**UNITED STATES DISTRICT COURT**
**For The**
**SOUTHERN DISTRICT OF FLORIDA**

NIGHT BOX
FILED
JUL 07 1998
CARLOS JUENKE
CLERK, USDC / SDFL / MIA

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**TITAN PETROLEUM CORP.**
**MAGNUM PETROLEUM ENTERPRISES, INC.,**
**MAGNUM OIL & PETROLEUM, INC.,**
**NATALE L. MONTOZZI and**
**PHILIP LEITNER,**

**CIVIL ACTION FILE NO. 98-1111-CIV-KING**

**MAGISTRATE JUDGE: BANDSTRA**

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges that:

1. This case involves the fraudulent sale of securities by Titan Petroleum Corp. ("Titan"), Magnum Petroleum Enterprises, Inc. ("Magnum Petroleum"), Magnum Oil & Petroleum, Inc("Magnum Oil")(Magnum Petroleum and Magnum Oil collectively "Magnum"), and their principals, Natale L. Montozzi ("Montozzi") and Philip Leitner ("Leitner"). The purported business of the issuers is drilling exploratory oil and gas wells. The issuers' fraudulent scheme consists of using false and misleading documents to raise far more money than is needed to drill and complete the proposed wells and then drilling exploratory wells in locations that are likely to be dry holes. The surplus offering proceeds

are then diverted to undisclosed uses. Among other things, to induce persons to invest, the defendants misrepresent the success of their prior efforts.

From April 2, 1997 through September 24, 1997, the proposed defendants fraudulently raised at least $654,770 from sixty-five investors in Titan securities. After they learned of the Commission's investigation, Montozzi and Leitner terminated the operations of Titan and Montozzi organized Magnum Petroleum and Magnum Oil. He then began offering securities of those two issuers to the public, using essentially the same fraudulent sales documents as they had used in the Titan offering.

2. By virtue of the foregoing conduct, the defendants have violated, are violating, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 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 thereunder [17 C.F.R. 4240.10b-5].

3. Pursuant to authority granted by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)], the Commission has promulgated Rule 10b-5 [17 C.F.R. 240.10b-5], which rule was in effect at all times relevant herein and is now in effect.

## JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C.

77t(b) and 77t(d)], and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. 78u(d) and 78u(e)], to enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa].

6. The defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentality's of interstate commerce in connection with the transactions, acts, practices and courses of business alleged in this complaint.

7. Certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act and the Exchange Act have occurred in the Southern District of Florida. Specifically, the defendants operate from offices in the Southern District of Florida, and have solicted persons to invest in the securities by means of telephone calls and mailings from the Southern District of Florida. In

addition, the individual defendants reside in the Southern District of Florida.

8. The defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business alleged in this complaint, and in transactions, acts, practices and courses of business of similar purport and object.

**DEFENDANTS**

9. **Titan Petroleum Corp.** was incorporated in Florida on April 24, 1980, involuntarily dissolved on December 16, 1981, and reinstated on March 24, 1997. Its executive office is in Ida, Louisiana.

10. **Magnum Petroleum Enterprises, Inc.** was incorporated in Florida on December 4, 1997. Its principal office is in Hollywood, Florida.

11. **Magnum Oil & Petroleum, Inc.** was incorporated in Louisiana on February 16, 1998. Its principal office is in Ida, Louisiana.

12. **Natale L. Montozzi**, of Coral Springs, Florida, is president of Titan, director and president of Magnum Petroleum, and director, president, secretary and treasurer of Magnum Oil. Cease-and-desist orders have been entered against Montozzi by the states of Wisconsin and South Carolina in 1984, Alabama in 1986 and Illinois in 1989. All of the proceedings involved the sale of unregistered securities and two of the proceedings involved securities fraud.

13. **Philip Leitner**, of North Miami, Florida, is secretary and treasurer of Titan.

**THE TITAN PROGRAMS**

14. From April 2, 1997 through September 24, 1997, Titan, through Montozzi and Leitner, raised at least $654,770 by selling one hundred undivided, fractional, working interests in three separate oil and gas well drilling programs to sixty-five investors.

15. The three drilling programs, named TM1, TM2, and TM3, were to drill exploratory wells at specific, designated locations in the state of Louisiana.

16. Titan solicited investors for the drilling programs throughout the United States and Canada.

17. Titan offered and sold the drilling programs through offering brochures and other sales materials, distributed by Montozzi and Leitner, that describe, among other things, the exact location where each well was to be drilled, the uses to be made of the offering proceeds, and the experience and previous successes of Titan and its employees.

18. Titan also hired World Wide Asset Services, Inc., ("World Wide"), a company with a telephone sales room in Miami, Florida, to make cold calls to prospective investors.

19. The sales persons of World Wide used a script, provided by Titan, which described the proposed exploratory drilling, the planned use of offering proceeds, and Titan itself.

**TITAN MISREPRESENTATIONS AND OMISSIONS**

20. The offering documents for Titan drilling programs TM1 and TM2, prepared by Montozzi and Leitner, represented that each undivided, fractional interest in those programs cost $5,900. The offering documents represented that of that amount, $4,500 was to cover all costs for drilling and testing and that the remaining $1,400 was to be used for the completion of the well.

21. The offering documents for the TM3 program, prepared by Montozzi and Leitner, represented that each interest cost $7,900, and that of that amount, $5,500 was to cover all costs for drilling and testing and $2,400 was to be used for the completion of the TM3 well.

22. In total, Titan raised $211,900 for TM1, $205,870 for TM2, and $237,000 for TM3.

23. Titan failed to disclose to investors that the amount of money that it raised for TM1, TM2 and TM3 was in each case far in excess of the costs that it knew it would incur to lease the land and to drill and complete the well for which the funds were raised.

24. The total cost to Titan for the TM1 and TM2 subleases and drilling services was $83,650. Montozzi and Leitner were aware of that cost when they sold the investment interests in those programs. Titan nevertheless raised over $417,770 from investors for those programs.

25. On behalf of Titan, Montozzi and Leitner contracted with Innovative Exploration, LLC ("Innovative") for the lease rights and the drilling and completion of the TM3 well, including plugging. The total cost to Titan for the lease and services was $83,500, yet it raised at least $237,000 and according to its offering documents, planned on raising $395,000. Montozzi and Leitner were aware of the actual cost of the drilling when they sold the TM3 investment interests.

26. The TM1 and TM2 offering documents go on to state that "[s]hould Titan Petroleum elect not to complete the well the sum of $1,400.00 per unit will be refunded." The TM3 offering documents promise that "[s]hould Titan Petroleum elect not to complete the well the sum of $2,400.00 per unit will be refunded."

27. All three wells drilled by Titan were dry. Two of the wells have already been plugged and the third is scheduled to be plugged in the near future. As provided in the contracts Montozzi and Leitner negotiated, the total cost of this work was $167,150. No investor proceeds have been returned.

28. At least one investor in TM3 was told by a representative of Titan that investors in TM2 were already receiving their checks. That representation was false.

29. The offering documents for TM1, TM2 and TM3 each represented that investors' funds would be used for the specific drilling project in which they were invested. In

fact, the funds raised for the three projects were commingled into Titan's general bank account by Montozzi and Leitner.

30. Leitner, the treasurer of Titan, drew numerous checks on Titan's general bank account to pay a wide variety of expenses not provided for in the TM1, TM2 and TM3 offering materials. Among other things, Leitner used this account, containing primarily investor funds, to pay for rent, office supplies, investor leads, commissions for sales persons, legal services, telephone charges, and credit card purchases.

31. Leitner used investors' funds to make large, undisclosed payments to related parties from the Titan general account. For example, between May 9, 1997 and September 10, 1997, Leitner signed checks paying over $56,000 to a company controlled by Montozzi, and more than $84,000 to World Wide.

32. World Wide, the company which Titan hired to market its securities, charged Titan marketing fees totaling more than ten percent of the amount raised by Titan for the three drilling programs. These marketing charges, were known to Montozzi and Leitner when the investments were sold but were not disclosed in the offering materials or otherwise.

33. Titan checks, dated November 13 1997 and November 24, 1997, totaling $83,500, were written to Innovative, purportedly for the work of that company in drilling TM3.

The address and phone number of Innovative are the same as those of Titan and Magnum.

34. The Titan offering documents claim that Titan is a highly reputable and experienced drilling and operating company, founded in 1980. In addition, an addendum, signed by Montozzi, and attached to at least one investor's offering documents, states that Titan "has had a proud record of success over the past seventeen years."

35. In fact, although Titan was incorporated in 1980, it was involuntarily dissolved in 1981 and was not reinstated until 1997. The offering documents do not disclose that Montozzi has had four cease-and-desist orders entered against him based on violations of state securities laws.

36. A telephone script used by sales representatives selling the investments contained false statements concerning the past successes of the company, including, for example, the claim that Titan is "a company that has been successfully producing oil and gas throughout Texas, Louisiana, Oklahoma, Illinois and Kentucky since 1980." Potential investors were told that "our last well just came in" and that although exact figures can not be given "by all indications it's a home run." One investor was told investors in earlier Titan drilling projects were already receiving returns on their investments. These statements are false.

37. The Titan offering documents describe in detail the exact locations at which the various exploratory wells are to be drilled. In fact, Titan drilled the TM1 and TM3 wells at locations different from those described in the relevant offering materials. Montozzi and Leitner were aware of the actual locations to be drilled when they prepared the offering materials.

**THE MAGNUM OFFERING**

38. In approximately December 1997, after Montozzi and Leitner learned of the Commission's investigation, they wound down the business of Titan, and Magnum Petroleum and Magnum Oil were incorporated. Magnum Petroleum and Magnum Oil are both controlled by Montozzi.

39. Montozzi is a director and officer of both Magnum Petroleum and Magnum Oil. The address of Magnum Oil's executive office is the same Ida, Louisiana address listed in Titan's sales brochures. The address of Magnum Petroleum is the same as the Florida address listed as the marketing office in the Magnum prospectus.

40. Using offering brochures, sales materials, and agreements prepared by Montozzi and virtually identical to those used by Titan, Montozzi has been offering and selling undivided, fractional interests in at least one oil and gas well drilling program located in the state of Louisiana. The interests are sold under the name Magnum Petroleum, but the company is described as a Louisiana corporation and the corporate address is the same as Magnum Oil's address. The

marketing office address listed in the prospectus is the address of Magnum Petroleum.

**MAGNUM MISREPRESENTATIONS AND OMISSIONS**

41. The Magnum offering documents describe in detail the exact locations at which the well is to be drilled. In fact, Magnum does not hold the necessary sublease to drill at the location cited in its sales brochure. Montozzi was aware of the actual locations to be drilled when he prepared the offering materials.

42. In its offering materials, Magnum claims that its principals and staff "have nearly 80 years of oil and gas experience . . . [and that] [m]ost of these years were spent working for other oil and gas companies where the drilling and successful completion rate was over 90%." Magnum does not disclose that it is the successor to Titan and that Montozzi is president of all three corporations (including both Magnums). Nor does Magnum disclose that its predecessor has no record of success in Louisiana, that all three of Titan's recent drilling programs failed, and that Montozzi has a history of cease-and-desist orders being entered against him by state authorities.

43. On April 28, 1998, an investor contacted Magnum and was told that the well had been completed. In fact, Magnum has not even obtained a permit to begin.

## COUNT I

## FRAUD

### Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)]

44. Paragraphs 1 through 43 are hereby realleged and are incorporated herein by reference.

45. From in or about April 2, 1997 through the present, defendants Titan, Magnum Petroleum, Magnum Oil, Montozzi and Leitner, singly and in concert, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

46. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

47. By reason of the foregoing, defendants Titan, Magnum Petroleum, Magnum Oil, Montozzi and Leitner have violated, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)].

**COUNT II**

**FRAUD**

**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. 77q(a)(2) and 77q(a)(3)]**

48. Paragraphs 1 through 44 are hereby realleged and are incorporated herein by reference.

49. From in or about April 2, 1997 through the present, defendants Titan, Magnum Oil, Magnum Petroleum, Montozzi and Leitner, in the offer and sale of securities, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

(a) obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(b) engaged in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

50. By reason of the foregoing, defendants Titan, Magnum Petroleum, Magnum Oil, Montozzi and Leitner have violated, and, unless restrained and enjoined, will continue

to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. 77q(a)(2) and (3)].

**COUNT III**

**FRAUD**

**Violations of 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]**

51. Paragraphs 1 through 43 are hereby realleged and are incorporated herein by reference.

52. From in or about April 1997 through the present, defendants Titan, Magnum Petroleum, Magnum Oil, Montozzi and Leitner, in connection with the purchase and sale of securities, by the use of means and instrumentality's of interstate commerce and by use of the mails, directly and indirectly:

(a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon persons,

all as more particularly described above.

53. Said defendants knowingly, intentionally and/or recklessly engaged in the above-described conduct.

54. By reason of the foregoing, defendants Titan, Magnum Petroleum, Magnum Oil, Montozzi and Leitner have violated, and, unless restrained and 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].

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff Securities and Exchange Commission respectfully prays for:

### I.

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the defendants committed the violations alleged herein.

### II.

A temporary restraining order, preliminary and permanent injunctions, restraining and enjoining the defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of them, whether as principals or as aiders and abettors, from violating Section 17(a) of the Securities Act [15 U.S.C. 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] promulgated thereunder.

### III.

An order requiring accountings by the defendants of the use of proceeds of the sales of the securities described in

this Complaint and the disgorgement by Leitner, Montozzi, Magnum Oil and Magnum Petroleum of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws, and setting the disgorgment amount as to Titan[1], and an order freezing the assets of the defendants, to preserve the status quo.

IV.

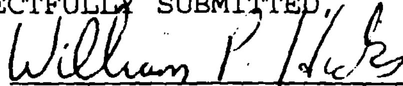
An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against defendants Leitner, Montozzi, Magnum Oil and Magnum Petroleum, and setting a civil penalty amount against defendant Titan.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

1 The Civil Action brought by the Commission is continuing during the pending Titan bankruptcy case as an action by a governmental unit to enforce such governmental unit's police or regulatory power, in accordance with the exception to the automatic stay provided in Sections 362(b)(4) and (5) of the Bankruptcy Code. Although the Commission seeks to establish the amount, if any, of civil penalties and disgorgment as to defendant Titan, any enforcement of a money judgment against property of the Titan estate will be sought through the bankruptcy case.

DATED: 1998 RESPECTFULLY SUBMITTED,



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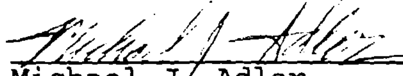

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