

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**PETROLEUM UNLIMITED, LLC,
PETROLEUM UNLIMITED II, LLC,
ROGER A. KIMMEL, JR., HARRY NYCE,
MICHEL-JEAN GERAUD, ROBERT ROSSI,
JOSEPH VALKO, and
MORGAN KIMMEL, n/k/a MORGAN PETITTI,**

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. The Commission brings this action against the Defendants for defrauding investors through the sale of securities in violation of the antifraud provisions of the federal securities laws.

2. From March 2008 until July 2008, Petroleum Unlimited, LLC and Petroleum Unlimited II, LLC raised approximately \$2.9 million through offerings of limited liability company membership interests to investors primarily located in Canada, England, and Australia. The purported purpose of the offerings was to fund oil and gas exploration and drilling projects in Texas and Oklahoma.

3. Defendants Roger A. Kimmel, Jr. and Harry Nyce participated in drafting the private placement memoranda ("PPMs") given to investors. Kimmel, Nyce, and Defendants

Michel-Jean Geraud, Robert Rossi, and Joseph Valko drafted, reviewed or distributed the PPMs and other offering materials for Petroleum Unlimited and Petroleum Unlimited II. Morgan Kimmel, n/k/a Morgan Petitti, assisted by typing the PPMs. These materials misrepresented the use of the offering proceeds by stating the two companies would use investor funds primarily for oil and gas development and production, when, in fact, the companies paid 49% to 74% of investors' funds as commissions to sales agents. Ultimately, Petroleum Unlimited and Petroleum Unlimited II used only about \$534,000 of the \$2.9 million they raised from investors for oil drilling.

4. The offering materials further stated without any reasonable basis that investors could earn annual returns ranging from 14% to 141%. These projections were based on grossly exaggerated production rates. In the end, the two companies never found any oil.

5. Geraud, Rossi, and Valko conducted the private placement offerings through sales offices in Florida and New Jersey of a related company, GPS Management, Inc. Geraud also conducted private placement offerings through sales offices overseas. Geraud, Rossi, and Valko managed and operated the sales offices and knew sales agents and the offering materials were not advising investors about the sales commissions of 49% to 74%.

6. Through this conduct, Petroleum Unlimited, Petroleum Unlimited II, Kimmel, Nyce, Geraud, Rossi, and Valko violated Section 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 Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]. Petitti violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]. Geraud, Rossi, and Valko further violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]. Unless enjoined, the Defendants are reasonably likely to continue to violate

the federal securities laws.

II. DEFENDANTS

7. Petroleum Unlimited, LLC is a Wyoming limited liability company Kimmel incorporated in February 2008. Its principal place of business is located in Aurora, Ohio. It has never been registered with the Commission in any capacity and has not registered any offering of securities under the Securities Act or a class of securities under the Exchange Act. Between July 2008 and January 2009, five Canadian provincial securities regulators issued temporary cease-trade orders against Petroleum Unlimited preventing future selling of unregistered securities to Canadian investors. Petroleum Unlimited settled an Alberta Securities Commission action by consenting to an order that prohibited it from trading or purchasing securities or relying on any Alberta registration exemptions for seven years. The Ontario Securities Commission (“OSC”) entered a final order against Petroleum Unlimited prohibiting it from trading or purchasing securities for seven years.

8. Petroleum Unlimited II, LLC is a Wyoming limited liability company Kimmel incorporated in February 2008. Its principal place of business is located in Aurora, Ohio. It has never been registered with the Commission in any capacity and has not registered any offering of securities under the Securities Act or a class of securities under the Exchange Act.

9. Kimmel, 67, resides in Aurora, Ohio and is licensed to practice law in the State of Ohio. He founded Petroleum Unlimited and Petroleum Unlimited II, and managed both issuers through another entity he controlled, Reserve Oil & Gas, LLC. He and Nyce co-owned Oil & Gas Holdings, the company Petroleum Unlimited and Petroleum Unlimited II paid to purportedly conduct oil drilling operations. He also co-owned Aurora Escrow Services, LLC, the company that served as escrow agent for the offerings. He was named in the five Canadian temporary

cease-trade orders. He settled the Alberta action by consenting to an order that prohibited him from trading or purchasing securities or relying on any Alberta registration exemptions for seven years and fined him \$25,000. The OSC entered an order against Kimmel prohibiting him from trading or purchasing securities for seven years.

10. Nyce, 66, resides in Carrollton, Texas. He co-owned Oil & Gas Holdings.

11. Petitti, 29, resides in Aurora, Ohio. She is licensed to practice law in the State of Ohio. She is Kimmel's daughter and co-owned Aurora Escrow Services. She acted as the escrow agent for all offering proceeds received as a result of the offerings. Petitti was the corporate Secretary of Petroleum Unlimited.

12. Geraud, 34, resides in Lighthouse Point, Florida. He was the operating manager and controlled the day-to-day operations of GPS Management Inc., which sold investments in Petroleum Unlimited and Petroleum Unlimited II through its offices in Boca Raton, New Jersey, and overseas. On May 20, 2010, the U.S. Attorney's Office for the Southern District of Florida ("USAO") filed criminal charges against Geraud alleging he conspired to commit wire fraud in the sale of Petroleum Unlimited's securities. On August 24, 2010, Geraud plead guilty to a one count Information which charges a conspiracy to commit wire fraud. In October 2006, the Commodity Futures Trading Commission ("CFTC") permanently enjoined Geraud from engaging in any commodity-related activity, held him jointly and severally liable for restitution of \$500,000 with an entity he controlled, and individually assessed against him a \$250,000 civil money penalty.

13. Rossi, 65, resides in Pompano Beach, Florida. Rossi was responsible for GPS Management's day-to-day operations. In 1999, the CFTC brought an action against Rossi and permanently barred him from trading on CFTC registered entities for his participation in a

scheme to divert profitable commodity futures trades to accounts he controlled. In April 2000, he was convicted of mail fraud and sentenced to 27 months in prison in a criminal case arising out of the same matter in the United States District Court for the Southern District of Texas.

14. Valko, 41, resides in Margate, Florida. Valko was responsible for hiring, training, and monitoring GPS Management's sales agents. In 2002, the National Futures Association ("NFA") fined Valko \$7,500 for failing to diligently supervise employees' and agents' conduct while making sales solicitations, and placed him in the NFA's Enhanced Surveillance Compliance Program for eighteen months. In July 2006, he pleaded guilty to one count of conspiracy to commit mail fraud and was later sentenced to three years probation in the United States District Court for the District of New Jersey, based on his participation in a scheme to market fraudulent investments.

III. JURISDICTION AND VENUE

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

16. Kimmel and Pettiti, who were located in the United States, signed the membership certificates provided to investors. Kimmel signed the subscription agreements, accepting investments, in the United States, and the offering proceeds were deposited with Aurora Escrow Services in Aurora, Ohio. In addition, both PPMs provided the governing law for any disputes would be in the United States.

17. The Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida because many of the Defendants' acts constituting violations of the Securities Act and the Exchange Act occurred in the Southern District of Florida. More

specifically, GPS Management's sales agents solicited investors and sold securities from its principal offices in Boca Raton. In addition, Geraud, Rossi, and Valko reside in the Southern District of Florida. Kimmel and Nyce regularly communicated via telephone and e-mail with GPS Management's sales force in Boca Raton and visited the boiler room at least twice. Petitti visited there at least once.

18. The Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this complaint.

IV. THE DEFENDANTS' FRAUDULENT OFFERING AND SALE OF SECURITIES

A. The Petroleum Unlimited Offerings

19. From March through July 2008, Petroleum Unlimited and Petroleum Unlimited II raised approximately \$2.9 million from foreign investors through two fraudulent, simultaneous offerings of securities, purportedly for the purpose of oil and gas exploration and drilling in Texas and Oklahoma.

20. Kimmel formed Petroleum Unlimited and Petroleum Unlimited II as vehicles to facilitate sale of securities in the two companies. He drafted the PPMs for both companies with Nyce's assistance. He regularly communicated via telephone and e-mail with Rossi and Geraud regarding the status of the sale of the securities.

21. The PPM for Petroleum Unlimited, dated March 21, 2008, provided for the company to sell 504 membership interests, or shares, known as Units, at \$25,000 per Unit. The Defendants offered this investment primarily to investors in Canada. The PPM for Petroleum Unlimited II, dated April 4, 2008, provided for the company to sell 760 Units at \$25,000 per

Unit. The Defendants offered this investment primarily to investors located in Australia and the United Kingdom. Neither PPM specifically stated sales agents would receive commissions.

22. In February 2008, Petroleum Unlimited, Petroleum Unlimited II, Kimmel, and Nyce enlisted GPS Management to operate the boiler room sales forces in the United States and overseas, and agreed with Geraud and GPS Management to pay sales commissions of 49% and 74% of the offering proceeds. Kimmel initially resisted paying these high commissions, but ultimately relented.

23. Geraud, Rossi, and Valko operated the boiler rooms in the United States. Geraud enlisted sales offices to operate boiler rooms overseas. Geraud, Rossi, and Valko trained the sales agents and monitored their calls as they pitched the investment. Rossi was GPS Management's liaison with Kimmel and Nyce. Geraud, Rossi, and Valko received a portion of GPS Management's receipts, which were based solely on the offering proceeds and sales of Units of Petroleum Unlimited and Petroleum Unlimited II.

24. Geraud rented the office space used as the boiler room in Boca Raton, Florida and he and Rossi ran the day-to-day operations. Geraud enlisted Valko to recruit GPS Management's sales agents through newspaper and internet advertisements. Valko, along with Rossi, interviewed the sales agents and trained the sales agents to pitch Units of Petroleum Unlimited and Petroleum Unlimited II.

25. To assist the sales agents in selling investments, Geraud provided leads for them to cold call. The sales agents did not ask any questions of investors regarding their level of financial sophistication. Geraud, Rossi and Valko monitored the sales agents' calls through a sophisticated phone system. Valko, with Geraud's help, prepared scripts for the sales agents to use when pitching Units of Petroleum Unlimited and Petroleum Unlimited II and describing the

benefits of making the investment. None of the three ever advised the agents to disclose that Petroleum Unlimited and Petroleum Unlimited II were using the offering proceeds to pay sales commissions. Geraud, Rossi, and Valko were not registered as broker-dealers or associated with a registered broker-dealer while facilitating and participating in these securities sales.

26. As a further sales tool, Geraud established a password-protected website for the offering and other marketing materials, which were posted on the website along with the PPM and subscription agreements. Rossi and Valko knew the sales agents directed investors to view the website which contained the PPM and subscription agreements.

27. Once an investor submitted payment for a Unit to Aurora Escrow Services, Petitti confirmed receipt of the funds, and prepared and sent to the investors welcome packets consisting of: (1) a cover letter Kimmel signed; (2) a copy of the investor's electronically signed subscription agreement; (3) a certificate of ownership Petitti signed as Secretary of Petroleum Unlimited; and (4) a glossy brochure, which Geraud prepared and which contained much of the same information as the website.

B. Misrepresentations and Omissions

28. In connection with the offering of securities during the relevant period, the Defendants made numerous material misrepresentations and omissions to investors.

1. Undisclosed Exorbitant Selling Commissions

29. The Defendants failed to disclose either orally or in the offering materials that they were using 49% (for Petroleum Unlimited offering) and 74% (for Petroleum Unlimited II offering) of the offering proceeds to pay sales commissions. The PPMs did not state the companies would pay any commissions out of the offering proceeds. Instead, their stated use of proceeds section indicated the proceeds would be used as follows:

<u>Petroleum Unlimited</u>	<u>Petroleum Unlimited II</u>	
65%	40%	Lease acreage, geological & specialty consulting, drill and complete wells
34%	59%	Accounting, Printing, Organization & Syndication Costs
1%	1%	Escrow Agent Fee

30. In contrast to these explicit representations, the Defendants used 49% of the Petroleum Unlimited offering proceeds and 74% of the Petroleum Unlimited II offering proceeds to pay sales commissions. Kimmel and Nyce knew the two companies were paying these commissions based on their conversations and correspondence with Geraud.

31. In fact, on February 6, 2008, just weeks prior to the offerings, Kimmel stated in an email to Nyce and Geraud that paying 75% commissions was “obscene,” and the failure to disclose them “is tantamount to Fraud.” He added, “[a]ny and all prospective investors would certainly consider material information to be the fact that only 25% of the money invested was going in the ground and 75% was being paid to the individuals raising money.” Kimmel stated he felt that such an arrangement was “ridiculous” and “insane.” Yet weeks later he agreed to pay GPS Management 49% commissions on the Petroleum Unlimited offering and 74% on the Petroleum Unlimited II offering, and subsequently prepared PPMs that failed to disclose the commissions.

32. Petitti distributed the sales commissions to GPS Management, which were inconsistent with the statements in the PPMs. Petitti also typed the PPMs. She received weekly payout reports from Geraud and GPS Management setting forth the total amount of investor funds received and the amount of sales commissions to be paid. She maintained records of all investor funds received.

33. Likewise, Geraud, Rossi and Valko knew sales agents did not disclose to investors the exorbitant commissions paid from the offering proceeds. Geraud, Rossi and Valko trained and instructed the sales agents on how to sell the Petroleum Unlimited and Petroleum Unlimited II investment and failed to take any action to ensure sales agents informed investors of the sales commissions the defendants were paying. Furthermore, Valko, Rossi, and Geraud observed and listened to the sales agents as they sold the Petroleum Unlimited investment and did not instruct the sales force to advise investors of the sales commissions.

2. Anticipated Use of Proceeds

34. The Defendants also misrepresented to investors the anticipated use of the offering proceeds. First, contrary to the stated uses in the PPMs, a significant portion of the proceeds went to pay the exorbitant sales commissions. Kimmel, Nyce, Geraud, Rossi, and Valko, drafted, reviewed, or distributed the PPMs and therefore knew or were reckless in not knowing these commissions were inconsistent with the stated use of proceeds. Petitti typed the PPMs and distributed the commissions that were inconsistent with the stated use of proceeds.

35. Second, Kimmel, Petroleum Unlimited and Petroleum Unlimited II misrepresented the anticipated use of proceeds because approximately \$425,000 of the offering proceeds went to Kimmel and not to the oil and gas drilling project. The PPMs state the managing member would receive 50% of the profits from the sale of oil from the wells, but only after the investors recouped 25% of their investments. Yet, despite authoring the PPMs, Kimmel took \$425,000 before any investors recouped their investments.

36. Of the \$425,000, Kimmel received approximately \$218,000 from Petroleum Unlimited and Petroleum Unlimited II's bank accounts. He also received \$190,000 of the approximately \$950,000 Petroleum Unlimited and Petroleum Unlimited II paid Oil & Gas

Holdings to drill the wells, and he received \$17,000 from Aurora Escrow Services. These payments were inconsistent with the limited compensation disclosures in the PPMs. The PPMs did not disclose any compensation, salaries, or management fees for Kimmel individually. They also did not disclose Kimmel's ownership interest in Oil & Gas Holdings, or Aurora Escrow Services, from which a portion of his payments came.

3. *Promises of Unrealistic Investment Returns*

37. The Defendants falsely represented to investors they could earn substantial annual returns by investing in Petroleum Unlimited and Petroleum Unlimited II. The table of estimated returns in the PPMs, which Nyce prepared with Kimmel's input, stated investors could earn an annual return on their investment of 14% to 141%. There was no reasonable basis for these statements because the companies were using 81% of the offering proceeds for purposes other than drilling for oil producing wells. Moreover, the highest returns Nyce projected were based on pumping the exaggerated rate of 1,000 barrels of oil per day. Although Nyce stated the rate of 1,000 barrels of oil per day was "ridiculous," he included the figure in the table of estimated returns after discussion with Kimmel, Geraud, and Rossi. The table of estimated returns in the PPMs also did not take into account that it was possible no oil would be found.

38. In addition, Geraud sent spam facsimile flyers to prospective investors in Canada which claimed investors could share in 700% profit returns. The flyers also stated investors would "[g]et monthly royalty checks in the thousands off of minimal investments."

39. The claim that investors could share in 700% profits was misleading for several reasons. First, there were no profits, and neither Petroleum Unlimited nor Petroleum Unlimited II were drilling at the time. Second, Petroleum Unlimited and Petroleum Unlimited II's ability to

generate such returns were further impacted by its operating expenses and the exorbitant sales commissions. These facts were not disclosed in the flyer.

V. CLAIMS FOR RELIEF

COUNT I

**FRAUD IN VIOLATION OF
SECTION 17(a)(1) OF THE SECURITIES ACT**

**(As to Defendants Petroleum Unlimited, Petroleum Unlimited II,
Kimmel, Nyce, Geraud, Rossi, and Valko)**

40. The Commission repeats and realleges Paragraphs 1 through 39 of this complaint.

41. From March 2008 and through July 2008, Petroleum Unlimited, Petroleum Unlimited II, Kimmel, Nyce, Geraud, Rossi, and Valko directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

42. By reason of the foregoing, the Petroleum Unlimited, Petroleum Unlimited II, Kimmel, Nyce, Geraud, Rossi, and Valko directly and indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II

**VIOLATIONS OF SECTIONS
17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT**

(As to all Defendants)

43. The Commission repeats and realleges Paragraphs 1 through 39 of this complaint.

44. From March 2008 and through July 2008, the Defendants directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce

and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) engaged in transactions, practices and courses of business which operated and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

45. By reason of the foregoing, the Defendants directly and indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III

FRAUD IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

(As to Defendants Petroleum Unlimited, Petroleum Unlimited II, Kimmel, Nyce, Geraud, Rossi, and Valko)

46. The Commission repeats and realleges Paragraphs 1 through 39 of this complaint.

47. From March 2008 and through July 2008, the Defendants directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this complaint, knowingly, willfully or recklessly; 1) employed devices, schemes or artifices to defraud; 2) made untrue statements of material facts and 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; or 3) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities and will operate as a fraud upon the purchasers of such securities.

48. By reasons of the foregoing, the Defendants directly or indirectly violated, and, unless enjoined, are reasonably likely to 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].

COUNT IV

VIOLATIONS OF SECTION 15(a) OF THE EXCHANGE ACT

(As to Defendants Geraud, Rossi, and Valko)

49. The Commission repeats and realleges Paragraphs 1 through 39 of this complaint.

50. From March 2008 and through July 2008, Geraud, Rossi, and Valko while acting as or associated with a broker or dealer, effected transactions in, or induced or attempted to induce the purchase or sale of, securities while they were not registered with the Commission as a broker or dealer or when they were not associated with an entity registered with the Commission as a broker-dealer.

51. By reasons of the foregoing, Geraud, Rossi, and Valko directly or indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court:

Declaratory Relief

Declare, determine and find that the Defendants have committed the violations of the federal securities laws alleged in this complaint.

Permanent Injunction

Issue a Permanent Injunction restraining and enjoining Petroleum Unlimited, Petroleum Unlimited II, Kimmel, Nyce, Geraud, Rossi, and Valko, their officers, agents, servants,

employees, attorneys, representatives and all persons in active concert or participation with them, and each of them, from violating Section 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act; enjoin Petitti and her officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, and each of them, from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act; and enjoin Geraud, Rossi, and Valko and their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, and each of them, from violating Section 15(a) of the Exchange Act.

Disgorgement with Prejudgment Interest

Issue an Order directing Petroleum Unlimited, LLC, Petroleum Unlimited II, LLC, Roger Kimmel, Harry Nyce, Michel-Jean Geraud, Robert Rossi, and Joseph Valko to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this complaint.

Penalties

Issue an Order directing each of the Defendants to pay a civil money penalty 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)].

Further Relief

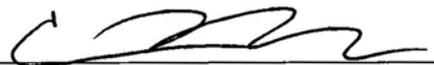
Grant such other and further relief as may be necessary and appropriate.

Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion by the Commission for additional relief within the jurisdiction of this Court.

January 12, 2011

Respectfully submitted,

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