

**UNITED STATES OF AMERICA**  
before the  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 91196 / February 24, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20232**

**In the Matter of**

**GULFPORT ENERGY  
CORPORATION,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Gulfport Energy Corporation (“Gulfport” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings arise from Gulfport's failure to disclose certain perquisites and related person transactions concerning Gulfport's former CEO, Michael G. Moore ("Moore").

2. From the time he became CEO in 2014 until his resignation in October 2018 (the "Relevant Period"), Moore: (1) caused Gulfport to incur approximately \$650,000 worth of charges by traveling on chartered aircraft for reasons that were not integrally and directly related to the performance of his CEO duties; and (2) used a Gulfport corporate credit card for personal expenses that he did not repay timely, which resulted in Gulfport extending Moore interest-free credit and carrying a related person account receivable. Additionally, during 2015, Gulfport paid Moore's son's company approximately \$152,000 to provide landscaping services.

3. Throughout the Relevant Period, Moore failed to provide required information to enable Gulfport to identify these perquisites and related person transactions, and as a result, Gulfport made material misstatements in its annual reports and definitive proxy statements. Further, Gulfport's insufficient internal accounting controls resulted in Gulfport's failure to accurately record Moore's perquisites in its books and records.

4. As a result of the conduct described herein, Gulfport violated Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3 and 14a-9 thereunder.

#### Respondent

5. **Gulfport Energy Corporation**, a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, is engaged in the exploration, development, acquisition and production of natural gas, crude oil, and natural gas liquids in the United States. Gulfport's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades on the OTC Markets Group Inc.'s Pink Open Market. Gulfport and its affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on November 13, 2020. In re Gulfport Energy Corp., et al., Case No. 20-35562 (Bankr. S.D. Tex.) (jointly administered).

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **Related Individuals**

6. **Michael G. Moore**, 64, was Gulfport's CEO from 2014 to October 2018. Prior to being CEO, Moore had been Gulfport's CFO from 2000 to 2014. Moore was also a member of Gulfport's Board of Directors from 2014 through October 2018.

## **Background**

7. Section 14(a) of the Exchange Act makes it unlawful to solicit any proxy in respect of any security (other than an exempted security) registered pursuant to Section 12 of the Exchange Act in contravention of such rules and regulations as the Commission may prescribe. Rule 14a-3 prohibits solicitation of a proxy without furnishing information specified by Schedule 14A, including executive compensation pursuant to Item 402 of Regulation S-K and related person transactions pursuant to Item 404 of Regulation S-K. Rule 14a-9 prohibits the use of proxy statements that are materially false or misleading. Misstatements and omissions are material under Rule 14a-9 if they would alter the "total mix of information" considered by a shareholder in making a voting decision. TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

8. Item 402 of Regulation S-K requires disclosure of the total value of all perquisites and other personal benefits provided to named executive officers who receive at least \$10,000 worth of such items in a given year. Item 402 of Regulation S-K also requires identification of all perquisites and personal benefits by type, and quantification of any perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of total perquisites.

9. Form 10-K and Schedule 14A require registrants to disclose, pursuant to Item 404, any transaction "in which the registrant was or is to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest." Instruction 1 to Item 404 defines the term "related person" to include "[a]ny immediate family member of a director or executive officer of the registrant," including any "child." Instruction 3 to Item 404 states that for transactions providing for periodic payments or installments the amount involved in the transaction shall be the "aggregate amount of all periodic payments or installments due" during the fiscal year.

## **Gulfport's Undisclosed Perquisites Related to Moore's Use of Chartered Aircraft**

10. During the Relevant Period, Gulfport did not have any internal policies or procedures specifically governing the use of chartered aircraft. Gulfport's Code of Business Conduct and Ethics, however, required that "[a]ll Company assets should be used for legitimate business purposes only." Also, by 2016, Gulfport issued an Employee Handbook, approved and adopted by Moore, that provided that company resources should not be used for personal expenses. Gulfport's Code of Business Conduct and Ethics during the Relevant Period required employees, including Moore, to "maintain familiarity with the disclosure requirements applicable to the Company and . . . prohibited [employees] from knowingly misrepresenting, omitting, or causing others to misrepresent or omit, material facts about the Company to others, whether within or outside the Company, including the Company's independent auditors."

11. From 2014 to 2018, Moore caused Gulfport to pay for his travel by chartered aircraft in some instances where his travel was not integrally and directly related to the performance of his duties as CEO, costing Gulfport approximately \$650,000. For example, Moore used chartered aircraft for himself and his wife to attend two events sponsored by a Gulfport supplier: a wine tasting weekend in Napa, California and a poker tournament in Las Vegas, Nevada. Neither one of these events was integrally and directly related to Moore's duties as Gulfport's CEO. As a result of these trips and others that were not integrally and directly related to the performance of Moore's duties, Gulfport incurred aircraft related charges of \$107,300 in 2014, \$175,800 in 2015, \$138,700 in 2016, \$163,600 in 2017, and \$63,800 in 2018.

12. As a result of the lack of policies and procedures discussed above, Gulfport did not review Moore's chartered aircraft usage to determine if it involved perquisites or personal expenses. While Gulfport was aware of the chartered aircraft usage through its process of purchasing and tracking the charter services, no one at Gulfport reviewed the individual flights to determine the flight purpose.

13. Moore also did not provide information about his flights to Gulfport during the annual process to identify perquisites and other personal benefits that might require disclosure. Each year, in connection with the preparation of the proxy statement, Moore received a document titled "Questionnaire for Directors, Officers and Certain Other Persons" (the "D&O Questionnaire"). The D&O Questionnaire required that perquisites and personal benefits be disclosed, and contained detailed examples and explanations concerning benefits that may require disclosure, including "[p]ersonal use of Company provided aircraft." Further, the D&O Questionnaire highlighted that "[i]f you have any doubts about whether to include an item of information, please resolve those doubts in favor of disclosure." During the Relevant Period, Moore did not identify any use of chartered aircraft on his D&O Questionnaires, which he completed and signed. Moore's use of chartered aircraft was, in certain instances, not integrally and directly related to the performance of his duties to Gulfport. Further, chartered aircraft were not generally available on a non-discriminatory basis to all Gulfport employees to be used in the manner in which Moore used chartered aircraft.

14. Because Moore failed to provide Gulfport with certain information about his use of chartered aircraft, Gulfport's books and records were inaccurate since they improperly characterized Moore's flight expenses as business travel expenses when they were not integrally and directly related to the performance of his duties as CEO, and not generally available on a non-discriminatory basis to all employees.

**Gulfport's Undisclosed Perquisites and Related Person Transactions**  
**Arising from Moore's Personal Use of the Company Credit Card**

15. Throughout the Relevant Period, Moore was authorized to use a company credit card for work-related expenses. As noted above, the Code of Business Conduct and Ethics provided that "[a]ll Company assets should be used for legitimate business purposes only." Additionally, the Employee Handbook, adopted in 2016, contained a credit card usage policy

requiring that “[p]ersonal charges are not to be made on the card.” The policy included examples of “unacceptable uses” of the company credit card that included “[p]ersonal charges for non-work related purchases.” The policy also required “immediate reimbursement” in the event a personal charge was made. Additionally, Moore signed a one-page Gulfport Credit Card Agreement in April 2016 where he agreed that “the card is not to be used for personal purchases.”

16. Despite these policies, every year during the Relevant Period, Moore used his company credit card for significant personal purchases that were not integrally and directly related to the performance of his duties as CEO of Gulfport. For example, in 2016 Moore paid for approximately \$450,000 in personal expenses using his Gulfport credit card. These personal charges included, for example, over \$46,000 in a single month in 2016 to pay for hotel charges associated with his son’s wedding. Further, such personal use of a company credit card was not generally available on a non-discriminatory basis to all Gulfport employees.

17. Moore identified his personal charges for Gulfport on a monthly basis, but despite its policy, and Gulfport’s former CFO and finance department being aware of these charges, Gulfport did not require Moore to repay these expenses to the company when due. Instead, Gulfport paid the company credit card bill at the end of each month and routinely allowed Moore to defer repayment. The finance department, along with the former CFO, was aware of this. As a result, Gulfport regularly carried an account receivable from Moore regarding his personal use of his company credit card. The receivable often ballooned throughout the year, with Moore repaying the interest-free credit Gulfport extended by year-end. In 2017, for example, the receivable climbed to more than \$336,000 without any payments over eight months before Moore extinguished the debt four days prior to the end of the year.

18. As a result of Moore’s failure to repay his personal credit card charges each month, Gulfport furnished large amounts of interest-free credit to Moore, at times in excess of \$120,000. Had Moore placed these charges on a personal credit card and then deferred payment (as he did with amounts he owed Gulfport), significant interest would have accrued on the substantial balances. Accordingly, Moore’s use of the company credit card for personal expenses and failure to timely repay the amounts, in violation of company policy, afforded him a personal benefit not integrally and directly related to the performance of his duties, and not generally available on a non-discriminatory basis to all Gulfport employees. Moore failed to disclose this personal benefit in any of the D&O Questionnaires that he completed during the Relevant Period.

19. The D&O Questionnaires that Moore completed during the Relevant Period also required that he disclose related person transactions where the amount involved exceeded \$120,000. As defined in the D&O Questionnaire, Moore was required to disclose transactions or indebtedness that, in the aggregate, exceeded \$120,000. From 2015 through 2017, Moore’s personal use of his company credit card and deferral of repayment of those amounts exceeded the \$120,000 threshold, yet Moore failed to disclose these transactions or indebtedness in the related person transaction section of the D&O Questionnaires.

**Gulfport's Undisclosed Related Person Transactions Concerning  
Amounts Paid to Moore's Son's Company**

20. Gulfport hired Moore's son's company to perform landscaping work for Gulfport in at least 2014, 2015, and 2016. From January 1, 2015, through December 1, 2015, Gulfport paid Moore's son's company approximately \$152,000 for this work.

21. In December 2015, Moore directed his son's company to repay Gulfport approximately \$32,000, thereby bringing the amount paid to the landscaping company below \$120,000, the threshold for related person transaction disclosure. Moore then personally paid his son's company the additional \$32,000 to make up for the shortfall created by the repayment.

22. Moore's son's company had in fact provided services and materials valued at approximately \$152,000 in 2015.

23. In Moore's D&O Questionnaire for the year ending 2015, he failed to identify the payments to his son's company, even though the information was required to be disclosed.

**Undisclosed Perquisites and Related Person Transactions Resulted in  
Material Misstatements in Gulfport's SEC Filings**

24. Perquisites or personal benefits relating to Moore's use of chartered aircraft and a company credit card were not disclosed in the Summary Compensation Tables in Gulfport's Definitive Proxy Statements issued for the fiscal years 2014, 2015, 2016, or 2017 (the "Proxy Statements"), as required. As a result, Moore's perquisites were understated in the Proxy Statements by 78% in FY 2014, 81% in FY 2015, 76% in FY 2016, and 82% in FY 2017.

25. Gulfport did not disclose related person transactions arising from Moore's personal use of the company credit card and deferral of repayment in the company's Definitive Proxy Statements for fiscal years 2015, 2016, and 2017. Gulfport also failed to disclose the related person transaction that resulted from Gulfport's use of Moore's son's landscaping company in the company's Definitive Proxy Statement for fiscal year 2015.

26. During the Relevant Period, Gulfport used the Proxy Statements to solicit annual shareholder votes to elect directors, including Moore. The Proxy Statements also solicited non-binding advisory votes from shareholders on executive compensation, including Moore, for each year during the Relevant Period.

27. Gulfport's Annual Reports filed on Form 10-K incorporated the Proxy Statements by reference with respect to executive compensation and related person transactions. Consequently, those annual reports also materially understated Moore's compensation, understated perquisites, and failed to disclose certain related person transactions.

## **Gulfport Uncovers Expense Abuses by Moore and Institutes Remedial Measures**

28. Gulfport's Board of Directors became aware of Moore's undisclosed use of chartered aircraft and personal charges on his company credit card after these issues were reported internally. The Audit Committee of Gulfport's Board of Directors authorized an internal investigation into Moore's conduct.

29. Following the conclusion of the internal investigation, on November 1, 2018, Gulfport disclosed in its Form 10-Q that its Audit Committee had determined that Moore's unauthorized use of chartered aircraft was not timely identified, quantified, or disclosed, and that Moore had made unauthorized personal charges on his company credit card that resulted in incremental costs to the company. The Form 10-Q also announced Moore's resignation.

30. After Moore separated from Gulfport and Gulfport replaced him, the company undertook extensive remedial efforts, including: replacing the CFO; replacing the Controller; hiring a new general counsel and external disclosure counsel; development of a new internal audit program and hiring of a new director of internal audit; development of a new enterprise risk management program and hiring of a new risk manager; adoption and implementation of a private aircraft use policy; adoption and implementation of a new travel and expense policy and additional training and reinforcement with respect to existing travel and expense policies; adoption and implementation of new proxy and related person tracking processes; enhanced director and officer questionnaires and review processes; and quarterly review and reporting to the Audit Committee with respect to compliance by the company's named executive officers with travel and expense policies.

### **Violations**

31. As a result of the conduct described above, Gulfport's solicitation of proxies in connection with certain annual meetings materially misrepresented and understated the compensation paid to Moore by failing to report certain perquisites, and also omitted certain related person transactions involving Moore. As a result of the conduct described above, Gulfport violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

32. Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading. As a result of the conduct described above, Gulfport violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder by materially understating the compensation paid to Moore when it failed to include certain personal benefits and perquisites provided to him. Gulfport further violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 by failing to disclose related person transactions involving Moore.

33. Section 13(b)(2)(A) of the Exchange Act requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and dispositions of assets. As a result of the conduct described above, Gulfport violated Section 13(b)(2)(A) of the Exchange Act by failing to record the true nature of the expenses as personal benefits and perquisites paid to Moore in the company's books, records, and accounts.

34. Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to, among other things, provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization. As a result of the conduct described above, Gulfport violated Section 13(b)(2)(B) of the Exchange Act by failing to implement sufficient internal accounting controls concerning perquisites and related person transactions.

#### **Gulfport's Remedial Efforts**

35. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Gulfport's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Gulfport cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3 and 14a-9 thereunder.

B. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the

Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary