



### **JURISDICTION AND VENUE**

3. Jurisdiction is proper pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district because a substantial part of the events or omissions giving rise to the cause of action accrued in this district and because this district is where Energytec's principal office and the office of the Company Defendants was located at the time the causes of action in this lawsuit accrued.

### **GENERAL ALLEGATIONS**

5. Beginning as early as January of 2002, Mr. Vula worked with others, including Mr. Petito, to develop a scheme to sell Energytec working interests through unlicensed brokers including Mr. Vula and Mr. Petito. Mr. Vula and Mr. Petito participated in this scheme in order to earn large commissions for their sales. Mr. Vula also solicited other unlicensed brokers who split their commissions with Mr. Vula, including Mr. Petito. Mr. Vula and Mr. Petito agreed to conceal the use of unlicensed brokers and other violations from the Company Defendants in order to induce Energytec to approve these illegal sales and to continue with additional sales.

6. On information and belief, Mr. Vula is not properly licensed and registered to sell securities, and/or to act as a broker-dealer in securities. Nonetheless, Mr. Vula entered into commission agreements, kept secret from the Company Defendants, whereby Mr. Vula would solicit sales of working interests in Energytec oil wells and stock in exchange for a 10% commission (which was sometimes split with other unlicensed brokers). Mr. Vula proceeded to sell Energytec working interests and stock from 2002 to 2006 and received commissions in the total amount of \$4,953,008.18.

7. On information and belief, Mr. Petito is a certified public accountant who used his special status and relationship of trust and confidence with his accounting clients to solicit and procure investments for Mr. Vula and others in Energytec, and who offered up his book of

clients as investors. On information and belief, Mr. Petito is not properly licensed and registered to sell securities, and/or to act as a broker-dealer in securities. Nonetheless, Mr. Petito entered into a commission agreement, kept secret from the Company Defendants, to sell Energytec working interests and stock in exchange for a portion of the 10% commission.

8. Mr. Petito purports to “know a great deal regarding securities laws and purports to have taught the rules that govern the sale of securities to attorneys in New York City law firms.

9. The Company Defendants have been sued in the above-captioned lawsuit by parties (the “Plaintiffs ) that allege to have purchased working interests and/or securities from Energytec.

10. Mr. Vula and Mr. Petito located prospective investors in Energytec to purchase Energytec securities, marketed the Energytec securities to investors, assisted in the negotiation of the terms by which the purchase and sale of such securities would occur, and accepted commission payments as compensation in a manner that was linked in whole or in part to the sale of Energytec’s securities and/or working interests, including the securities and/or working interests complained of by the Plaintiffs in their lawsuit against the Company Defendants. Mr. Vula’s and Mr. Petito’s aforementioned acts and omissions were undertaken without the consent, approval and/or authority of the Company Defendants.

11. Mr. Vula and Mr. Petito are responsible for any false or misleading information they may have communicated to Plaintiffs in order to induce Plaintiffs to purchase Energytec securities and/or working interests as alleged in the Plaintiff’s Amended Consolidated Complaint in this matter.

12. Mr. Vula and Mr. Petito engaged in the interstate business of effecting securities transactions for the account of another, without being registered with the Securities Exchange Commission, as a broker or dealer, in violation of Section 15(a) of the Securities Exchange act, 15 U.S.C. § 78o.

13. Energytec has brought a lawsuit against Mr. Vula and Mr. Petito in the United States District Court, Northern District of Dallas, Consolidated Case No. 3:06-CV-0933-L, to recover for damages resulting from Mr. Vula's and Mr. Petito's acts and omissions.

### **CLAIM FOR RELIEF**

14. As set forth in Plaintiffs' Amended Consolidated Complaint in this matter, Plaintiffs contend that the Company Defendants are liable to pay damages to Plaintiffs.

15. The Company Defendants deny they are liable to pay the damages claimed by Plaintiffs in the Amended Consolidated Complaint. However, if it is determined that the Company Defendants are liable, in whole or in part, to pay any damages to Plaintiffs, Mr. Vula and Mr. Petito are obligated, in whole or in part, to pay any sums due.

16. An actual case and controversy exists between the Company Defendants and Mr. Vula and Mr. Petito as to who is responsible for the payment of damages to Plaintiffs, if any.

17. A judicial declaration is thus necessary and appropriate at this time to determine whether Mr. Vula and Mr. Petito are responsible, in whole or in part, for payment of any sums due Plaintiffs resulting from Plaintiffs' claims against the Company Defendants.

18. The Company Defendants seek a judicial declaration that Mr. Vula and Mr. Petito are responsible, individually and/or collectively, in whole or in part, for any sums the Company Defendants are found to be liable for in the future to Plaintiffs, and a declaration that the Company Defendants are not responsible to pay any damages to Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, the Company Defendants pray for judgment as follows:

1. The Court enter an order declaring that if any sums are due Plaintiffs by the Company Defendants, that Mr. Vula and/or Mr. Petito are responsible, individually or collectively, in whole or in part, for any sums due Plaintiffs by Company Defendants;
2. For costs and reasonable attorneys' fees; and
3. For such other and appropriate relief as deemed appropriate by the Court.

DATED: July 21, 2008.

Respectfully submitted,

*/s/ Richard A. Smith*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served on counsel of record, as indicated below, on the 21<sup>st</sup> day of July, 2008:

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