UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**CASE NO.**
CHARLES COUCH and COUCH OIL & GAS, INC.	§	
Defendants.	§	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") files this Complaint against Charles Couch ("Couch") and Couch Oil & Gas, Inc. ("COG") (collectively, "Defendants"), respectfully alleging the following:

I. SUMMARY

1. From at least September 2010 through January 2012, Couch, directly and through his company COG, carried on a fraudulent scheme and made materially false and misleading statements and omissions to potential and actual investors in order to make unregistered offers and sales of securities in two of Defendants' oil and gas investment programs: the Permian-Black Shale-Fifty Nine Well Program (the "59 Well Program") and the Radial Nine Well Program (the "Radial Nine Program") (collectively, "Programs").

2. Through these fraudulent offerings, Defendants raised approximately $9,800,000 million from more than 200 investors located in at least 21 states. In offering documents, private placement memoranda, and other communications with investors, Defendants, among other things:

- falsely represented that investors would receive working interests in oil and gas wells through their participation in the Programs;
- falsely represented that all investor funds would be used to drill and complete wells in the Programs;
- failed to tell investors that approximately 30% of their funds would be paid as sales commissions;
- failed to tell investors that COG was using unregistered brokers to sell interests;
- made unsubstantiated and highly inflated projections concerning potential oil and gas production from wells in the Programs;
- falsely represented that COG was experienced and successful in using radial jet drilling technology;
- misled investors regarding a decision to wind down the Radial Nine Program early; and
- failed to amend offering materials for the Radial Nine Program to reflect the impact the early closure of the offering would have on COG's ability to raise the full offering amount and the resulting adjustments to the program's projections and expected performance.

3. In light of this conduct, alleged in further detail below, the Commission requests a judgment against Defendants permanently enjoining them from violating the registration and antifraud provisions of the Securities Act of 1933 (the "Securities Act") and the Securities and Exchange Act of 1934 (the "Exchange Act"), permanently enjoining them from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities; and ordering them to pay disgorgement with prejudgment interest and civil penalties.

II.
JURISDICTION AND VENUE

4. Defendants offered and purported to sell units of fractional undivided working interests in the Programs' wells, which investments constitute securities, and/or did offer and sell investment contracts, under Section 2(1) of the Securities Act [15 U.S.C. § 77b(a)(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

5. 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)]. The Commission seeks the imposition of civil penalties pursuant to Section 20(d)(2)(C) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. §§ 78u(d)].

6. This Court has jurisdiction over this action under Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa] because Defendants directly or indirectly made use of the means or instrumentalities of commerce and/or the mails in connection with the transactions described herein. 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 certain of Defendants' acts, practices, transactions, and courses of business alleged herein occurred within this judicial district.

III.
PARTIES

7. Charles O. Couch, age 64, resides in Irving, Texas. Couch is COG's owner, principal, and control person and serves as a director and as President and Chief Executive Officer of the company. Couch, as well as COG, solicited investments in the 59 Well Program and the Radial Nine Program. Couch, as well as COG, served as the operator of oil and gas

wells identified in the Programs' offering materials. None of the offerings was registered with the Commission or any state. In March 2005, the State of Wisconsin's Department of Financial Institutions, Division of Securities, issued an order prohibiting Couch, along with COG, from offering and selling unregistered securities in that state in an action styled *In the Matter of Couch Oil & Gas and Charles Couch*, File No. S-04061(EX), March 18, 2005. In July 2009, the Pennsylvania Securities Commission issued a cease-and-desist order against Couch, along with COG, requiring them to halt the offer and sale of unregistered securities in that state in an action styled *In the Matter of Couch Energy, LLC, et al.*, Penn. Sec. Comm'n, Dkt. No. 9901-21 (July 20, 2009).

8. Couch Oil & Gas, Inc. is a Texas corporation headquartered in Irving, Texas. From at least 2010 through 2012, COG raised money from investors in connection with the Programs, and also served as the Programs' operator.

IV.
FACTS

A. DEFENDANTS OFFERED AND SOLD SECURITIES IN CONNECTION WITH TWO OIL AND GAS INVESTMENT PROGRAMS.

9. From at least September 2010 through January 2012, Defendants offered and sold, or purported to sell – to more than 200 investors across at least 21 states – fractional, undivided working interests in oil and gas wells comprising two investment offerings: (1) the 59 Well Program; and (2) the Radial Nine Program.

1. The 59 Well Program

10. Investment in the 59 Well Program was first offered to investors in or around the fall of 2010. Defendants represented to prospective investors that the program would include 59 turnkey oil and gas wells located within "proven undeveloped productive oil zones" within

existing oil fields in West Texas. Defendants claimed that a total sum of approximately $10,000,000 would be needed to fully fund the program.

11. Defendants represented that they planned to raise $4,995,000 from investors who purchased interests in the 59 Well Program and claimed that, for an investment of $99,900, investors would receive a 1% working interest in each of the program's 59 wells. Defendants further represented that they would provide the remaining $4,995,000 needed for the program through funding and/or labor.

12. Defendants stopped offering investments in the 59 Well Program in the spring of 2011, after raising approximately $7,000,000 from 139 investors, overselling the program by more than $2 million.

2. The Radial Nine Program

13. Defendants began offering and selling interests in the Radial Nine Program in or around the summer of 2011. Defendants claimed that a total sum of approximately $10,000,000 would be needed to fully fund the program, and stated a plan to raise up to $7,500,000 from investors, with the remaining sum to be provided by Defendants through funding and/or labor.

14. Defendants represented to prospective investors that this program would include nine new, turnkey, horizontal wells located within "proven undeveloped productive oil zones" in existing oil fields in West Texas. Defendants further represented that the wells would be drilled utilizing so-called "radial jet drilling technology." Defendants told investors in the Radial Nine Program that, for a $100,000 investment, they would receive a 1% working interest in each of the nine wells to be drilled.

15. In October 2011, Couch met with Commission staff regarding the staff's underlying investigation of Defendants. After that meeting, Couch claims, he decided to stop

selling the Radial Nine Program offering. At that time, Defendants had sold approximately $460,000 in interests in the Radial Nine Program. In fact, however, Defendants continued to enroll Radial Nine investors until late January 2012, encouraging them to invest soon because the interests were no longer going to be offered to individual investors. Defendants sold another $2.35 million in interests in the Radial Nine Program, or 84% of the total money raised in the program, *after* Couch decided to stop selling program.

16. Potential investors who purchased interests in the Radial Nine Program after October 2011 were misled regarding the basis for Defendants' decision to close the offering early. While Defendants intended to close the offering early based on the Commission's investigation, they instead represented that the offering would no longer be available to individual investors. Furthermore, Defendants did not revise offering materials and projections to reflect the early closing of the offering. When Defendants finally did close the program in late January 2012, they had raised approximately $2,800,000 from 65 investors in 21 states.

B. DEFENDANTS DID NOT REGISTER THEIR SECURITIES OFFERINGS WITH THE COMMISSION.

17. The interests Defendants offered and sold or purportedly sold in the Programs are securities.

18. Defendants never filed a registration statement for the 59 Well Program securities offering, the Radial Nine Program securities offering, or for the working interests purportedly sold through the Programs.

C. DEFENDANTS MADE MATERIAL MISREPRESENTATIONS AND OMISSIONS IN CONNECTION WITH THE OFFER, PURCHASE, AND SALE OF SECURITIES IN THE PROGRAMS.

19. Defendants created brochures and subscription agreements describing the Programs which were distributed to prospective investors (the "Offering Documents").

20. Defendants also created private placement memoranda ("PPMs") for the Programs, though not all investors – and perhaps none of them – ever received the PPMs. Defendants' Offering Documents and PPMs contained materially false and misleading statements and omissions.

1. Failure to Provide Investors Title to Working Interests

21. Defendants' Offering Documents and PPMs each promised investors that, in exchange for their investment, they would acquire working interests in the Programs' oil and gas wells.

22. In reality, Defendants never transferred any working interests to any investors. Rather, COG retained all ownership interest in the Programs' wells. Thus, Defendants misrepresented the fundamental nature of the investment investors believed they were making.

2. Misrepresentations Regarding Use of Investor Proceeds

23. The Offering Documents and PPMs for both Programs claimed that investor funds would be used to pay the turnkey costs to drill, complete, and produce oil and gas wells.

24. Neither the Offering Documents nor the PPMs disclosed that Defendants engaged a California-based brokerage firm to offer and sell investments in the Programs ("California Brokerage Firm"), or that the firm was not registered as required by Section 15 of the Exchange Act. In fact, the PPMs falsely stated that COG did not use the services of any broker-dealer or

placement agent to offer or sell the interests in the Programs but that, if it did, it would use a FINRA-licensed broker-dealer or placement agent.

25. Importantly, Defendants never informed investors that approximately 30% of their investment funds would be – and were – paid as sales commissions to the California Brokerage Firm and its unregistered sales staff, rather than used to pay the costs of drilling and operating oil-and-gas wells as Defendants had represented.

26. Defendants' PPMs also misstated how investor monies would be allocated and assigned, as percentages, to pay for costs associated with leasing, drilling, well completion, geologic matters, marketing, and more. Despite Defendants' intentional enumeration of how they would – and therefore by extension would not – use investor funds, Defendants' misappropriated funds by comingling them with funds from other offerings and using them to pay for undisclosed and often unrelated expenses.

27. Defendants raised approximately $9,800,000 through the Programs. Defendants raised approximately $7,000,000 from 139 investors in the 59 Well Program and approximately $2,800,000 from 65 investors in the Radial Nine Program.

28. Of the $9,800,000 they raised, Defendants diverted approximately $2.8 million of investor funds to the California Brokerage Firm as undisclosed commissions.

29. Defendants spent approximately $3.3 million of additional investor proceeds from the Programs to pay COG payroll and tax liabilities, credit card and other debt obligations, private litigation expenses, and overhead, none of which was disclosed in the Offering Materials and some of which were completely unrelated to the Programs.

30. Defendants spent approximately $3.5 million, or only about 35% of investor funds, on actual costs associated with drilling, completing, and producing the wells in the

Programs. Additionally, at least $448,000 of Radial Nine Program investor funds were used to buy a workover drilling rig for COG, which COG used for its unrelated oil-and-gas services business.

31. Furthermore, Defendants improperly commingled in a single bank account (a) all investor funds received in connection with both Programs; as well as (b) funds raised from investors in separate, unrelated securities offerings; (c) proceeds from sales of oil and gas; (d) proceeds from Defendants' separate and unrelated oil-and-gas services business; and (e) proceeds from unrelated litigation. Defendants used these commingled funds to pay, among other things: (a) minimal investment returns to investors in the Programs; (b) commissions to the California Brokerage Firm; and (c) a variety of expenses unrelated to the Programs.

3. Misrepresentations Regarding Experience and Success With Radial Jet Technology

32. In connection with their efforts to secure investments in the Radial Nine Program, Defendants' Offering Documents misrepresented and grossly overstated their experience and success utilizing radial jet technology to extract oil and gas.

33. To lure investors to the Radial Nine Well Program, Defendants touted their experience with radial jet drilling to enhance oil and gas production and claimed they would employ the method in drilling the program wells. Contrary to their representations, Defendants actually had little experience even utilizing – much less successfully utilizing – radial jet technology.

4. Misrepresentations Regarding Estimated Production and Investment Returns

34. In addition, the Offering Documents for the 59 Well Program and the Radial Nine Program, upon which investors relied when investing, represented that the wells in both Programs were located – or would be drilled – in "proven undeveloped productive oil zones." In these documents, Defendants provided investors in both Programs with anticipated minimum and maximum barrels of oil per day that would be produced across the wells.

35. However, when Defendants' made these projections they knew or had every reason to know they were false and that investors relied on, among other things, (a) the false representation that Defendants would use all investor funds for drilling purposes; (b) highly unreasonable estimates of the costs and timing associated with drilling and completing wells; (c) a highly unreasonable presumption that all wells would be successful producers; and (d) the false claim that radial jet drilling would increase production in the Radial Nine Program.

36. As a result, Defendants materially misrepresented the investment returns investors could reasonably expect to receive from participation in the Programs.

37. Defendants misrepresentations and omissions were compounded by the absence of meaningful disclosures about the risks associated with drilling and producing oil and gas wells.

5. Misrepresentations Regarding Early Wind Down of the Radial Nine Program

38. As discussed above, after learning about the Commission's investigation of Defendants, and following an October 2011 meeting with Commission staff, Defendants decided to stop raising new investments in the Radial Nine Program and instead wind the offering down early before raising the funds needed to drill all nine wells promised to program investors.

39. Nevertheless, Defendants allowed the California Brokerage Firm to continue selling investments in the offering. Defendants also continued distributing, or authorized continued distribution of, Offering Materials stating they planned to raise $7,500,000 for the Radial Nine Program. Defendants did not modify these documents to reflect the fact that the offering would be terminated shortly, and that the full $7,500,000 would probably not be raised with the corresponding impact on the drilling program.

40. Approximately 84% of the interests in the Radial Nine Program were sold between October 29, 2011 and January 27, 2012, when the selling finally ceased.

D. DEFENDANTS CARRIED OUT A SCHEME TO DEFRAUD INVESTORS.

41. To persuade investors, Defendants engaged in a practice and course of business that consisted of making the untrue statements and omissions of material facts alleged above, concerning the nature of COG's business, its historical experience and success, anticipated well production, and the amount of investment returns investors could expect to realize through the Programs. These misrepresentations and omissions were not the only acts Defendants took in furtherance of their scheme.

42. In addition, Defendants engaged in a practice and course of business of misusing investor proceeds for their own purposes and benefits including paying commissions, covering non-well-related expenses, and purchasing equipment for COG to be used – and which was in fact used – outside of the Programs.

43. In furtherance of their scheme, Defendants repeatedly made lulling statements to investors to mollify them when wells were not being drilled, completed, or produced and when returns were not being paid. Among such statements, Defendants claimed for more than two years that COG was actively negotiating the sale of certain producing fields to a third party.

44. Moreover, Defendants failed to act as promised in their Offering Documents and PPMs because they did not complete the drilling, well-completion, or production they represented they would and, instead, substituted or added different wells to the programs in an effort to provide investors with a false sense that actual progress was being made toward production in their respective investment Programs. In fact, after raising approximately $9,800,000 from the Programs' investors, COG went from doing business as the oil-and-gas development company investors invested with, to an oil-and-gas services company that, at a minimum, substantially reduced the amount of time and resources Defendants devoted to drilling and completing the wells investors were promised.

V.
CLAIMS FOR RELIEF

FIRST CLAIM
Violations of Section 17(a) of the Securities Act

45. The Commission repeats and re-alleges Paragraphs 1 through 44 of the Complaint as if fully set forth herein.

46. By engaging in the conduct described herein, Defendants directly or indirectly, singly or in concert, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce or of the mails:

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

(b) obtained money or property by means of untrue statements of material fact or omissions to state material facts 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, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

47. With regard to their violations of Section 17(a)(1) of the Securities Act, Defendants acted intentionally, knowingly or with severe recklessness with respect to the truth. With regard to their violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Defendants acted at least negligently.

48. By engaging in this conduct, Defendants violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. §§ 77q].

SECOND CLAIM
Violations of Exchange Act 10(b) and Rule 10b-5 thereunder

49. The Commission repeats and re-alleges Paragraphs 1 through 44 of the Complaint as if fully set forth herein.

50. By engaging in the conduct described herein, Defendants directly or indirectly, singly or in concert, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly:

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

(b) made untrue statements of material fact or 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, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities and upon other persons.

51. Defendants engaged in this conduct intentionally, knowingly or with severe recklessness with respect to the truth.

52. By engaging in this conduct, Defendants violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

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

53. The Commission repeats and re-alleges Paragraphs 1 through 44 of the Complaint as if fully set forth herein.

54. By their conduct as alleged above, Defendants, directly or indirectly, singly or in concert with others, (i) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (ii) for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by any means or instruments of transportation, securities as to which no registration statement was in effect; or (iii) may use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

55. No valid registration statement was filed or was in effect with the Commission in connection with Defendants' offer or sale of securities.

56. By engaging in this conduct, Defendants 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)].

VI.
RELIEF REQUESTED

For these reasons, the Commission respectfully requests that the Court enter a judgment:

(a) Permanently enjoining Defendants and their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from violating, directly or indirectly Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 5 U.S.C. §§ 77e(a), §77e(c), 77q(a)] and 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].

(b) Permanently enjoining Defendants from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities;

(c) Ordering Defendants to disgorge, jointly and severally, all ill-gotten gains and/or unjust enrichment realized by each of them, plus prejudgment interest;

(d) Ordering each Defendant to pay an appropriate civil monetary penalty 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)];

(e) Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

(f) Granting all other relief to which the Commission may be entitled.

Dated: May 12, 2014

Respectfully submitted,

/s/ Janie L. Frank
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