



2. By reason of the foregoing, the Defendants 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)], Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)(1)] 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 Defendants, seeking permanent injunctive relief, accountings, disgorgement plus prejudgment interest, civil money penalties, and all other equitable and ancillary relief deemed necessary by the Court. Against the Relief Defendants, the Commission brings this action seeking disgorgement and all other equitable or ancillary relief deemed necessary by the Court to prevent their unjust enrichment.

### **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 Defendants 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 Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

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

6. Venue is proper 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 Harris, 37 years old, resides in Mansfield, Texas.

9. Defendant Giant Operating is a Texas limited liability company with its principal place of business in Irving, Texas.

10. Relief Defendant Plunkett, 33 years old, resides in Grand Prairie Texas.

11. Relief Defendant Giant Petroleum is a Texas corporation with its principal place of business in Irving, Texas.

12. Relief Defendant DSSC is a Texas limited liability company with its principal place of business in Irving, Texas.

### **Statement of Facts**

#### ***The Giant Operating Securities Offerings***

13. From at least December 2007 through at least September 17, 2009, Giant Operating, by and through Harris, has offered securities in the form of interests in five oil-and-

gas drilling programs—Giant Ranch 7, Giant Matagorda, Giant New Mexico 10, Giant Energy USA, and Giant New Mexico 4. Defendant Giant Operating, by and through Defendant Harris, served as sponsor and manager for each program, which purportedly drilled or reworked wells in Texas or New Mexico. In the five offerings combined, Giant Operating sought approximately \$23 million from investors. To date, Giant has raised at least \$13.4 million from at least 150 investors located throughout the United States.

14. To facilitate the offerings, which were not registered with the Commission, Harris hired a sales staff to make unsolicited telephone calls to prospective investors throughout the United States. Harris identified prospective investors by purchasing lead lists from other companies. For each sale, Giant Operating paid the salesperson at least a 10% commission.

***Misleading Statements Regarding Investment Returns***

15. At Harris's direction, sales staff sent prospective investors written offering materials, which included a glossy brochure and a private-placement memorandum ("PPM"). Each glossy brochure contained color pictures of oilrigs and maps, and included an "investment calculator." The investment calculator contained a "conservative" estimate that the investor would receive a 100% return on the investment "within 12 months."

16. These statements regarding investment returns were misleading because, to date, Giant Operating has never operated a profitable oil-and-gas program. Neither Giant Operating nor Harris disclosed to investors Giant Operating's history of negative performance. As a result, the Defendants' glossy-brochure return estimates were misleading.

***Misapplication and Misappropriation of Offering Proceeds***

17. The PPM for each program specified the amount sought in the offering and how the offering proceeds would be spent. According to each PPM, 80% of the offering proceeds

18. Harris has misapplied and misappropriated offering proceeds. For example, between July 2008 and August 2009, Giant Operating raised approximately \$7 million dollars from drilling-program investors. Harris used approximately \$1.14 million of the offering proceeds—approximately 16.3%—to pay sales-staff commissions and payroll taxes on behalf of Giant Operating and himself.

19. Given the 20% cap on management fees, Giant Operating would have been entitled to allocate approximately 3.7% of the offering proceeds—approximately \$259,000—toward other management costs. Contrary to the 20% cap, Harris transferred approximately \$1.3 million of the offering proceeds—approximately 18.6%—to an account in the name of DSSC, another company he owned and controlled. From the DSSC account, Harris spent the funds on personal expenses unrelated to the oil-and-gas programs. As a result of the transfers to DSSC, Giant Operating, acting by and through Harris, spent offering proceeds in a manner grossly inconsistent to the use-of-proceeds statements in the offering materials, rendering those statements misleading.

20. In addition, between July 2008 and August 2009, Harris transferred approximately \$3.9 million, obtained as a result of the fraudulent, unregistered offering, to Relief Defendant Giant Petroleum, a company Harris owned and controlled. Harris also transferred approximately \$1.3 million in offering proceeds to Relief Defendant Plunkett.

***The Most Recent Fraudulent Offering***

21. From at least July 1, 2009, through at least September 17, 2009, Giant Operating,

- Steady revenue stream from Salt Water Disposal System well
- Estimated 10% to 50% return annually from the saltwater-disposal well

22. The glossy brochure portion of the offering materials highlighted the saltwater-disposal-well component of the investment. The brochure contained claims that revenue from the saltwater-disposal well was “virtually guaranteed” and that Giant Operating could “easily” reach a 10% annual return because Giant Operating was securing contracts with two other companies to process 3,000 barrels of saltwater per day. These statements were false because Giant Operating neither had saltwater-processing contracts with the two companies nor was Giant Operating securing such contracts.

23. The glossy brochures also contained the “investment calculator.” The investment calculator contained a “conservative” estimate that the investor would receive a 100% return on the investment “within 12 months” and a “possible 10 to 1 return over the life of the wells.” These statements regarding investment returns were misleading. To date, Giant Operating has never operated a profitable oil-and-gas program. Neither Giant Operating nor Harris disclosed to investors Giant Operating’s history of negative performance. As a result, the Defendants’ glossy-brochure return estimates were misleading.

## FIRST CLAIM

### Violations of Section 5(a) and 5(c) of the Securities Act

24. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 23 of this Complaint by reference as if set forth *verbatim*.

25. Defendants, 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.

26. As described in paragraphs 1 through 23, 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.

27. By reason of the foregoing, the Defendants have 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

### Violations of Section 17(a) of the Securities Act

28. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 23 of this Complaint by reference as if set forth *verbatim*.

29. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact and 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; and (c) engaged in transactions, practices, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

30. As a part of and in furtherance of his scheme, the Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 23, above.

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



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

### **THIRD CLAIM**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

33. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 23 of this Complaint by reference as if set forth *verbatim*.

34. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of a material fact and 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; and (c) engaged in acts, practices, and courses of business which operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

35. As a part of and in furtherance of his scheme, Defendants, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 23 above.

36. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

37. By reason of the foregoing, Defendants 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].

#### **FOURTH CLAIM**

##### **Violations of Section 15(a)(1) of the Exchange Act**

38. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 23 of this Complaint by reference as if set forth *verbatim*.

39. Defendants, by engaging in the conduct described above, directly or indirectly made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

40. Accordingly, Defendants were brokers within the definition of that term in Section 3(a)(4) of the Exchange Act which defines “broker” as any person “engaged in the business of effecting transactions in securities for the account of others.” Defendants were never so registered and, acted as brokers which included: (1) solicitation of investors to purchase securities; (2) involvement in negotiations between the issuer and the investor; and (3) receipt of transaction-related compensation.

41. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

##### **I.**

Permanently enjoin each Defendant from violating 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)], Sections 10(b) and 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)(1)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**II.**

Order the Defendants and Relief Defendants to disgorge an amount equal to the funds and benefits obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

**III.**

Order the Defendants 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.

**IV.**

Order each Defendant and Relief Defendant to provide a sworn accounting, providing a detailed account of the receipt and disposition of all proceeds from the offering described in Paragraphs 1 through 23, above.

V.

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

Respectfully submitted,

DATED: September 28, 2009

s/ Timothy S. McCole  
TIMOTHY S. McCOLE  
Plaintiff's Lead Attorney  
Mississippi Bar No. 10628  
United States Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit 18  
Fort Worth, Texas 76102  
Telephone: (817) 978-6453  
FAX: (817) 978-4927  
E-mail: McColeT@SEC.gov