UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **TYCOON ENERGY, INC. and MATTHEW DEE NERBONNE,** **Defendants.**	**CIVIL ACTION** **No. 4:16-cv-00693**

COMPLAINT

For its complaint against Defendants Matthew Dee Nerbonne and Tycoon Energy, Inc. ("Tycoon"), Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges as follows:

Summary

1. From 2010 through 2013, Nerbonne and Tycoon raised approximately $5.6 million from 232 investors across the United States by selling investment-contract securities in unregistered transactions in four oil-and-gas ventures: (1) Plains Ranch #1 ("PR1"), (2) Plains Ranch #2 ("PR2"), (3) Plains Ranch #3 ("PR3"), and (4) Tycoon-Lewis 1 ("TL1"). Tycoon, a company Nerbonne owned and controlled, served as each venture's managing venturer. To attract investors to the ventures, Tycoon employed telephone solicitors to cold call investors using lead lists that Nerbonne obtained. To tout the ventures, Nerbonne drafted and disseminated brochures and other written materials. He also closed most sales, typically by telephone.

2. The Tycoon securities offerings were fraudulent. Nerbonne misappropriated approximately $1.5 million of the total offering proceeds, spending these funds on personal expenses. He schemed to defraud investors by soliciting and receiving well-completion costs before carrying out required testing to determine the wells' commercial viability. And Nerbonne prepared and disseminated written offering materials for the Tycoon investments containing untrue and misleading statements of material facts, for example:

a. Tests showed the PR1 well produced "up to 15 Barrels per hour." In reality, the well produced only 13.92 barrels of oil in a 24-hour test.

b. The PR1 and PR2 wells were projected to produce 300 to 400 barrels of oil per day. In reality, these projections were baseless and, in any event, Texas regulations limited production to no more than 160 barrels of oil per day.

c. Tycoon's maps showed that each proposed well site was surrounded exclusively by commercially viable existing wells. But the maps omitted numerous nearby dry, plugged, abandoned, and commercially unviable wells.

3. By reason of the foregoing, Nerbonne and Tycoon violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

4. In the interest of protecting the public from violations by the Defendants, the SEC seeks, among other things, permanent injunctions, disgorgement plus prejudgment interest, and civil money penalties from each Defendant.

Jurisdiction and Venue

5. The SEC brings this action under Securities Act Section 20(b) [15 U.S.C. §

77t(b)] and Exchange Act Section 21(d) [15 U.S.C. § 78u(d)], seeking to restrain and enjoin the Defendants permanently from engaging in such acts and practices as alleged herein.

6. 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]. Each of the joint-venture interests offered and sold as described in this complaint is an investment contract and, therefore, a "security" as that term is defined under Securities Act Section 2(a)(1) [15 U.S. C. § 77b(a)(1)] and Exchange Act Section 3(a)(10) [5 U.S. C. § 78c(a)(10)].

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

8. Venue is proper because transactions, acts, practices, and courses of business described in this complaint occurred within the Eastern District of Texas.

Parties

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

10. Tycoon is a Texas corporation headquartered in Plano, Texas.

11. Nerbonne, an individual aged 55, resides in Plano, Texas.

STATEMENT OF FACTS

Background Relating to Nerbonne's Tycoon Joint Ventures

12. From 2010 through 2013, Nerbonne operated Tycoon as the so-called "Managing Venturer" for four oil-and-gas joint ventures. The first three joint ventures—PR1, PR2, and PR3—were formed to drill one well each on a 480-acre lease in Yoakum County, Texas called

the "Plains Ranch" lease. The fourth venture—TL1—was formed to drill a single well on an 80-acre lease in Lubbock County, Texas.

13. As the managing venturer, Tycoon controlled each joint venture. Nerbonne in turn owned and controlled Tycoon. Through Tycoon, Nerbonne exercised ultimate authority over each venture, including its overall direction, the content of its public statements, and the decision to disseminate such statements.

14. Nerbonne offered and sold joint-venture units in Tycoon's ventures through a sales staff of three to four employees, who solicited investors across the country using telephone cold-calling. Nerbonne identified prospective investors from lead lists that he purchased from lead generators or acquired from his previous employers. When Tycoon's cold-callers identified an interested investor, they directed the investor to Nerbonne, who closed most of the sales, typically by telephone.

15. From July 1, 2010, through September 27, 2013, Nerbonne raised $5,619,565 from 232 investors by selling joint-venture units in the four ventures through Tycoon. Nerbonne misappropriated approximately $1.5 million of the total offering proceeds, spending these funds on personal expenses.

16. Apart from investing money, the investors' role in each venture was passive. They reasonably expected the success of each venture to come from the managerial efforts of Nerbonne and Tycoon. Each joint-venture unit offered and sold by Nerbonne and Tycoon constituted an investment contract and was, therefore, a security.

17. No registration statement was ever filed with the SEC relating to Tycoon's transactions in joint-venture units.

18. The following table sets out the offering period, investor count, and amount raised

for each securities offering:

Venture	Offering Period	Investors	Amount Raised
PR1	July 1, 2010 – March 30, 2012	67	$1,663,300
PR2	March 31, 2011 – June 22, 2012	60	$1,280,363
PR3	December 15, 2011 – June 29, 2012	49	$1,794,877
TL1	October 11, 2012 – September 27, 2013	47	$1,485,099
Total:		**232**	**$5,619,565**

The PR1 Venture

19. In the PR1 offering, Nerbonne prepared and provided prospective investors a brochure, describing the PR1 investment opportunity. The brochure explained that Tycoon sought to raise $1,050,000 to drill a 5,800-feet well, which was to be an "initial test well" to determine the viability of drilling up to 11 additional wells on the Plains Ranch lease. According to the brochure, the $1,050,000 initial-investment proceeds also covered cost to test the well's viability and covered the "Dry Hole Cost." The brochure provided that, after well testing, Tycoon could seek from the investors an additional "$525,000 Completion Cost." Completion cost covered those expenses necessary to prepare the well for oil production after testing. Including completion cost, the total Tycoon sought to raise in the PR1 venture was $1,575,000.

20. The brochure contained projections that the PR1 well "could pay-out the initial prospect cost in 2.33 months at 300 Bbl/day" and that "Pay-out of Total cost is estimated to be 3 months." These projections were untrue and misleading because they had no reasonable basis. No comparable wells in the prospect-well vicinity were producing anywhere near 300 barrels of oil per day. Moreover, the Texas Railroad Commission ("TRC"), which governs oil-and-gas production in Texas, limits daily production for wells drilled to depths under 6,000 feet to 160 barrels of oil per day.1 Therefore, even if the PR1 well had proven capable of producing 300

1 Texas Administrative Code Title 16, Chapter 3, Rule 3.42.

barrels of oil per day, it could legally produce no more than 160 barrels per day.

21. The brochure also included misleading maps identifying the formation in which Tycoon intended to drill the PR1 well. The maps noted several oil fields in the same formation that had already produced more than two billion barrels of oil combined since the 1960s. This gave the appearance that Tycoon had picked a promising location for the PR1 well. But the maps omitted numerous nearby dry, plugged, abandoned, and commercially unviable wells. As a result, the maps conveyed the misleading impression that the well prospect was far more favorable than it actually was.

22. Nerbonne also prepared and provided investors a Confidential Information Memorandum ("CIM"), which, compared to the brochure, contained a more detailed description of the PR1 venture and its well prospect. The CIM stated: "Following logging and testing, the Managing Venturer will make the decision to either plug or attempt to complete the well." It further stated:

> Tycoon will notify all venturers of test results and of the decision to either plug the well or attempt completion. Due to the expense and nature of drilling, completion funds must be received at the time of original investment or within seven (7) days of notification, should Tycoon, in its sole discretion, decide to collect completion funds after drilling has commenced. If funds are not received within seven (7) days, a venturer's interest in the well shall be forfeited and offered to other qualified venturers.

23. Drilling began on the PR1 well on January 29, 2011, and ended February 7, 2011. On February 7, 2011, Nerbonne sent investors a completion-cost notice, explaining that they would lose their investment if completion funds were not received within seven days. Nerbonne's completion-cost notice violated the CIM's terms in **paragraph 22**, above. When he issued the notice, the well had not been tested—and investors were therefore not notified of the test results—as the CIM's terms required.

24. The PR1 well ultimately underwent testing on March 18, 2011. Test results were dismal. During the 24-hour test period, the well produced 130 barrels of water and only 13.92 barrels of oil, a nearly 10-to-1 water-to-oil ratio leading to high water-disposal costs.

25. Nerbonne nevertheless received and used investor funds to complete the ill-fated well. Once in production, the well averaged fewer than 1.5 barrels of oil per day, far below the 300 barrels projected in the brochure. By failing to test the well and notify investors about the results, as required under the CIM, Nerbonne caused investors to incur substantial completion costs that they might have avoided if they had first received the poor test results. Reasonable investors would have considered the well-test results important—that is, material—in making an investment decision about the PR1 venture.

26. By calling for completion before testing, Nerbonne knowingly employed a scheme to defraud investors.

The PR2 Venture

27. In March 2011, Nerbonne began soliciting funds for the PR2 venture, which he set up through Tycoon to drill the second of the 12 wells contemplated on the Plains Ranch lease. For the PR2 venture, Nerbonne prepared and distributed a brochure similar to the PR1 brochure described above. The brochure provided that Tycoon sought to raise $875,000 for well drilling and testing and an additional $437,500 for completion. Like the PR1 brochure, the brochure included misleading maps that gave the impression that the Plains Ranch lease was surrounded by only commercially viable wells, which was untrue.

28. The brochure included a statement that the estimated oil production on the Plains Ranch lease was "1,280,000 +/- BO per Well based on 40% recovery." It further projected that each Plains Ranch well would yield "$128 Million in Oil." The brochure included a chart

projecting oil production ranging from 25 to 400 barrels per day. These estimates and projections were untrue and misleading because they had no reasonable basis. No comparable wells in the prospect-well vicinity were producing anywhere near 400 barrels of oil per day. Moreover, Nerbonne knew the PR1 well on the same lease produced far below the brochure's estimates and projections for PR2. And like the PR1 well, the PR2 well prospect was to be drilled to 5,800 feet. Therefore, it was subject to the same 160 barrel-per-day production cap applicable to the PR1 well. But the brochure omitted to disclose the production cap.

29. In addition, the PR2 brochure contained untrue and misleading statements of material facts about the PR1 well. It said the preliminary test results for the PR1 well showed "fluid entry into the well-bore . . . up to 15 Barrels per hour." This statement was misleading because it omitted to disclose that the PR1 well produced fewer than 14 barrels of oil in its 24-hour test period and that water produced in that period exceeded oil by a nearly 10-to-1 margin. By omitting this information, the statement conveyed the misleading impression that well tests showed the PR1 well would produce 15 barrels of oil per hour.

30. Despite the PR1 well's poor performance, Tycoon commenced drilling the PR2 well on February 21, 2012. In a letter dated February 8, 2012—before drilling even began—Nerbonne sent investors a completion-cost notice, explaining that they would lose their investment if completion funds were not received within seven days. The letter said that Tycoon had begun drilling operations, that the well should reach total depth in about ten days from the date of the notice, and that "due to extremely tight schedules, we have decided to call for completion and equipment." The letter was false. In reality, drilling had not commenced.

31. Nerbonne also prepared and provided investors a CIM for the PR2 venture, containing language virtually identical to the PR1 CIM. The PR2 CIM stated: "Following

logging and testing, the Managing Venturer will make the decision to either plug or attempt to complete the well." It further stated:

> Tycoon will notify all venturers of test results and of the decision to either plug the well or attempt completion. Due to the expense and nature of drilling, completion funds must be received at the time of original investment or within seven (7) days of notification, should Tycoon, in its sole discretion, decide to collect completion funds after drilling has commenced. If funds are not received within seven (7) days, a venturer's interest in the well shall be forfeited and offered to other qualified venturers.

32. Nerbonne's completion-cost letter violated the PR2 CIM's terms in **paragraph 31**, above. When he issued the notices, the PR2 well had not even been drilled, much less tested. PR2 investors were therefore not notified of the test results, as the CIM's terms required, before receiving the completion-cost notice.

33. The PR2 well's drilling operations ended on April 1, 2012. Tycoon tested the PR2 well on December 1, 2012. But Tycoon completed the well for production on September 18, 2012, two and a half months *before* testing it. The test showed poor performance. In the 24-hour test period, the well produced only one barrel of oil. And water exceeded oil 4-to-1. Again, by failing to test the well and notify investors about the results, as required under the PR2 CIM, Nerbonne caused investors to incur substantial completion costs that they might have avoided if they had first received the poor test results.

34. Again, by calling for completion before testing, Nerbonne knowingly employed a scheme to defraud investors.

The PR3 Venture

35. On October 5, 2012, Tycoon began drilling the PR3 well on the Plains Ranch lease. Before drilling it, however, Nerbonne hired a new geologist to determine whether anything could be done on the PR3 well prospect to improve production. After analyzing the

PR3 well prospect and the PR1 and PR2 wells' performance, the geologist advised Nerbonne not to drill the proposed PR3 well, explaining that it would likely produce poor results similar to the first two wells.

36. Nerbonne rejected the geologist's advice and proceeded to solicit investors for the PR3 venture. He prepared and provided investors a brochure virtually identical to that used in the PR2 offering. The PR3 brochure included the baseless claim that the total estimated oil production for each well on the Plains Ranch lease was 1,280,000 barrels of oil. And it included maps that were misleading because they featured successful wells but omitted numerous nearby dry and plugged wells and other commercially unviable wells.

37. Nerbonne signed and included an "Opinion Letter" in the PR3 brochure. The letter stated that the opinion was "derived from consulting our Geologist and Petroleum Engineer with active participation in every phase of exploration and production." It said that the PR1 well was "in production" and that the PR2 well was "pending final completion." And it provided a "Lease Estimate" of "38.4 Million Barrels" for the Plains Ranch lease. The opinion letter was misleading, however. It conveyed the impression that Tycoon already had successful wells on a lucrative 480-acre lease. In reality, neither well was profitable. Moreover, the statement that the opinion was "derived from consulting our Geologist" was false. The geologist expressed the opinion that the PR1 and PR2 wells performed poorly and that Tycoon should not drill the PR3 well prospect because it too would perform poorly.

38. In keeping with the pattern established in PR1 and PR2, Nerbonne issued investors a completion-cost notice dated September 21, 2012, before the PR3 well had been drilled or tested. In the notice, Nerbonne falsely stated that drilling had already begun on the well. Moreover, calling for completion costs at that time violated the terms of a PR3 CIM that

Nerbonne prepared and distributed to investors. As in the case of the PR1 and PR2 CIMs, the PR3 CIM contained language identical that in **paragraph 31**, above.

39. The PR3 well did not prove commercially viable. In a test on November 30, 2012, it produced 73 barrels of water and 13 barrels of oil—a 5.6-to-1 ratio—in 10 hours. Nerbonne's failure to test the PR3 well and notify investors about the results, as required under the PR3 CIM, caused investors to incur substantial completion costs that they might have avoided if they had first received the poor test results.

40. Yet again, by calling for completion before testing, Nerbonne knowingly employed a scheme to defraud investors.

The TL1 Venture

41. In October 2012, after drilling three unsuccessful wells on the Plains Ranch lease, Nerbonne began soliciting investments in the TL1 venture. Nerbonne drafted and provided investors a CIM dated October 11, 2012, for the TL1 venture. Under the heading "PRIOR ACTIVITIES" in the CIM contained descriptions of the PR1, PR2, and PR3 wells that were misleading as to material facts. This section stated that the PR1well was "in production" and that the PR2 and PR3 wells were "waiting on final completion." But the CIM omitted to disclose the PR1 and PR2 wells' poor test results. And it omitted to disclose that—because of these poor test results and other analysis—Tycoon's geologist had recommended against drilling the PR3 well.

42. Nerbonne continued to disseminate the misleading CIM to investors, without amendment, even after the PR3 well test on November 30, 2012, showed the well to be commercially unsuccessful. This conduct constituted a knowing scheme to defraud investors.

43. The TL1 CIM contained the same testing requirement for completion costs as that

described in paragraph's 22 and 31, above. On April 24, 2013, Nerbonne issued a completion-cost notice to investors stating that Tycoon had begun drilling operations. In the notice, Nerbonne predicted the well would reach total depth in 10 to 15 days. Nerbonne's notice was false, however. In reality, drilling had not begun. Despite its receipt of the completion costs, Tycoon never drilled the TL1 well. This conduct likewise constituted a knowing scheme by Nerbonne to defraud investors.

FIRST CLAIM
Fraud
Violations of Securities Act Section 17(a)
Against Tycoon and Nerbonne

44. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 43 of this Complaint by reference as if set forth verbatim in this Claim.

45. Defendants Nerbonne and Tycoon 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 or 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.

46. With respect to violations of Securities Act Sections 17(a)(2) and (3), Defendants Tycoon and Nerbonne were negligent in their conduct and in the untrue and misleading statements alleged herein. With respect to violations of Securities Act Section 17(a)(1), Defendants Tycoon and Nerbonne engaged in the referenced conduct and made the referenced untrue and misleading statements knowingly or with severe recklessness.

47. For these reasons, Defendants Tycoon and Nerbonne have violated and, unless

enjoined, will continue to violate Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

SECOND CLAIM
Fraud
Violations of Exchange Act Section 10(b) and Rule 10b-5
Against Tycoon and Nerbonne

48. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 43 of this Complaint by reference as if set forth verbatim in this Claim.

49. Defendants Tycoon and Nerbonne, 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 or 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.

50. Defendants Tycoon and Nerbonne engaged in the above-referenced conduct and made the above-referenced untrue and misleading statements knowingly or with severe recklessness.

51. For these reasons, Defendants Tycoon and Nerbonne violated and, unless enjoined, will continue to violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

THIRD CLAIM
Violations of Securities Act Sections 5(a) and 5(c)
[15 U.S.C. §§ 77e(a) and 77e (c)]

52. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 43 of this Complaint by reference as if set forth verbatim in this Claim.

53. Defendants Nerbonne and Tycoon, directly or indirectly, singly or in concert with others, have offered to sell, sold, and delivered after sale, certain securities and have (a) made use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of email, interstate carrier, brokerage transactions, and otherwise; (b) carried and caused 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) made use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

54. By reason of the foregoing, Defendants Nerbonne and Tycoon 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)]

RELIEF REQUESTED

Plaintiff Commission respectfully requests that this Court:

(1) Permanently enjoin Defendants Nerbonne and Tycoon from violating Securities Act Sections 5(a), 5(c), and 17(a) [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

(2) Permanently enjoin Nerbonne from participating directly or indirectly, including, but not limited to, through any entity owned or controlled by him, in the issuance, purchase, offer, or sale of any unregistered securities, provided however that such injunction shall not prevent him from purchasing or selling securities for his own accounts;

(3) Order each Defendant to disgorge an amount equal to the funds and benefits obtained illegally, or to which the Defendant is otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount;

(4) Order Defendants Tycoon and Nerbonne to pay civil monetary penalties in an amount determined appropriate by the Court under Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d) [15 U.S.C. § 78u(d)] for the violations alleged herein; and

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

DATED: September 9, 2016

Respectfully submitted,

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