


Fox, and Brian W. Bull (collectively, “Defendants”). The SEC has reached a settlement with each of the Settling Defendants, and the Settling Defendants have executed consents (the “Consents”), representing that each: (1) has waived service of a summons and the complaint in this action; (2) enters a general appearance in this matter; and (3) admits the Court's jurisdiction over them. *See* Dkts. 22, 22-1. The Consents also represent that each of the Settling Defendants consents to the entry of final judgment as set forth in the Consents (Dkt. #22-1) and in the proposed final judgments submitted with the Motion (Dkts. #22-3-22-6).

Among other things, the proposed final judgments seek the issuance of permanent injunctions against the Settling Defendants. *See id.* As set forth in the Motion and its accompanying attachments, the SEC moves, under Federal Rule of Civil Procedure 54(b), for entry of final judgments and permanent injunctions against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil Company, and Thomas A. Lewis. *See* Dkt. #22.

Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** that the SEC's Unopposed Motion to Enter Judgment against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil Company, and Thomas A. Lewis (Dkt. 22), as set forth in the proposed final judgments (Dkts. 22-3-22-6) is **GRANTED**.

IT IS SO ORDERED.

SIGNED this 18th day of June, 2018.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	CASE NO. 4:18-CV-00129-ALM-KPJ
v.	§	
	§	
AMERATEX ENERGY, INC., LEWIS	§	
OIL CORPORATION, LEWIS OIL	§	
COMPANY, THOMAS A. LEWIS,	§	
WILLIAM R. FORT, DAMON L. FOX,	§	
and BRIAN W. BULL.,	§	
	§	
Defendants.	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is Plaintiff Securities and Exchange Commission’s (the “SEC”) Unopposed Motion to Enter Judgment against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil Company, and Thomas A. Lewis (collectively, the “Settling Defendants”) (the “Motion”) (Dkt. 22). As set forth below, the Court finds the Motion (Dkt. 22) should be **GRANTED**.

I. BACKGROUND

The SEC filed suit on February 27, 2018 (Dkt. 1), alleging violations of federal securities law against the Settling Defendants, as well as Defendants William R. Fort, Damon L. Fox, and Brian W. Bull (collectively, “Defendants”). The SEC alleges, among other things, that Defendants made material misrepresentations and omissions and engaged in a continuous scheme to misappropriate investor monies to enrich themselves. *See generally id.* The complaint further alleges that Defendants violated the antifraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 (the “Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder. *Id.* at ¶¶ 3-4.

The Motion represents that the SEC has reached a settlement with each of the Settling Defendants. *See* Dkt. 22. Additionally, the Settling Defendants have each executed a consent (the “Consents”) (Dkt. 22-1) representing that each: (1) has waived service of a summons and the complaint in this action; (2) enters a general appearance in this matter; and (3) admits this Court's jurisdiction over them. *See* Dkt. 22-1. The Consents also represent that each of the Settling Defendants consents to the entry of final judgment as set forth in the Consents (Dkt. 22-1) and in the proposed final judgments submitted with the Motion. *See* Dkts. 22-3-22-6. Among other things, the proposed final judgments seek the issuance of permanent injunctions against the Settling Defendants. *See id.* As set forth in the Motion and its accompanying attachments, the SEC moves, under Federal Rule of Civil Procedure 54(b), for entry of final judgments and permanent injunctions against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil Company, and Thomas A. Lewis.

II. LEGAL STANDARD

Rule 54(b) of the Federal Rules of Civil Procedure provides:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED.R.CIV.P. 54(b). In other words, “[n]o ruling can be appealed until a certification is obtained under Rule 54(b) or until all the remaining issues in the case have been decided.” *Crostley v. Lamar Cty., Texas*, 717 F.3d 410, 420 (5th Cir. 2013) (citing 10 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2656 (3d ed.1998)). Unless the district court indicates “that no just reason for delay exists and expressly directs entry of judgment, finality will not attach to an order

that disposes of some but not all of the defendants.” *Id.* (quoting *Witherspoon v. White*, 111 F.3d 399, 402 (5th Cir.1997)).

This rule reflects the “historic federal policy against piecemeal appeals.” *Id.* (citing *Curtiss–Wright Corp. v. Gen. Electric Co.*, 446 U.S. 1, 8 (1980)). “[I]n deciding whether there are no just reasons to delay the appeal of individual final judgments . . . a district court must take into account judicial administrative interests as well as the equities involved.” It is left to the sound discretion of the district court to decide whether to certify a 54(b) final judgment. *See Curtiss–Wright Corp.*, 446 U.S. at 8; *see also Pemex Exploración Y Producción Basf Corp. Pemex Exploración Y Producción v. Big Star Gathering Ltd L.L.P.*, 2014 WL 12596522, at *17 (S.D. Tex. 2014) (“[D]istrict courts have broad discretion to enter Rule 54(b) judgments in a multi-party case like this, even where similar claims remain pending against other defendants.”).

III. ANALYSIS

Because the SEC seeks entry of final judgment based on its consent agreements with the Settling Defendants, the Court must first consider the nature of such agreements. The underlying agreements between the SEC and the Settling Defendants are in the nature of a settlement and also have the elements of a contract. *Local 93, Int’l Firefighters v. City of Cleveland*, 478 U.S. 501, 519 (1986). However, when such an agreement “is entered as a judgment of the court, it takes on an added significance.” *Kaspar Wire Works, Inc. v. Leco Eng’g and Mach., Inc.*, 575 F.2d 530, 538–39 (5th Cir.1978). Thus, consent decrees “have attributes both of contracts and of judicial decrees.” *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 236–37 n.10 (1975).

Although a consent decree is sometimes “construed for enforcement purposes as a contract,” *ITT Continental*, 420 U.S. at 238, where the consent judgment involves an injunction or similar equitable relief, “the injunction . . . will be enforced as any injunction is enforced.” 1B JAMES W. MOORE, MOORE’S FEDERAL PRACTICE, ¶ 0.409[5], at III–151 (2d ed. 1993). *Accord Kaspar Wire Works, Inc.*, 575 F.2d at 538–39. A consent decree, once entered into judgment by a

court, “has the same force and effect as any other judgment until set aside in the manner provided by law[.] . . .” *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975); *see also Andrews v. Roadway Exp. Inc.*, 473 F.3d 565, 568 n.2 (5th Cir. 2006) (“We have always held that a consent decree approved by judicial order is ‘judgment’ . . .”).

Furthermore, “courts should pay deference to the judgment of the government agency which has negotiated and submitted the proposed judgment.” *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984). When reviewing a consent decree, a court “does not inquire into the precise legal rights of the respective parties” but instead “assures itself that there has been valid consent by the concerned parties and that the terms of the decree are not unlawful, unreasonable, or inequitable.” *United States v. City of Jackson*, 519 F.2d 1147, 1151 (5th Cir. 1975); *see also Jones v. Gusman*, 296 F.R.D. 416, 428-29 (E.D. La. 2013) (noting courts temper deference by endeavoring to ascertain whether “the settlement is fair and . . . does not violate the Constitution, statutes, or jurisprudence.”). Notwithstanding the deference due such proposed decrees, the Court may not act as a “rubber stamp” in this context. *See United States v. Wallace*, 893 F. Supp. 627, 630-31 (N.D. Tex. 1995); *Jones*, 296 F.R.D. at 428-29 (considering the “nature of the litigation and purposes to be served by the decree” in making determination whether to enter terms of consent decree).

Having reviewed the Consents (Dkt. 22-1) and the proposed final judgments (Dkt. 22-2), the Court is satisfied that there has been valid consent by all parties and the terms of the Consents and the proposed final judgments are not unlawful, unreasonable, or inequitable. *Jackson*, 519 F.2d at 1151.

IV. CONCLUSION AND RECOMMENDATION

For the foregoing reasons, the Court recommends the SEC’s Unopposed Motion to Enter Judgment against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil

Company, and Thomas A. Lewis (Dkt. 22) be **GRANTED**, and final judgment be entered at to each Settling Defendant as set forth in the proposed final judgments. *See* Dkts. 22-3-22-6.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 22nd day of May, 2018.



KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

Oil Company and Thomas A. Lewis and that the Court expressly rule that there is no just reason for delaying the entry of such Judgments under Federal Rule of Civil Procedure 54(b).

May 4, 2018

Respectfully submitted,

s/Matthew Gulde

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CERTIFICATE OF CONFERENCE

I certify that counsel for the Commission conferred with Thomas Lewis, who stated that Defendants are not opposed to the relief requested in this motion.

s/Matthew J. Gulde
Matthew J. Gulde

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2018, a copy of foregoing *Unopposed Motion To Enter Agreed Partial Judgment Against Defendants AmeraTex Energy, Inc., Lewis Oil Corporation, Lewis Oil Company, and Thomas A. Lewis* was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

s/Matthew J. Gulde
Matthew J. Gulde