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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
MATTHEW W. FOX and	§	
WAYNE ENERGY, LLC	§	**Civil Action No.:** 4:17-cv-271
	§	
	§	
Defendants.	§	
	§	

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") alleges as follows:

SUMMARY

1. Defendant Wayne Energy, LLC ("Wayne Energy") and its sole member and manager, Defendant Matthew W. Fox ("Fox") defrauded investors and misappropriated investor funds. Since at least March 2015, the Defendants raised approximately $950,000 from at least nine investors by selling interests in a joint venture formed to drill and operate a well in Upshur County, Texas. Fox solicited these funds by providing investors with offering materials filled with misrepresentations and omissions, including false statements that Wayne Energy had a valid operating license. Instead of using investor funds to rework and recomplete the former oil well as a gas well, as promised, Fox spent approximately $500,000 of investor money on personal expenses, including significant gambling activities.

2. By engaging in the conduct alleged in this Complaint, the Defendants have

violated various provisions of the federal securities laws—including the antifraud provisions. Thus, in the interest of protecting the public from further illegal activity, the SEC brings this action seeking all available relief—including preliminary and permanent injunctions; disgorgement of ill-gotten gains plus prejudgment interest; and civil money penalties.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action under Sections 20(b), 20(d), and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)]; and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

4. 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)].

5. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in the Complaint.

6. Venue is proper because a substantial part of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred in the Eastern District of Texas.

PARTIES

7. Plaintiff SEC is an agency of the United States government.

8. Defendant Fox is a natural person residing in Plano, Texas. Fox holds no professional licenses and is not registered with the SEC or any state securities regulator in any

capacity. Fox was previously the founder and president of Frisco Exploration Company, LLC.

9. Defendant Wayne Energy is a Texas limited liability company with its principal place of business in Plano, Texas. It previously operated out of Frisco, Texas and Prosper, Texas. Fox is the sole member and manager of Wayne Energy. In those capacities, he exercises complete control over Wayne Energy's operations.

FACTS

I. AFTER HIS PREVIOUS OIL AND GAS VENTURE FAILED, FOX BEGAN SELLING WAYNE ENERGY SECURITIES.

10. Fox previously owned and operated a company called Frisco Exploration. Formed in February 2008, Frisco Exploration sold interests in joint ventures for the purpose of drilling oil and gas wells in Texas. By February 2015, Frisco Exploration had no money, no successful wells, and owed almost half a million dollars to its operator. Frisco Exploration (i.e., Fox) was terminated as the managing venturer and, to settle its debt, transferred its remaining ownership in the joint ventures to the operator. The majority of Frisco Exploration investors formed a new joint venture under the management of the operator.

11. Forced out of Frisco Exploration, Fox formed a new entity, Defendant Wayne Energy. He then began raising money from investors by selling Wayne Energy securities. Wayne Energy investors were Fox's friends and acquaintances or referrals from Frisco Exploration investors. Fox aimed to raise $1.875 million by selling interests in a new venture—the Glover #1B Joint Venture ("Glover JV"). Wayne Energy served as the managing venturer of the Glover JV and Fox was the sole managing member of Wayne Energy. In those capacities, Fox controlled all aspects of the Glover JV.

12. The Glover JV was to acquire the working interests in the Lena Mae Glover #1 well ("Glover well") located in Upshur County, Texas. Fox told investors he planned to rework

and recomplete the Glover well—which had previously only produced oil—as a natural gas well. From March 2015 to October 2016, Fox raised approximately $950,000 from at least nine investors in five states.

II. FOX PROVIDED INVESTORS WITH FALSE AND MISLEADING OFFERING MATERIALS.

13. Fox drafted and sent prospective Glover JV investors a Confidential Information Memorandum ("CIM") filled with false and misleading statements. The CIM wasn't even tailored for the Glover JV. Instead, Fox simply recycled an old Frisco Exploration offering document—sometimes neglecting to swap "Wayne Energy" for "Frisco Exploration." Notably, Fox failed to update the CIM to analyze the Glover JV's specific operations, risks, or anticipated costs.

14. Among other misstatements and omissions, the CIM claimed that the Glover JV would be a separate legal entity from Wayne Energy with no comingling of funds. In reality, Fox did not create a separate bank account for the Glover JV, and investor funds were deposited into the Wayne Energy operating account. Fox knowingly conducted business unrelated to the Glover JV with funds that flowed in and out of the Wayne Energy operating account and were comingled with Glover JV investor funds.

15. The CIM also claimed that Wayne Energy was a licensed operator with the State of Texas Railroad Commission and would act as the operator of the Glover well. The operator license number provided, however, was the inactive license that belonged to the defunct Frisco Exploration. In fact, Wayne Energy was not, and has never been, a licensed operator.

16. The Defendants made each of these representations knowingly or recklessly. At a minimum, the representations were unreasonable. This is because Fox knew: that funds were being comingled; that funds were being misappropriated for unrelated business activities; and

that Wayne Energy was not a licensed operator. Finally, Fox had total control over the representations in the CIM, the use of the CIM, and over other representations to investors.

III. FOX MISAPPROPRIATED INVESTOR FUNDS.

17. Fox misappropriated investor funds for many things, including gambling, dining, shopping, entertainment, house and car payments, vacations, and jewelry purchases. Fox's personal spending of investor funds also directly contradicted what he represented to investors about the intended use of proceeds for the Glover JV.

18. Specifically, the CIM provided an "application of proceeds" chart that contained the following breakdown for the intended use of Glover JV investor funds:

Application of Proceeds		
	Amount	Percentage
Re-enter and Testing	$1,181,000	63%
Fracturing Structure	$562,500	30%
Geological	$75,000	4%
Organization, Syndication and Marketing Expenses	$56,250	3%
Total	**$1,875,000**	**100%**

19. Fox, however, used investor money to fund his personal lifestyle—as detailed below. Rather than use investor funds to rework and recomplete the Glover well, Fox spent approximately $500,000 of investor funds on personal expenses. Fox's wife, who did no work for Wayne Energy, was a signer for the Wayne Energy account and also had a debit card linked directly to it. She withdrew approximately $55,000 in cash from investor funds. Fox knew about and approved of these cash withdrawals. Fox and his wife frequently visited a casino located close to the Glover well and gambled investor money. The following chart depicts Fox's actual use of investor funds:

Estimated Actual Use of Proceeds		
	Amount	**Percentage**
Business Use		
Acquisition of Glover lease	$250,000	
Office rent, utilities, supplies, routine business expenses	$10,400	
Well site clean-up work	$600	
Total	**$261,000**	**27%**
Fox Family Personal Use		
Casino charges	$121,628	
Cash withdrawals	$114,930	
Dining, entertainment, shopping	$75,298	
House rent	$71,575	
Car payments	$46,604	
Jewelry/watch purchases	$33,997	
Vacations	$15,511	
Child support payments	$10,500	
Country club dues	$9,359	
Total	**$499,402**	**53%**
Referral Fee	**$25,000**	**3%**
Unaccounted for Expenses[1]	**$164,248**	**17%**
Total	**$949,650**	**100%**

IV. THE DEFENDANTS OPERATED WAYNE ENERGY AS A SECURITIES FRAUD SCHEME.

20. As described above, Wayne Energy was, in reality, a securities fraud scheme. The scheme included obtaining funds under false pretenses by distributing offering documents to investors that contained misrepresentations and omissions.

21. Fox then misappropriated investor funds to pay for his personal gambling habits and expensive lifestyle. Fox had sole control over the Wayne Energy bank account and Glover JV funds. Fox knowingly spent investor funds on personal expenses instead of using them to rework and recomplete the Glover well. Fox's state of mind is imputed to Wayne Energy because Wayne Energy acted through Fox.

[1] Appears to be a mix of personal and business expenses largely consisting of charges for groceries and gas.

FIRST CLAIM

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

22. Plaintiff SEC realleges and incorporates by reference paragraphs 1 through 21 of this Complaint as if set forth verbatim.

23. Each Defendant directly or indirectly, singly or in concert, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, have (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or omissions of material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers of securities. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, the Defendants acted knowingly, recklessly, unreasonably, or negligently. With respect to violations of Section 17(a)(1) of the Securities Act, the Defendants acted knowingly or recklessly.

24. Accordingly, the Defendants have violated and, unless enjoined, will again violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

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]

25. Plaintiff SEC realleges and incorporates by reference paragraphs 1 through 21 of this Complaint as if set forth verbatim.

26. Each Defendant directly or indirectly, singly or in concert, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce,

or of the mails, or of the facilities of a national securities exchange, knowingly or recklessly, have: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon other persons.

27. Accordingly, the Defendants have violated and, unless enjoined, will again 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].

REQUEST FOR RELIEF

The SEC respectfully requests that this Court:

I.

Temporarily, preliminarily, and permanently enjoin each Defendant from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. §§ 5 U.S.C. §77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b), 78t(a) and 78t(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Temporarily, preliminarily, and permanently enjoin Defendant Fox from directly or indirectly, including, but not limited to, through any entity he owns or controls, participating in the issuance, offer, or sale of any security; provided, however, that such injunction shall not prevent Fox from purchasing or selling securities for his own accounts.

III.

Order Defendants to disgorge, jointly and severally, an amount equal to the funds and

benefits obtained illegally, or to which Defendants otherwise have no legitimate claim, as a result of the violations alleged, plus prejudgment interest on that amount.

IV.

Order each Defendant to pay a civil penalty in an amount determined 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.

V.

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

April 19, 2017

Respectfully submitted,

/s/ Chris Davis
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