas wells and operate one salt water disposal well in Yoakum County and Runnels County, Texas. Few if any of the venture investors had experience with oil-and-gas exploration or operations. They lacked any relationship with each other or with EnerMax. They had no meaningful access to information

necessary to govern the ventures' affairs. And, they had no meaningful power or ability to control venture operations. Instead, Boteler, as the president of EnerMax, which was the managing venturer for the 16 ventures, controlled the operations of each venture and the flow of information relevant to their operations. EnerMax's website and its offering materials, all under Boteler's control, falsely portrayed EnerMax as an innovative, technologically sophisticated company offering high quality prospects, and misrepresented and omitted material information regarding the speculative, unproven nature of the prospects. The offering materials also falsely stated that EnerMax would not comingle proceeds and that EnerMax officers would not receive commissions from the sale of interests in the ventures. The offering materials omitted material information regarding EnerMax's financial obligations and its ability to meet such obligations, and its misapplication of the offering proceeds, including for Boteler's personal benefit. EnerMax has now ceased operations and ended its management of the joint ventures, without investors realizing any significant return of their investment.

2. Defendant Boteler violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. In the interest of protecting the public from any further violations of the federal securities laws, the Commission brings this action against the Defendant, seeking permanent injunctive relief, a conduct-based injunction barring general solicitations for oil-and-gas related securities, disgorgement with pre-judgment interest, civil money penalties, and all other equitable and ancillary relief deemed necessary by the Court.

Jurisdiction and Venue

3. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to restrain and enjoin permanently the Defendant from engaging in the acts, practices, and courses of business alleged herein.

4. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

5. The Defendant, directly and indirectly, made use of the mails or of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices, or courses of business described in this Complaint.

6. Venue is proper under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because transactions, acts, practices, and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

Parties

7. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

8. Defendant Boteler, age 48, is a resident of Bedford, Texas. He holds a B.B.A. in Management from the former Southwest Texas State University, and has worked for other oil-and-gas companies and in oil-and-gas securities sales. In connection with one such employment, Boteler consented in 1998 to an injunction against registration and anti-fraud violations of the federal securities laws. *See SEC v. Kinlaw Secs. Corp.*, No. 3:93-CV-2010-T (N.D. Tex.).

Related Entity

9. EnerMax, Inc. was a Texas corporation headquartered in Hurst, Texas. Boteler founded EnerMax in 2001, and was its president and sole shareholder. He controlled all of its operations, including the sale of the investment contracts that are the subject of this Complaint, and the management of the ventures capitalized by such sales. EnerMax no longer conducts business operations, and its corporate charter was forfeited on May 10, 2013.

Statement of Facts

Background

10. EnerMax portrayed itself as an oil-and-gas exploration and development company. In reality, neither Boteler nor the EnerMax staff were oil-and-gas professionals who personally discovered and developed oil-and-gas prospects. EnerMax itself did not have crews and equipment that could conduct drilling operations. The only operation conducted by EnerMax was selling oil-and-gas securities.

11. From 2001 through September 2007, before the conduct at issue in this Complaint, EnerMax raised nearly $15 million from selling interests in 45 largely unsuccessful joint ventures that participated in oil-and-gas projects drilled and operated by unaffiliated third parties. EnerMax's participation in these projects, which it financed through the sale of joint venture interests, was relatively small compared to its involvement in the later Yoakum and Runnels County projects that are the subject of this Complaint.

The West Janice and Comanche Ranch Prospects

12. With the West Janice Prospect in Yoakum County, and the Comanche Ranch Prospect in Runnels County, Boteler sought to greatly increase EnerMax's financial and

managerial involvement in oil-and-gas drilling. The offerings for these prospects are the subject of this Complaint.

13. In October 2007, Boteler committed EnerMax to pay $2.7 million for exploration rights on the 3,600 acre West Janice Prospect, located in the historically prolific Permian Basin of West Texas and eastern New Mexico. EnerMax was required to drill three exploratory wells, with the first to be completed in January 2008. In return, EnerMax would receive a 75% working interest on wells completed.

14. In August 2010, EnerMax acquired an option for exploration and development rights on the 10,500 acre Comanche Ranch Prospect in Runnels County, outside the Permian Basin. EnerMax paid $100,000 for the option, which set an exercise price of $1.645 million. In return, EnerMax would acquire an 87.5% working interest on wells completed.

Securities sales were EnerMax's source of cash

15. EnerMax did not have cash or ongoing revenues from business operations to pay for the West Janice and Comanche Ranch acquisitions and drilling operations. Instead, Boteler sought to meet EnerMax's financial obligations by selling securities (and also by selling percentages of EnerMax's working interests to third parties). The securities, in the form of investment contracts representing interests in 16 West Janice and Comanche Ranch joint ventures, were sold to approximately 260 different investors between November 2007 and December 2011. The 16 offerings, which should be integrated and considered a single offering by EnerMax, raised a total of $17.26 million from investors nationwide. The funds invested, according to the offering materials, would allow a venture to purchase a certain maximum percentage of the working interest in a particular drilling project, with the ultimate percentage determined by the total funds raised from investors.

The Joint Venture Interests Were Securities

16. The West Janice and Comanche Ranch joint ventures were entities created by Boteler, who designated EnerMax as their managing venturer. The ventures had no operating history and no assets at the time of their formation by Boteler. And, although the joint venture agreements governing their formation and operation purported to give investors a share of management responsibility, this assignment of responsibility was illusory. Boteler, through EnerMax, made all significant decisions without investor involvement and without investors being fully apprised of the facts involved.

Boteler and EnerMax managed and controlled the joint ventures

17. Few if any of the 260 investors had any experience in the particular business at issue - managing oil-and-gas exploration, drilling and production projects. The investors that Boteler solicited through EnerMax were passive, and these investors had neither the expectations nor the abilities to participate in or control the operations of the joint ventures. To the extent the joint venture agreements granted investors any powers, these powers were illusory at best, as they were not exercisable by investors in any realistic way.

18. Boteler, through EnerMax, made all significant operational and financial decisions for the ventures. For instance, EnerMax, at Boteler's direction, selected the prospects, the drilling sites, the well operator, and all other aspects of exploration, drilling and production operations. Boteler likewise decided how much to spend on exploration and drilling activities, how much to divert to other activities, how much to commingle amongst the different EnerMax and joint venture bank accounts, and all other financial aspects of exploration, drilling and day-to-day operations. He selected all EnerMax and joint venture employees and contractors, and chose how much to compensate them and himself from investor funds. He decided how, where

and when to solicit investors, and how much money to raise for any given joint venture. Investors had no say in any meaningful operational activity, which exemplifies the intended passive nature of their investment. In this and other respects, investors were far more like passive investors in a limited partnership than members of a true joint venture. And, to the extent the joint venture agreements gave investors any power, they had no realistic ability to exercise that power.

Inexperienced investors

19. Few if any of EnerMax's investors had any experience in the particular business at issue - managing oil-and-gas exploration, drilling and production projects. In the absence of such experience, these investors could not make intelligent decisions about how to exercise such powers, even if they were granted. Moreover, Boteler and EnerMax touted their supposed experience and expertise in oil-and-gas exploration and drilling, as well as their supposed (but untrue) successes. Boteler emphasized this supposed expertise to entice investors into the joint ventures. Therefore, the investors reasonably expected to rely on Boteler and EnerMax to make decisions and generate returns on their investment.

No investor power in numbers

20. Investors had no way to communicate with each other so that they could combine to exercise any powers requiring a vote. A vote of 51% of the investors in one venture could remove EnerMax from the control of that venture. But investors were solicited from the public at large, so very few had prior involvement with each other or EnerMax. Boteler did not provide investors with a contact list from which investors could contact each other, nor did he provide access for investors to obtain this information on their own.

No investor access to information

21. Investors lacked independent access to internal operational or financial information about their respective ventures. Instead, Boteler controlled all access to such information, and he conducted venture operations without involving investors in most fundamental decisions.

No contracting power in investors

22. Investors were precluded from binding their respective ventures to contracts. This is far different from the powers partners possess in true joint ventures.

EnerMax's contractual entanglements

23. Investors also lacked the realistic ability to remove Boteler or EnerMax from the business. Once a venture sold as little as one venture interest, the venture immediately became bound to a contract negotiated by Boteler with EnerMax to pay for drilling operations. In turn, EnerMax became bound to a contract to pay the actual well operator for conducting drilling operations. These contracts were already in place when investors purchased an interest, so the investors had no say in the selection of the operator and contract terms. Further, multiple EnerMax joint ventures invested in each well, and each joint venture had a separate contract with EnerMax. Boteler also sold direct interests in the wells to third parties, who contracted with EnerMax as the "initial" well operator. As a result of these intertwining contractual relationships, investors in any single joint venture were powerless to rid themselves of EnerMax and Boteler, even if they could have found a way to communicate with each other to hold a vote. These circumstances rendered the purported power in the joint venture agreements to remove the managing venturer wholly illusory and meaningless.

24. EnerMax took control as the managing venturer as soon as a single venture interest was sold. Investors had no actual powers over day-to-day operations, and were expressly forbidden by the joint venture agreement *"to act on behalf of, sign for or bind the Joint Venture with respect to the operations of the Joint Venture."* Further, multiple investors and third parties participated in each individual well under separate agreements with EnerMax. The investors in one venture could not truly control any single well's management and operations, since such control would require coordinated efforts by investors across multiple ventures.

Admissions that the interests were securities

25. While the written materials Boteler used to market the offerings expressed EnerMax's belief that the interests were not securities, they also warned that the interests could be securities. The offering materials claimed exemptions and safe harbors afforded by the federal securities laws, and made multiple unqualified references to the joint venture interests as securities. For example, the 2008 CIM for West Janice #1 stated:

> Up to sixty joint venture interests are being offered on behalf of the Venture as permitted by the jurisdictions in which the *securities* are to be offered and sold. ….There is no established public market for the *securities* offered herein….
>
> ...These *securities* are offered pursuant to an exemption from registration with the Commission….
>
> …These *securities* have not been approved or disapproved by the Securities and Exchange Commission….
>
> ...These *securities* have neither been registered with the Securities and Exchange Commission under the Securities Act of 1933…..
>
> *(Emphasis added.)*

Further, the subscription agreement accompanying this CIM acknowledged the investment contract nature of the ventures, and referenced the evidence of ownership of the investment contract as "stock,"

The Unregistered Offerings and Their Integration

26. Between November 2007 and December 2010, EnerMax conducted eight joint venture offerings for three oil-and-gas wells in the West Janice Prospect: the West Janice #1; the West Janice #2; and the McKenzie Draw #1; along with one salt water disposal well. And, between October 2009 and December 2011, EnerMax conducted eight joint venture offerings for six oil-and-gas wells in the Comanche Ranch Prospect: Comanche Ranch #s 1–6.

27. The 16 West Janice and Comanche Ranch offerings, which were authorized and directed by Boteler, were not registered with the Commission. Instead, the offering materials claimed exemption from registration under the Commission's Regulation D, Rule 506 exemption, and Boteler signed the multiple offering notices on Form D that EnerMax filed with the Commission. The offerings were sold by way of a general solicitation, however, in violation of the provisions of Regulation D and Rule 506. Further, Boteler and EnerMax sold the securities to more than 40 investors who were not accredited and did so without making required financial disclosures. As a result, the integrated offering did not qualify for an exemption from registration. Integration results because the 16 offerings for the ten wells in the West Janice and Comanche Ranch projects overlapped with each other in several ways.

Overlapping time of offerings

28. The West Janice and Comanche Ranch offerings overlapped in time. Offerings for each prospect occurred at the same time or at least within six months of the completion of an

offering for other well(s) within that project. Also, offerings for the West Janice and Comanche Ranch prospects occurred at the same time beginning in October 2009.

Overlapping subject matter of offerings

29. The offerings overlapped in subject matter, since wells in each project were the subject of multiple offerings. For example, the West Janice #1 well was the subject of three joint venture offerings: two offerings which raised funds solely for that well, and a third which raised funds for interests in both the West Janice #1 and West Janice #2 wells. The Comanche Ranch offerings raised funds for three double-well packages (the Comanche Ranch wells #s 1 & 2, wells #s 3 & 4, and wells #s 5 & 6). The first two well-pairs were the subject of two joint venture offerings expressly dedicated to those wells. Additionally, the Comanche Ranch #4 well was the subject of an additional offering raising funds only for it, and one offering raised funds for all the Comanche Ranch wells.

Overlapping purpose of offerings

30. The offerings overlapped in purpose because they served to sustain EnerMax's continued business operations. Boteler caused EnerMax to use the offering proceeds to meet EnerMax's management expenses in amounts that exceeded the terms of the offerings, and he also comingled the proceeds. Further, Boteler misapplied the offering proceeds for his personal benefit and without disclosure to investors.

Boteler's False and Misleading Solicitations

31. Boteler authorized and directed EnerMax's sales efforts. He caused EnerMax to solicit investors through its website (www.enermaxinc.com) and by interstate telephone "cold-calls" from its in-house sales force.

Boteler falsely portrayed EnerMax

32. From November 2007 through at least December 2011, the EnerMax website, controlled by Boteler, portrayed the company as innovative, technologically sophisticated, and offering high quality prospects. The technological innovations described on its website included horizontal drilling, hydraulic fracturing, and gas injection. These representations were materially false and misleading.

33. EnerMax was not a stand-alone exploration and drilling company. In reality, EnerMax was a sales office. Further, EnerMax had not historically selected and marketed high quality projects, eliminated dry holes, or strategically recovered oil-and-gas reserves. EnerMax had offered 45 drilling projects before the West Janice and Comanche Ranch offerings, of which 34 had been plugged and abandoned by December 2011. Only three of the 45 projects (6.7%) had produced revenues in excess of the funds invested. The West Janice and Comanche Ranch projects did not employ the referenced technologic innovations of horizontal drilling, hydraulic fracturing, or gas injection, as touted. And, early on in their development, the West Janice and Comanche Ranch wells were revealed to be low quality. Boteler never caused EnerMax to disclose these matters on its website, nor did he amend the written materials for the later offerings to reflect the projects' mounting difficulties, costs, and inability to meet projections.

The false and misleading offering materials

34. The written materials for the West Janice and Comanche Ranch offerings were prepared under Boteler's direction and supervision, and bore a transmittal letter with his signature, in which he claimed that the described well was of sound technical merit. The written materials were delivered by U.S. mail or other facilities of interstate commerce, and included the

CIM, a subscription agreement, an investor questionnaire, an informational CD, and promotional publicity for EnerMax, among other information.

Risky nature of the West Janice drilling operations

35. The West Janice prospect was a particularly risky venture for a thinly capitalized and inexperienced operator such as EnerMax. Its exploration agreement required it to drill to depths far deeper than those from which oil-and-gas had historically been produced in the Permian Basin. Boteler's transmittal letter and the geologic reports highlighted the Permian Basin's prolific production history, but failed to disclose that the drilling depths to which EnerMax had committed to drill were as much as one mile below the formations that accounted for much of the Basin's historical success. Drilling to those depths was far more speculative and costly, which greatly increased the risks associated with this prospect. The non-disclosure of this risk was particularly misleading in light of the positive statements made about the Permian Basin.

Misleading financial disclosures

36. In neither the West Janice nor the Comanche Ranch offering materials did Boteler cause EnerMax to disclose its financial standing via audited statements or otherwise. The offering documents made only a boilerplate disclosure that EnerMax and the ventures had limited financial resources.

37. The CIMs for the West Janice joint ventures also falsely claimed that EnerMax had already purchased a working interest in the subject wells with its own funds. In reality, no such purchase had occurred before the West Janice offerings. Rather, EnerMax had to rely on funds raised in the West Janice offerings to purchase the prospect and the working interest.

Misleading production predictions

38. The transmittal letter from Boteler advised investors that the projects were of sound technical merit with a high probability of success, and the well-specific geologic reports found in EnerMax's offering materials quantified supposed reserves, potential production, projected monthly income, and total returns. Boteler's transmittal letter for the West Janice wells claimed they had reserves of at least 2,500,000 barrels of oil, and the program summary showed anticipated flow rates of 200 to 500 barrels of oil per day. Boteler's Comanche Ranch letter represented that its wells could produce from 100 to 400 barrels per day, and the program summaries projected as much as 600 barrels of oil per day. The wells were undrilled and unproven at the beginning of the initial offerings for each prospect, yet Boteler presented these figures as reasonably likely outcomes. Investors were not warned that the represented volumes were highly speculative and not independently verified. In its later offerings, EnerMax failed to revise or temper the projections in the written materials to acknowledge that the initial drilling efforts produced far more salt water than oil, making the bold projections even less likely.

EnerMax's Comingling and Misapplication of Offering Proceeds

39. Boteler's West Janice and Comanche Ranch CIMs represented that EnerMax would not comingle joint venture funds with the funds of EnerMax and its affiliates. In reality, Boteler caused EnerMax to extensively comingle joint venture funds, using proceeds from one venture to pay expenses associated with EnerMax and other ventures. Funds from investors were initially deposited into a separate bank account opened for the particular venture in which they invested. But, Boteler did not keep the funds in that account until EnerMax sold out or otherwise closed an offering. Instead, as soon as EnerMax sold one venture unit, it began transferring funds from that particular venture's account into a common account styled

"EnerMax, Inc." which comingled funds from all the other ventures and third parties. Boteler paid EnerMax's management expenses from the EnerMax, Inc. account, and further transferred comingled funds to another account he named "EnerMax Operating," from which he paid well costs for all ventures. Boteler made no effort to segregate or account for an individual venture's funds. Instead, he used funds available from any source to pay any EnerMax and joint venture expenses as he wished.

40. The comingling of joint venture funds also resulted in Boteler applying the offering proceeds in amounts and for purposes not disclosed in the CIMs. The West Janice CIMs allowed EnerMax to retain 8%, or $740,775 of the total $9.260 million raised in the eight West Janice offerings, as management and syndication fees. After making allowance for revenues received from well participants other than the EnerMax West Janice joint ventures, the books and records of EnerMax show that it applied an additional $1.909 million, or 21%, of West Janice joint venture offering proceeds to syndication expenses.

41. Similarly, the Comanche Ranch CIMs allowed EnerMax to retain 10%, or $800,063 of the total of $8,000,625 raised in the eight Comanche Ranch offerings, as management fees. After making allowance for revenues received from well participants other than the EnerMax Comanche Ranch joint ventures, the books and records of EnerMax show that over the time of the offerings it applied an additional $3.245 million, or 41%, of Comanche Ranch joint venture offering proceeds to management expenses. Investors were not apprised that Boteler caused EnerMax to apply so much of their investment to the expenses of his company.

42. The comingling and payment priority directed by Boteler ensured that he and EnerMax were compensated with offering proceeds before well expenses were paid. By October of 2010, this undisclosed practice of self-compensation and the lack of well production resulted

in EnerMax owing approximately $1.5 million to the well operator for the West Janice project. This debt was not disclosed to investors in later West Janice offerings. Since late 2012, when EnerMax suspended operations, it has owed the operator $1.241 million on the West Janice #2 and $262,000 on the Comanche Ranch #4.

Boteler personally benefited

43. Despite the joint ventures' poor operational performances, Boteler personally benefited from the comingling and payment priorities that he directed. Between 2008 and 2011, Boteler received a total of $432,000 in salary from the EnerMax, Inc. account. Also during this time, Boteler received additional payments totaling $552,000 from the EnerMax Operating account, which were characterized as "distributions of equity." Boteler took an additional $230,000 for unspecified expenses and also $65,000 for his children's private school tuition from the EnerMax operating account, and characterized both as "loans" in EnerMax's books. Boteler never repaid these loans.

44. Boteler also used $253,000 of comingled investor funds in an attempt to secure funds from what instead appears to be a company operating a fraudulent advance-fee loan scheme. Additionally, he invested $504,000 of comingled investor funds in units of an internet services company that managed EnerMax's website and internet communications. Boteler also directed other improper expenditures from the EnerMax Operating account, including a $12,000 purchase of gold coins, which were later sold for $7,000, and a $191,000 investment in a now-failed company selling medicinal water as a cancer cure.

Investors were misled about EnerMax officers' personal profits from sales

45. Boteler's West Janice and Comanche Ranch CIMs represented that EnerMax officers would sell interests, but, *"… (T)he officers will not be paid a commission or … compensated based on their sales."* Persons nominally designated by EnerMax as officers in the CIMs offered and sold joint venture interests, but these officers were in fact only sales representatives who received transaction-based compensation. EnerMax's 14 sales representatives earned commissions of 10% upon their sales, totaling at least $1.437 million from 2008 through 2011.

Current Status

46. Boteler dismissed EnerMax's sales force in 2012 and later wholly ceased its joint venture sales and operations. Although the West Janice and Comanche Ranch wells produced some oil, they did not produce in amounts that allowed investors to recover their investment. The records of the Texas Railroad Commission ("TRC") indicate no current production on the West Janice wells, and they are believed to be shut in or otherwise not operating. The TRC records indicate only marginal, historical production for the Comanche Ranch wells. Some of the wells may remain in production, but the historic production records do not indicate that investors will recover their investment on any immediate or short-term basis, if ever.

Claims for Relief

First Claim
Unregistered Offering
(In violation of Section 5(a) and 5(c) of the Securities Act)

47. Plaintiff Commission re-alleges and incorporates paragraphs 1-46 of this Complaint by reference as if set forth *verbatim*.

48. Defendant Boteler, directly or indirectly, singly and in concert with others, have been offering to sell, selling, and delivering after sale, certain securities, and have been, directly

and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

49. As described in paragraphs 1-46, the securities described herein have been offered and sold to the public. No registration statements were ever filed with the Commission or otherwise in effect with respect to these securities.

50. By reason of the foregoing, Defendant has violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

Second Claim
Fraudulent Offers and Sales
(In violation of Section 17(a) of the Securities Act)

51. Plaintiff Commission re-alleges and incorporates paragraphs 1-46 of this Complaint by reference as if set forth *verbatim*.

52. Defendant Boteler, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes, or artifices to defraud; or (b) obtained money or property by means of untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in

transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers.

53. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Defendant was negligent in his actions regarding the representations and omissions alleged herein. With respect to violations of Section 17(a)(1) of the Securities Act, Defendant made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

54. By reason of the foregoing, Defendant has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Third Claim
Fraudulent Actions
(In violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)

55. Plaintiff Commission re-alleges and incorporates paragraphs 1-46 of this Complaint by reference as if set forth *verbatim*.

56. Defendant Boteler, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or with reckless disregard for the truth: (a) employed devices, schemes, or artifices to defraud; or (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon purchasers of securities, or upon other persons.

57. By reason of the foregoing, Defendant violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Relief Requested

Plaintiff respectfully requests that this Court enter a judgment:

A. Permanently enjoining Defendant Boteler from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

B. Permanently enjoining Defendant from engaging in general solicitations to sell oil-and-gas related securities.

C. Ordering the Defendant to disgorge an amount equal to the funds and benefits obtained illegally, or to which he is otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

D. Ordering the Defendant to pay civil monetary penalties in an amount determined appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

E. Order such other relief as this Court may deem just and proper.

DATED: June 28, 2013

Respectfully submitted,

s/ Bret Helmer
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