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2010 JAN -7 AM 10:13
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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 THOMAS A. LABRY and
CHEROKEE GAS SYSTEMS, INC.,

18 Defendants.

Case No. SACV10-00018 JVS(ANX)

COMPLAINT

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

23 JURISDICTION AND VENUE

24 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
25 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C.
26 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of
27 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),
28 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of

1 the means or instrumentalities of interstate commerce, of the mails, or of the
2 facilities of a national securities exchange, in connection with the transactions,
3 acts, practices, and courses of business alleged in this Complaint.

4 2. Venue is proper in this district pursuant to Section 22(a) of the
5 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
6 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
7 constituting violations of the federal securities laws occurred within this district,
8 Defendant Thomas A. Labry resides in this district, and Defendant Cherokee
9 transacts or has transacted business in this district.

10 SUMMARY

11 3. From on or about December 5, 2008, continuing to the present, the
12 Defendants have been engaged in a fraudulent scheme whereby they solicit
13 investors to invest in units of an unregistered securities offering constituting
14 interests in oil and gas wells on Walters Field, located in Oklahoma. The
15 Defendants represent projected minimum monthly returns of \$725 per \$25,000 unit
16 purchased, or about a 35% annual return. In fact, investor monies are not invested
17 in oil and gas production. Instead, Defendant Thomas A. Labry has
18 misappropriated investor funds for his own personal use. From December 5, 2008,
19 through December 31, 2009, the Defendants raised at least \$1.4 million from
20 investors located throughout the United States and in Canada. Of this amount,
21 Labry has withdrawn \$268,800 in cash, caused \$148,126 in cashier's checks made
22 out to "SCS" to be withdrawn and expended another \$466,283 to purchase
23 cashier's checks made payable to various individuals.

24 4. The Defendants have violated and are violating the antifraud
25 provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section
26 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17
27 C.F.R. § 240.10b-5, and Defendant Cherokee is additionally violating the securities
28 registration provisions of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C.

1 §§ 77e(a) & 77e(c). By this action, the Commission seeks a temporary restraining
2 order and preliminary and permanent injunctions prohibiting future such violations,
3 appointment of a receiver over the entity Defendant, an order freezing the
4 Defendants' assets, disgorgement of the Defendants' ill-gotten gains, and civil
5 penalties.

6 THE DEFENDANTS

7 5. **Thomas A. Labry ("Labry")** resides in Newport Beach, California.
8 Labry is the president of Defendant Cherokee and has sole control over its bank
9 accounts. Five states have issued administrative orders prohibiting Labry and/or
10 an entity he then controlled, Iron Horse Petroleum, Inc. ("Iron Horse"), from
11 offering or selling securities based on findings Labry and/or Iron Horse were
12 offering and selling unregistered securities. Specifically:

- 13 ● On August 25, 2000, the State of Illinois issued an Order of
14 Prohibition prohibiting Iron Horse from offering and selling
15 securities, based upon Findings that Iron Horse, including through a
16 letter from Labry as its president, solicited and made representations
17 to investors in offering and selling unregistered securities.
- 18 ● On September 26, 2000, the Commonwealth of Pennsylvania,
19 Pennsylvania Securities Commission, issued a Summary Order to Cease
20 and Desist against Labry, Iron Horse and others finding that they were
21 offering and selling unregistered securities, and ordering them to cease
22 and desist from offering and selling unregistered securities.
- 23 ● On January 9, 2001, the State of Wisconsin, Department of Financial
24 Institutions, Division of Securities, issued an Order of Prohibition
25 against Labry prohibiting him from offering and selling unregistered
26 securities, based on a Petition for Order alleging offer and sale on
27 behalf of Iron Horse of units constituting securities.
- 28 ● On April 17, 2003, the State of Alabama, Alabama Securities

1 Commission, issued a Cease and Desist Order against Labry, Iron
2 Horse and others finding that they were not registered as securities
3 agents or dealers, that the securities they were offering and selling
4 were not registered, and ordering them to cease and desist from
5 offering or selling any securities in Alabama.

- 6 ● On November 13, 2009, the Arizona Corporation Commission issued
7 an Order to Cease and Desist, Order for Restitution [and] Order for
8 Administrative Penalties, against Labry and Iron Horse finding that
9 they had sold unregistered securities in the form of investment
10 contracts and/or fractional undivided interests in oil and gas, and
11 ordering that they permanently cease and desist from violating the
12 Arizona Securities Act, pay restitution of \$99,481.54, and pay a
13 \$50,000 penalty.

14 Additionally, on April 6, 2006, an Order and Judgment was entered by the Court in
15 *Earl Burba and Brooke Burba v. Thomas A. Labry and Iron Horse Petroleum, Inc.*,
16 Case No. SACV 04-1098 JVS (C.D. Cal.), following entry of a default order issued
17 by the Court for failure to follow the Federal Rules of Civil Procedure, the Local
18 Rules and Court Orders. The Order and Judgment ordered the Defendants to pay
19 \$647,776.12, consisting of actual damages resulting from Defendants' failure to
20 return plaintiff's investment in Iron Horse, punitive damages, interest and
21 attorneys' fees and costs.

22 6. **Cherokee Gas Systems, Inc. ("Cherokee")** was incorporated in
23 Oklahoma on May 15, 1991, and operates from offices located in Costa Mesa,
24 California. No registration statement has been filed with the Commission or has
25 been in effect with respect to the securities offering by Cherokee alleged in this
26 Complaint. Between December 5, 2008, and December 31, 2009, more than 40
27 people from 15 states have invested at least \$1.4 million with Cherokee.

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1 THE FRAUDULENT SCHEME

2 **A. Cherokee Generally Solicits Investors Including Through Cold Calls**

3 7. In approximately December 2008, Cherokee began soliciting potential
4 investors throughout the United States, including through the use of cold calling.
5 To facilitate this general solicitation, Labry, using Cherokee investor monies,
6 purchased dialing software that can automatically place outbound calls from a pre-
7 loaded database of numbers. In these calls, Cherokee representatives offer
8 investors the opportunity to purchase units in oil and gas wells purportedly owned
9 by Cherokee located on Walters Field in Oklahoma, for \$25,000 per unit. In
10 instances where an investor does not want to purchase an entire unit, Cherokee
11 allows the investor to purchase a fraction of a unit. Cherokee representatives tell
12 investors that they will start receiving returns on their investments, paid monthly,
13 within 45 to 60 days of the investment.

14 8. Cherokee sends potential investors a package containing a cover
15 letter, a brochure, and a subscription agreement. To purchase units, investors are
16 instructed to send a check to Cherokee using a prepaid Federal Express envelope
17 provided by Cherokee. Once Cherokee receives the investor's check, Cherokee
18 sends to the investor a "Certificate of Participation" certifying that the investor is
19 the holder of a certain number of units of "Working Interest in the Walters Field
20 Priddy Sand Unit." The Certificate of Participation bears Labry's signature.

21 9. The Cherokee brochure is almost identical to the brochure previously
22 disseminated by Iron Horse, an entity controlled by Labry, except that the
23 Cherokee brochure refers to "Cherokee" rather than "Iron Horse."

24 **B. The Defendants Make Material Misrepresentations About The**
25 **Investment And Misappropriate Investor Monies**

26 10. Cherokee and Labry falsely represent to investors that their monies
27 will be used to fund the increase in production of oil and gas from the Walters
28 Field wells. In the "Company Profile" section of the brochure Cherokee sends to

1 investors, the Defendants represent that Cherokee is “engaged in the acquisition,
2 development, exploration, production and marketing of natural gas and crude oil,”
3 and describes its “primary business strategy” as being “to build a reserve base
4 through the acquisition and development of producing oil and gas wells that are
5 underdeveloped.” On the “Cherokee Project Summary” page of the brochure, the
6 Defendants provide a description of the Walters Field Priddy Sand Unit, including
7 its location and acreage, the number of total wells, equipped wells, injection wells,
8 and amount of purported “proved reserves.” The brochure also includes maps,
9 including an “Aerial Map” described as an “Actual Photo” of the Walters Field
10 Priddy Sand Unit with locations of the various wells marked.

11 11. Consistent with sales agents’ oral representations to investors that
12 they will receive monthly returns of at least \$725 per unit, or about 35% annually,
13 the Defendants represent in the Cherokee brochure that one of the “Project
14 Benefits” is that “Income will be distributed monthly.” Additionally, the
15 Defendants include in the brochure under the faint heading “Projections” gross
16 revenues per month assuming various daily and monthly production levels, of up to
17 \$456,240 in gross monthly revenues assuming 1,000 barrels of oil per day in
18 production. However, another page provided to investors with the brochure
19 entitled “Monthly Projections” purporting to show the per unit monthly returns on
20 an investment with Cherokee, sets forth significantly greater gross revenues,
21 assuming an oil price of \$40 per barrel. On this page, the per unit monthly returns
22 are projected to be between \$725 to \$4,225 depending on production levels ranging
23 from 100 to 500 barrels of oil per day.

24 12. In fact, the Defendants are using little, if any, of the investor monies
25 they obtain for oil production, having made only one payment of \$10,000 to a
26 company named McPherson Drilling, and \$8,700 to a company named Garner Oil
27 Company. Cherokee is also not receiving any income from oil and gas production,
28 and is not paying investors any monthly returns. Instead, Labry, who is the sole

1 signatory on Cherokee's bank accounts, has misappropriated investor monies for
2 his own use or to pay third parties in order to perpetuate the fraudulent scheme.
3 Specifically, of the \$1.65 million in monies deposited into Cherokee's bank
4 accounts, at least \$1.4 million of which is investor monies:

- 5 a. Labry has withdrawn at least \$268,800 in cash. This comprised
6 approximately 16% of deposits during this period.
- 7 b. Labry has withdrawn \$466,283 that he then used to purchase
8 cashier's checks payable to various individuals who were not
9 investors. These withdrawals comprised approximately 28% of
10 deposits during this period. Of these cashier's checks, certain
11 individuals received the following:
 - 12 i. cashier's checks totaling \$221,195 were paid to Gary
13 Maddux, who was convicted of wire and mail fraud in 1998;
14 and
 - 15 ii. cashier's checks totaling \$105,000 were paid to Gary
16 Wykidal, an attorney who represented Labry and Iron Horse
17 in *Burba v. Thomas A. Labry and Iron Horse Petroleum,*
18 *Inc.*, Case No. SACV 04-1098 JVS (C.D. Cal.).
- 19 c. Labry has made withdrawals totaling \$148,126 that were used to
20 purchase cashier's checks made out to "SCS," one or more of
21 which he then cashed.
- 22 d. Labry has made payments to OPC Marketing Inc., for the
23 purchase of dialing software that can automatically place
24 outbound calls from a pre-loaded database of numbers, of at least
25 \$17,737; among the databases purchased were databases
26 containing telephone numbers of "Homeowners Age 60+ with
27 income \$100K and up **Except CA**," and "Homeowners Age
28 60+ with wealth 1 million **Except CA**" purchased on or about

1 June 16, 2009.

2 13. When investors inquire why they have not received their promised
3 monthly returns, they are falsely told by Cherokee agents that oil production is
4 “behind” and that they will receive payment within a certain number of weeks or by
5 a certain date. Cherokee and Labry do not, in fact, make these promised payments.

6 **FIRST CLAIM FOR RELIEF**

7 **OFFER AND SALE OF UNREGISTERED SECURITIES**

8 **Violations of Sections 5(a) and 5(c) of the Securities Act**

9 **(Against Cherokee)**

10 14. The Commission realleges and incorporates by reference paragraphs 1
11 through 13 above.

12 15. Defendant Cherokee, by engaging in the conduct described above,
13 directly or indirectly, made use of means or instruments of transportation or
14 communication in interstate commerce or of the mails, to offer to sell or to sell
15 securities, or to carry or cause such securities to be carried through the mails or in
16 interstate commerce for the purpose of sale or for delivery after sale.

17 16. No registration statement has been filed with the Commission or has
18 been in effect with respect to the offering alleged herein.

19 17. By engaging in the conduct described above, Defendant Cherokee has
20 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)
21 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

22 **SECOND CLAIM FOR RELIEF**

23 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

24 **Violations of Section 17(a) of the Securities Act**

25 **(Against Defendants Labry and Cherokee)**

26 18. The Commission realleges and incorporates by reference paragraphs 1
27 through 13 above.

28 19. Defendants Labry and Cherokee, and each of them, by engaging in the

1 conduct described above, directly or indirectly, in the offer or sale of securities by
2 the use of means or instruments of transportation or communication in interstate
3 commerce or by use of the mails:

- 4 a. with scienter, employed devices, schemes, or artifices to
5 defraud;
- 6 b. obtained money or property by means of untrue statements of a
7 material fact or by omitting to state a material fact necessary in
8 order to make the statements made, in light of the
9 circumstances under which they were made, not misleading; or
- 10 c. engaged in transactions, practices, or courses of business which
11 operated or would operate as a fraud or deceit upon the
12 purchaser.

13 20. By engaging in the conduct described above, Defendants Labry and
14 Cherokee violated, and unless restrained and enjoined will continue to violate,
15 Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

16 **THIRD CLAIM FOR RELIEF**

17 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**
18 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
19 **(Against Defendants Labry and Cherokee, and alternatively**
20 **against Labry as a Control Person of Cherokee)**

21 21. The Commission realleges and incorporates by reference paragraphs 1
22 through 13 above.

23 22. Defendants Labry and Cherokee, and each of them, by engaging in the
24 conduct described above, directly or indirectly, in connection with the purchase or
25 sale of a security, by the use of means or instrumentalities of interstate commerce,
26 of the mails, or of the facilities of a national securities exchange, with scienter:

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- 1 a. employed devices, schemes, or artifices to defraud;
- 2 b. made untrue statements of a material fact or omitted to state a
- 3 material fact necessary in order to make the statements made,
- 4 in the light of the circumstances under which they were made,
- 5 not misleading; or
- 6 c. engaged in acts, practices, or courses of business which
- 7 operated or would operate as a fraud or deceit upon other
- 8 persons.

9 23. By engaging in the conduct described above, Defendants Labry and

10 Cherokee violated, and unless restrained and enjoined will continue to violate,

11 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,

12 17 C.F.R. § 240.10b-5.

13 24. Alternatively, by engaging in the conduct described above, Defendant

14 Labry directly or indirectly controlled Cherokee, and pursuant to Section 20(a) of

15 the Exchange Act, 15 U.S.C. § 78t(a), is liable jointly and severally with and to the

16 same extent as Cherokee is liable for its violations.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Commission respectfully requests that the Court:

19 **I.**

20 Issue findings of fact and conclusions of law that the Defendants committed

21 the alleged violations.

22 **II.**

23 Issue orders, in a form consistent with Fed. R. Civ. P. 65(d), temporarily,

24 preliminarily and permanently enjoining Defendants Labry and Cherokee and their

25 officers, agents, servants, employees, and attorneys, and those persons in active

26 concert or participation with any of them, who receive actual notice of the order by

27 personal service or otherwise, and each of them, from violating Section 17(a) of

28 the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15

1 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and
2 additionally, temporarily, preliminarily and permanently enjoining Cherokee and
3 its officers, agents, servants, employees, and attorneys and those persons in active
4 concert or participation with any of them, from violating Sections 5(a) and 5(c) of
5 the Securities Act, 15 U.S.C. §§ 77e(a) & 77e(c).

6 **III.**

7 Issue in a form consistent with Fed. R. Civ. P. 65, a temporary restraining
8 order and a preliminary injunction freezing the assets of Defendants Labry and
9 Cherokee; appointing a receiver over Defendant Cherokee; prohibiting each of the
10 Defendants from destroying documents; ordering accountings from each of the
11 Defendants; and issuing an order permitting the Commission to conduct expedited
12 discovery.

13 **IV.**

14 Order Defendants Labry and Cherokee to disgorge all ill-gotten gains from
15 their illegal conduct, together with prejudgment interest thereon.

16 **V.**

17 Order Defendants Labry and Cherokee to pay civil penalties under Section
18 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
19 Exchange Act, 15 U.S.C. § 78u(d)(3).

20 **VI.**

21 Retain jurisdiction of this action in accordance with the principles of equity
22 and the Federal Rules of Civil Procedure in order to implement and carry out the
23 terms of all orders and decrees that may be entered, or to entertain any suitable
24 application or motion for additional relief within the jurisdiction of this Court.

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VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: January 7, 2010



Karen Matteson
C. Dabney O’Riordan
Attorneys for Plaintiff
Securities and Exchange Commission

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