



proppant at a premium to well-known oil and gas operating companies. These companies, according to Defendants, have already signed purchase orders with Permian.

3. In reality, and described further below, Permian is a sham enterprise that has had no material proppant supply operations. Rather than using investor funds to operate Permian's business, Defendants have used these funds to make Ponzi payments and to fuel Perez's extravagant personal lifestyle. Over the last three years, Perez has used investor money to purchase luxury cars, a helicopter, private jet travel, and jewelry, and to fund casino expenses and his wedding aboard the Queen Mary, to name just a few items.

4. To perpetuate this fraudulent scheme and keep it from being discovered, Defendants furnish investors fabricated account statements showing exorbitant – but entirely fictitious – returns. Perez has also lied to investors to dissuade them from withdrawing their investment funds, including in some instances falsely telling investors that the requested withdrawal was prohibited by SEC rules and regulations. Perez has even persuaded some investors, by promising higher returns or other benefits, to recruit others to invest in Permian's investment program or to leave positive reviews on the Better Business Bureau website, which reviews Perez has touted to attract investments.

5. Through their actions, Defendants violated, and unless enjoined will continue to violate, the antifraud and securities-registration provisions of the federal securities laws, namely Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)].

6. To protect the public from further fraudulent activity, the SEC brings this action against Defendants and seeks: (i) permanent injunctive relief; (ii) disgorgement of ill-gotten gains,

plus prejudgment interest; and (iii) civil penalties. Because of the ongoing nature of the fraudulent offering and the risk of asset dissipation, the Commission also seeks against Defendants emergency relief, including a temporary restraining order, an asset freeze, an accounting, and orders expediting discovery, permitting alternative means of service, requiring surrender of Perez's passport, and prohibiting alteration or destruction of documents.

### **DEFENDANTS**

7. **Marco "Sully" Perez** resides in Keller, Texas, and resided in Midland, Texas during some of the time period in which the conduct described in this Complaint occurred. Perez is President of Permian. At all relevant times, Perez controlled Permian and held himself out as its CEO.

8. **Permian Basin Proppants, Inc.** is a Texas corporation with its principal office in Midland, Texas. Permian purports to supply materials to energy companies for the extraction of oil and gas using hydraulic fracturing.

### **JURISDICTION AND VENUE**

9. The Commission brings this action pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

10. This 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), (e), and 78aa].

11. The Defendants offered and sold to investors interests in Permian's investment program. These interests are investment contracts, which are securities under Section 2(a)(1) of

the Securities Act [15 U.S.C. § 77b(a)(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

12. In connection with the conduct described in this Complaint, Defendants, directly or indirectly, made use of the mails or the means or instruments of transportation or communication in interstate commerce by, among other means, soliciting investments via the internet and accepting investor deposits via wire transfer.

13. Venue is proper in this District because, at all relevant times, Permian was located in and conducted business in this District, and Perez resided in this District. Further, acts, transactions, and courses of business constituting violations of the securities laws alleged in this Complaint occurred within this District, including but not limited to Defendants' solicitations of investors, acceptance of investment proceeds, and Perez's operation of the Permian business.

### **FACTUAL ALLEGATIONS**

#### **I. The Permian Securities Offering**

14. Through Permian's website and in posts on social media, Defendants hold out Permian as an oilfield services company that provides sand proppants to oil and gas companies throughout the United States and some foreign countries. A proppant is a material, typically sand, used in the process of fracturing oil and gas wells.

15. Beginning at least in June 2018, Perez orchestrated and has implemented an investment program aimed at individual investors for the purported purpose of financing Permian's acquisition of proppants from suppliers to enable Permian to re-sell the proppants to oil and gas operators at a markup. Since June 2018, Defendants have raised at least \$9.25 million from at

least 265 investors in six states by selling Permian interests. This offering is ongoing, and Defendants continue to solicit investors.

16. Defendants have solicited investors by representing that Permian has existing contracts in place with oil and gas operating company customers – which they term “purchase orders” – that enable Permian to sell proppants to these customers at a significant markup from the price at which Permian could acquire the proppant. Each investment that Defendants have offered relates to a specific purported purchase order from an identified customer, with a promised specified rate of return ranging from 10 to 100 percent, depending on the amount invested and other parameters, to be achieved in a specified time period, typically 30 to 90 days.

17. As Perez has explained in investor pitches, and as reflected on account statements that Permian provides to investors, at the end of the period specified for each investor’s initial investment, Defendants credit the investor’s account with the promised return. Afterwards, Permian purportedly “rolls over” the investor’s entire account balance into a new investment that relates to a different purchase order with an identified customer, to be chosen by Permian. Permian prohibited investors from withdrawing any money from their investment accounts for 366 days from the date of the investment. Further, as set forth below, Perez made false statements to dissuade investors from withdrawing funds even after the expiration of the 366-day period.

18. After successfully soliciting an investor, Defendants instruct the investor to open an investment account through Permian’s website and to send the investment amount to Permian via cashier’s check, wire transfer, or through a credit card or bank debit transaction. After making the first investment, an investor is able to make additional investments through Permian’s website, which are structured in the same manner.

19. Perez has represented to investors that, as the person who operates Permian's business, he identifies proppant customers and negotiates the price and delivery terms of these transactions. Perez also has represented that he sources and negotiates the terms of Permian's proppant acquisition deals.

20. Permian investors have no role in the management of Permian, the supposed purchase orders with customers, or the supply deals with proppant manufacturers and distributors.

21. Defendants have promoted the Permian investment program through Permian's website, Perez's in-person investment pitches, and Perez's video conference calls with prospective investors. Defendants have solicited potential investors with whom they had no prior relationship. Further, as described in detail below, Perez has induced certain investors to promote the Permian offering within their own networks, including through their social media accounts.

22. When soliciting investors through presentations and pitch materials, Perez highlighted his military background, which he used to specifically target veterans and active service members.

23. Many investors in Permian's investment program are not accredited, and Defendants have not taken any steps to verify whether investors are accredited before they invest with Permian.

24. Perez had no previous relationship with many of the investors to whom Defendants offered Permian securities. The Permian securities offering is not registered with the Commission.

## **II. Defendants' Material Misstatements and Fraudulent Conduct**

25. To solicit investors, Defendants have lied about nearly every aspect of Permian's business and its securities offering. Defendants also have engaged in other fraudulent conduct that defrauded existing investors.

**A. *Material Misstatements Used To Obtain Investments***

26. As set forth below, Defendants have made false and misleading statements about the nature of Permian's business, the use of investor funds, the profitability and safety of participating in Permian's investment program, and the investment returns that Permian generates.

27. Permian's website presents the company as a legitimate proppant supply business, with recognized oil and gas production firms listed as customers. Perez has provided to potential investors in presentations the same information that appears on Permian's website. Perez also has claimed in at least one presentation to potential investors in or around summer of 2020 that Permian employs more than 50 employees and that its sales revenue had grown from \$1 million in 2017 to \$40 million in 2020.

28. These representations are false because, in reality, Permian was and is a sham. The companies that Permian claims are its customers have never been Permian's customers (with the exception of one small transaction with one such company), and Permian has had little legitimate revenue. This information is material, because an investor would consider whether Permian's business was legitimate important in deciding to invest with Permian.

29. Defendants have represented to investors that Permian would use their investment funds to acquire proppant that it would then sell, at a premium, to customers from which Permian has already received purchase orders. Perez has made these statements verbally to potential investors from 2018 through the present. Defendants have made these same representations in "investment letters" signed by Perez that document the terms of the investments, which Permian provides to investors.

30. Defendants' representations described above are false. In reality, Perez and Permian used most of the investor funds for Perez's personal benefit, to make Ponzi payments to

investors, and for purposes other than to fulfill proppant purchase orders. This information is material because an investor would consider it important in deciding to invest with Permian whether Permian had actually entered into contracts that would generate revenue to pay the promised investment returns.

31. Defendants made misstatements about the supposed profitability and safety of participating in the Permian investment program. Permian's investment letters, which are personalized to each investor, specify returns of 10-100 percent that Permian agreed to deliver to each investor within a specified period. Perez has represented to potential investors, including at one investor presentation in or around the summer of 2020, that Permian at all times maintains sufficient cash in its bank accounts to pay off all investors. And Defendants have told investors that investments in Permian's investment program could generate a return on investment ("ROI") of up to 30 percent, and were "100% guaranteed," "completely protected," and "backed with insurance and bonds." Perez even touted the supposed advantages of investing retirement savings with Permian as compared to a 401(k) account. Defendants have made these statements in investor presentations, on Permian's website, and in social media content that Perez provided to investors to post on their social media accounts.

32. The representations described above relating to the supposed profitability and safety of investing in Permian's investment program are false. Permian did not and does not engage in proppant supply transactions or other revenue-generating activity sufficient to produce the promised returns. Permian also did not have any insurance or bonds to "back" any investments. And, Permian did not keep sufficient cash in its bank account to pay off all investors. In fact, around the time that Perez made the claim about Permian's available cash balance, Permian had cumulatively raised nearly \$2.5 million from investors but had less than \$5,000 in its bank account.



All of this information is material because an investor would consider it important in deciding to invest with Permian whether its claims about profitability and the safety of the investment were true.

33. Further, statements made by Defendants in investment letters that specify the period within which an investor would realize a return on their investment (typically 30 to 90 days) are false and misleading because Defendants do not operate a legitimate business that generates sufficient revenue to pay investment returns within *any* period. This information is material because an investor would consider it important in deciding to invest with Permian when and if their investment might generate a return.

34. Defendants have falsely led investors to believe that their investments were generating high returns. When each investor's investment reaches its specified maturity date, Permian emails the investor an account statement that purports to show that the promised return on the investment has been achieved, and that the original principal and the investment return have been "rolled over" into another investment relating to another purchase order with a specified customer, selected by Defendants. Permian's website also displays each investor's account balance and the supposed returns generated through Permian's investment program.

35. The information regarding the investors' account balances, investment returns, and "rolled over" investments provided in the account statements and displayed on Permian's website is false. Permian has not and does not generate returns for its investors, and the account balances are fabricated. The account statements also do not reflect that Defendants have been misappropriating the principal invested by investors (as described further below). Moreover, the claims in account statements purporting to show investor funds being "rolled over" into new investments associated with other purchase orders are false. The represented purchase orders do

not exist, and the “rolling over” of investor funds into new investments is entirely a fiction, as Defendants have misappropriated all or nearly all investor funds.

36. Perez controls Permian’s bank accounts. Perez, as Permian’s President (who also held himself out as CEO), also controls all aspects of Permian’s operations. He personally has solicited potential investors, recruited investors to solicit other investors, and asserted that he is the only person who maintained relationships with Permian’s supposed customers.

37. Because Perez has at all relevant times controlled Permian’s bank accounts and its operations, he knew, or was severally reckless in not knowing that:

- a. Permian’s business was not legitimate;
- b. Permian did not have purchase orders with oil and gas operating companies;
- c. investor funds were not being used as represented but instead were used for Perez’s benefit and to make Ponzi payments (which kept the scheme going);
- d. investments in Permian were neither profitable nor protected;
- e. the information provided to investors reflecting their account balances and returns was false, as there were no accounts and no balances; and
- f. investor funds were not being “rolled over” into new investments.

***B. Other Fraudulent Conduct***

38. Although Defendants have represented that investor funds would be used to acquire proppant for resale to oil and gas operating companies pursuant to existing purchase orders, Defendants have not used any material amounts of investor funds to obtain proppants. Instead, Defendants have misappropriated investor funds on a massive scale.

39. Of the \$9.25 million raised from investors, Perez has used at approximately \$2.4 million to make Ponzi payments to investors, seeking to deceive them into believing that the funds

they were receiving represented returns on investment based on Permian's legitimate business activities. In addition, Perez has misappropriated approximately \$5.6 million of investor funds as follows, in part:

- a. spending approximately \$1.1 million on the purchase of cars and recreational vehicles, including a Maserati and a Range Rover;
- b. making approximately \$650,000 in cash withdrawals;
- c. making approximately \$450,000 in payments for private charter flights;
- d. spending more than \$300,000 on jewelry;
- e. transferring approximately \$269,000 to a youth baseball training academy

in which, on information and belief, Perez has a financial interest;

- f. spending approximately \$200,000 at casinos;
- g. paying nearly \$170,000 to the Dallas Cowboys Stadium;
- h. spending approximately \$110,000 on his wedding party aboard the Queen Mary;
- i. paying over \$75,000 to buy a helicopter and helicopter pilot training; and
- j. transferring approximately \$2.9 million to various companies and individuals in transactions without a discernable relationship to Permian's purported business operations.

40. From April through September 2021 alone, Perez spent at least \$373,934 of investor funds on vehicles, \$47,000 on a helicopter, \$360,469 on private jet travel, \$101,065 on furniture, and \$46,580 at casinos.

41. Perez has also enticed existing investors to use their personal social and professional networks to market the Permian investment program to other prospective investors.

For example, Perez has told at least one Permian investor that if they recruited additional investors, Permian would credit the investor's existing Permian account balance with amounts equal to the amounts invested by the recruited investors. Enticed by this supposed opportunity, several investors have promoted the Permian investment program on their personal social media accounts and have invited their friends, family, and others in their social and professional networks to attend online presentations in which Perez has solicited investments. Perez has provided at least several investors with content about the Permian investment program to post on their social media accounts.

42. Perez also told existing investors that he would increase by 20% the promised rate of return on investments of any investor who posted a positive review of Permian on the website of the Better Business Bureau. At the same time, in at least one presentation to investors, Perez touted Permian's reviews on the Better Business Bureau website and encouraged persons he was soliciting to read these reviews.

43. To keep Defendants' fraudulent scheme concealed and to further deceive investors, Perez has misled some investors who have sought to redeem their investments. Specifically, Perez has told some investors that the SEC would place the investors' accounts "on hold" if they chose to withdraw all of their account balance, supposedly because SEC regulations prohibit "quick withdrawals." He has also told at least one investor that if they were to withdraw their initial investment, they would not have access to funds they subsequently invested with Permian or the ability to invest again, because the SEC supposedly "will not authorize . . . access." In reality, these statements were false and designed to dissuade investors from withdrawing funds so that Defendants could keep their fraudulent scheme undetected. There are no SEC rules or regulations

that would have prohibited Permian investors from withdrawing any part of their account balance from their Permian accounts.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**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]**

*Against All Defendants*

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

45. By engaging in the acts and conduct alleged herein, Defendants, directly or indirectly, in connection with the purchase or sale of securities, by the use of the means or instrumentality of interstate commerce, or of the mails, knowingly or with severe recklessness:

- a. employed a device, scheme, or artifice to defraud; and/or
- b. made an untrue statement of a material fact, or 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/or
- c. engaged in an act, practice, or course of business which operated as a fraud or deceit upon any person.

46. By reason of the foregoing, Defendants have violated, and unless enjoined will continue to 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].

**SECOND CLAIM FOR RELIEF**

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

***Against All Defendants***

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

48. By engaging in the acts and conduct alleged herein, Defendants, directly or indirectly, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, have:

a. knowingly or with severe recklessness employed a device, scheme, or artifice to defraud; and/or

b. knowingly, recklessly, or negligently obtained money or property by means of an untrue statement of a material fact or an omission 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/or

c. knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

49. By reason of the foregoing, Defendants have violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM FOR RELIEF**

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

*Against All Defendants*

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

51. By engaging in the conduct described herein, Defendants, directly or indirectly:

- a. made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of any prospectus or otherwise, securities as to which no registration statement was in effect; and/or
- b. for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement was in effect; and/or
- c. made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise, securities as to which no registration statement had been filed.

52. By engaging in the conduct described above, Defendants 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 (c)].


**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

1. Permanently enjoining the Defendants from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a) and (c) and 77q(a)] and 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];
2. Ordering the Defendants to disgorge ill-gotten gains as a result of the violations alleged herein, plus prejudgment interest on those amounts;
3. Imposing civil penalties against Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] for violations of the federal securities laws as alleged herein;
4. Permanently enjoining Perez from directly or indirectly, including, but not limited to, through any entity owned or controlled by him, participating in the issuance, purchase, offer, or sale of any securities provided, however, that such injunction shall not prevent Perez from purchasing securities listed on a national securities exchange for his own personal account;
5. Imposing such other and further relief as the Court may deem just and proper.

Dated: December 14, 2021

Respectfully submitted,



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