

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NELSON BUNKER HUNT, WILLIAM	§	
HERBERT HUNT, HOUSTON B. HUNT	§	
LAMAR HUNT, ALBERT D.	§	
HUDDLESTON, and DOUGLAS H.	§	
HUNT,	§	
	§	
Plaintiffs,	§	
	§	CA 3-81-0316-F
v.	§	
	§	
UNITED STATES SECURITIES	§	
AND EXCHANGE COMMISSION,	§	
	§	
Defendant.	§	

AMENDED VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs Nelson Bunker Hunt (“N. B. Hunt”), William Herbert Hunt (“W. H. Hunt”), Houston B. Hunt, Lamar Hunt, Albert D. Huddleston and Douglas H. Hunt (hereinafter “plaintiffs”), for their amended complaint¹ for injunctive relief against Defendant United States Securities and Exchange Commission (“SEC”), allege as follows:

JURISDICTION AND VENUE

1. Plaintiffs are all citizens of the United States and reside in Dallas, Texas.
2. The SEC is an agency of the United States.
3. Plaintiffs’ claim for relief arises under the Fourth and Fifth Amendments to the United States Constitution, and further arises under the Securities Exchange Act of 1934, 15

¹ The number of each paragraph (or portions thereof) in this Amended Verified Complaint which were not included in plaintiffs’ original verified complaint or which have been modified have been placed in brackets for ease of identification.

U.S.C. §§78a-78hh-1 (the “1934 Act”), the Right to Financial Privacy Act of 1978 (the “RFPA”), 12 U.S.C. §§3401-3422, and The Commodity Futures Trading Commission Act of 1974 (the “CFTC Act”), Pub. L. No. 93-468, 88 Stat. 1389 (codified in scattered sections of Titles 5 and 7 of the U.S. Code).

4. This Court has jurisdiction over the subject matter of this action by reason of 28 U.S.C. §1331(a), which provides original jurisdiction in this Court of any action brought against the United States, any agency thereof or any other officer or employee thereof in his official capacity, and by reason of 28 U.S.C. §1337(a), which vests original jurisdiction in this Court over any civil action or proceeding arising under any act of Congress regulating trade or protecting trade in commerce. Jurisdiction is also vested in this Court by 28 U.S.C. §1361 to compel Defendant to perform its duties to plaintiffs. In addition, this Court has jurisdiction pursuant to 12 U.S.C. §3416, which vests jurisdiction in this Court over actions brought under the provisions of the RFPA.

5. Venue for this suit lies in the Northern District of Texas, since this is the judicial district in which all plaintiffs reside, 28 U.S.C. §1391(e), and it is the judicial district in which plaintiffs’ claim arose, 28 U.S.C. §1391(b).

BACKGROUND OF THE ACTION

[6.] In the Spring of 1980, plaintiffs N. B. Hunt and W. H. Hunt, as well as Bache Group, Inc. (“Bache”), became the subjects of a formal non-public investigation initiated and conducted by the SEC entitled In the Matter of Bache Group, Inc., HO-1233 (hereinafter the “SEC investigation”). The SEC investigation was initiated pursuant to an Order dated March 27, 1980, and is now being pursued under an Amended Order of Investigation (the “SEC investigative order”), dated April 4, 1980. A copy of the SEC investigative order is attached hereto as Exhibit 1. The SEC investigative order indicates that the SEC investigation was commenced to determine whether N. B. Hunt, W. H. Hunt, Bache, or others may have violated certain specified provisions of the 1934 Act and/or certain SEC rules promulgated thereunder, in

connection with purchases of Bache stock or acquisitions and sales of silver or silver futures contracts during 1979 and 1980.

7. Plaintiffs have cooperated fully with the SEC in this investigation. N. B. Hunt and W. H. Hunt have given extensive deposition testimony before the SEC. In addition, officers of Hunt Energy Corporation, which provides administrative services in connection with securities and commodities investments by some of the plaintiffs, have also been deposed by the SEC on one or more occasions. Plaintiffs have produced literally tens of thousands of documents from their respective files in response to SEC requests and subpoenas. Prior to the filing of a motion to quash a certain SEC subpoena, referred to in paragraph 11 through 15 herein, plaintiffs did not seek to file any action to limit any aspect of the SEC investigation.

8. Plaintiffs now must take steps to protect their Constitutional and statutory rights. The SEC has embarked upon an improper and illegal course of conduct, and continues to pursue such course of conduct, all as set forth below, which violates plaintiffs' constitutional rights and their statutory rights under the 1934 Act, the CFTC Act, and RFPA, and, in fact, constitutes an abuse of the administrative process, all to the irreparable harm of plaintiffs. The SEC's actions compel plaintiffs to seek to protect their rights by way of this action for injunctive relief.

9. Specifically, the SEC has failed to confine its pursuit of the investigation to matters within the scope of the SEC investigative order, has repeatedly exceeded its investigative authority and jurisdiction and has infringed and intruded upon the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC"), all in violation of the Securities Exchange Act, the CFTC Act and the RFPA, and plaintiffs' rights thereunder and in violation of plaintiffs' rights under the Fourth and Fifth Amendments to the United States Constitution.

10. Plaintiffs have no adequate remedy at law and will suffer irreparable harm unless the injunctive relief sought by them is granted.

PRIOR RELIEF SOUGHT BY PLAINTIFFS

[11.] The file in the captioned matter before this Court reflects that plaintiffs have previously moved, on March 2, 1981, to quash a certain subpoena dated February 18, 1981, issued by the SEC during its investigation. Plaintiffs' motion to quash was directed to a series of illegal and wrongful acts by the SEC in its conduct of the SEC investigation, and, in particular, to the SEC's actions in connection with the February 18, 1981, subpoena duces tecum issued by the SEC staff to First National Bancshares, Inc. (the "Subpoena"), seeking financial records of certain plaintiffs.

12. Plaintiffs' motion to quash rested, in substance, on three principal grounds. First, the SEC, by way of the Subpoena, violated plaintiffs' rights under the RFPA. Second, the Subpoena purported to seek financial records that were not relevant to any legitimate law enforcement inquiry conducted by the SEC or to any matters that fall in the first instance within the SEC's investigative or enforcement power, jurisdiction or authority. Third, the Subpoena was defective on its face.

13. On March 9, 1981, shortly after filing their motion to quash, plaintiffs also advised the SEC of their intention to file motions to quash two additional subpoenas issued by the SEC in the SEC investigation to other financial institutions (namely, Republic National Bank of Dallas and Citibank, N.A.) to interdict and prevent further violation of plaintiffs' rights. Following this advice to the SEC, plaintiffs were orally informed by the Office of the General Counsel of the SEC that the Subpoena (to First National Bancshares) was going to be withdrawn. Plaintiffs were also advised that the subpoenas to Citibank, N.A. and Republic National Bank, as to which plaintiffs had not yet filed motions to quash, would also be withdrawn. Based on the SEC's representations and in light of the additional representations set forth in paragraph 14, plaintiffs determined not to file the latter two motions to quash and to withdraw their pending motion to quash. By this pleading, plaintiffs hereby withdraw that motion.

14. Plaintiffs later learned of other improper actions taken by the SEC in the investigation in connection with the SEC's attempts to procure plaintiffs' financial records. The SEC had sent letters to four financial institutions of which some plaintiffs were customers.

Review of those letters indicates that the SEC was engaged in an improper attempt, without complying with the RFPA, to “update” the respective financial institutions’ response to SEC subpoenas duces tecum issued to the financial institutions in April, 1980. Plaintiffs thereupon advised the SEC that plaintiffs would be forced to challenge the SEC’s issuance of those “update letters” unless the SEC withdrew the “letters” and notified the financial institutions which received them that it was unnecessary to respond to them. Once again, the SEC, impliedly conceding the improper nature of those “letters,” advised plaintiffs that the “update letters” were being withdrawn and that the financial institutions which received the “letters” would be so advised by telephone and in writing. However, the SEC reserved its right to seek the same information in the same or similar manner in the future.

15. Based upon the events alleged above, it is evident that the SEC investigation (a) has violated plaintiffs’ rights under the RFPA, (b) has exceeded the scope of the SEC’s investigative authority under the SEC investigative order, and (c) has infringed and intruded upon the exclusive jurisdiction of the CFTC to regulate and investigate matters relating to commodity futures trading. The violations by the SEC continue continue and are likely to continue, and, unless enjoined, will result in grievous and irreparable harm to plaintiffs.

CLAIM FOR INJUNCTIVE RELIEF

16. Following certain events transpiring in the commodities futures market in 1979 and 1980 pertaining to silver, the activities of plaintiffs N. B. Hunt, W. H. Hunt and others in that market became subjects of extensive investigations by several Congressional committees and federal agencies, including the SEC. N. B. Hunt and W. H. Hunt have testified before, and have provided substantial documentation to, the Subcommittee on Conservation and Credit of the Committee on Agriculture of the United States House of Representatives, the Commerce and Monetary Affairs Subcommittee of the Committee on Government Operations of the United States House of Representatives, and the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition and Forestry of the United States Senate.

An investigation has also been conducted by the Committee on Banking, Housing, and Urban Affairs of the United States Senate.

17. In addition to those Congressional investigations, and the investigation conducted by the SEC, several other federal agencies have also formally inquired into the factual and economic events relating to the silver futures market in 1979 and 1980. The CFTC has conducted an extensive investigation into the activities of N. B. Hunt, W. H. Hunt and others. N. B. Hunt, W. H. Hunt and Douglas H. Hunt have all been subpoenaed by the CFTC to give deposition testimony, and have done so. Plaintiffs (and other persons and entities) collectively have produced to the CFTC, pursuant to subpoenas, over 10,000 pages of documents. Upon information and belief, the CFTC has also subpoenaed extensive documents and testimony from many banks and commodities and brokerage firms with which some of plaintiffs have done business. Upon information and belief, the Federal Reserve Board (the "Board") has also commenced an investigation into certain aspects of these events, and has contacted numerous financial institutions to solicit substantial banking information from them. In addition, the Board has also conducted intensive on-site examination of documentation maintained by these institutions. The United States Treasury Department (the "Treasury"), although having no direct statutory responsibility for the operation of the commodities futures markets, has likewise investigated and continues to investigate the potential impact of such markets on the Treasury's debt management flexibility and on the underlying cash market for Government securities. Upon information and belief, the Treasury is preparing a report to Congress concerning this investigation.

18. Despite the circumscribed scope of the SEC investigative order, the SEC now purports to inquire into matters over which it has no investigative authority and seeks information far beyond the permissible limits established by the SEC investigative order. The SEC continues to pursue its inquiry into areas in which it has no investigative jurisdiction, namely, commodities trading, and which, in fact, are within the exclusive jurisdiction of the CFTC.

19. On numerous occasions throughout the course of the SEC investigation, plaintiffs have repeatedly demanded that the SEC explain the purpose of its investigation and articulate the alleged basis of its investigatory power and jurisdiction to obtain the information which it purports to seek. The SEC has consistently refused to do so. On further numerous occasions, plaintiffs have advised the SEC that it is exceeding its jurisdiction and authority and that plaintiffs' rights have been and are being violated by the SEC. Despite plaintiffs' protests and objections, the SEC has persisted in its illegal conduct.

20. By way of example, attached hereto (and incorporated in this complaint as though fully set forth herein) as Exhibit 2 are excerpts from the deposition taken by the SEC of Charles H. Mercer on February 23-25, 1981. These ex the SEC. Despite plaintiffs' protests and objections, the SEC has persisted in its illegal conduct.

20. By way of example, attached hereto (and incorporated in this complaint as though fully set forth herein) as Exhibit 2 are excerpts from the deposition taken by the SEC of Charles H. Mercer on February 23-25, 1981. These excerpts provide some examples of the jurisdictional overreaching by the SEC about which plaintiffs complain herein.

(a) Violations of the RFPA

21. The SEC has issued subpoenas in the investigation in violation of plaintiffs' rights under the RFPA.

22. The RFPA, enacted to restore a proper balance between the needs of law enforcement agencies and the rights of citizens to financial privacy, requires prior notice to a citizen that his financial records have been sought and places the burden on the government to justify the intrusion into the citizen's private financial affairs.

[23.] On February 18, 1981, the SEC purportedly issued a subpoena duces tecum to First National Bancshares, Inc. ("First National Bancshares"), a bank holding company which the SEC staff mistakenly believed owns a bank with which plaintiffs have had business dealings. Pursuant to Section 1005 of the RFPA, 12 U.S.C. §3405, the SEC staff forwarded to plaintiffs,

through their respective attorneys, a Customer Notice attaching a copy of the February 18 subpoena represented to have been sent to First National Bancshares. Plaintiffs discovered that a different subpoena, dated February 19, 1981, was in fact served upon First International Bancshares, not First National Bancshares, and that the scope of the February 19, 1981, subpoena was far broader than the subpoena provided to plaintiffs in the Customer Notice. The SEC never served a copy of the February 19, 1981, subpoena on plaintiffs.

24. Plaintiffs received notification through a Customer Notice from the SEC staff of the SEC's intention to seek plaintiffs' financial records from Republic National Bank of Dallas ("Republic Bank") and its subsidiary banks or other affiliated financial institutions. The Customer Notice sent to plaintiffs contained a subpoena dated February 25, 1981. The subpoena actually served on Republic Bank was a greatly expanded and different version of the subpoena provided to plaintiffs in the Customer Notices.

25. Plaintiffs also received Customer Notices indicating the intent of the SEC to seek financial records from Citibank, N.A. ("Citibank") and its subsidiary banks or other affiliated financial institutions. The Customer Notices contained a "subpoena" which required the production of documents contained in an "Attachment." The Attachment which supposedly contained a description of the financial records to be produced was not furnished to plaintiffs.

26. In addition, in April, 1980, the SEC staff issued a subpoena duces tecum to the First National Bank of Chicago ("First of Chicago") to obtain extensive financial records. Upon information and belief, this subpoena was fully complied with by First of Chicago. Fortuitously, plaintiffs were advised that on February 18, 1981, the SEC staff wrote a letter to First of Chicago in an improper attempt to "update" that subpoena without complying with the RFPA. The "update" letter calls for entirely different documents than did the April 16, 1980, subpoena. Plaintiffs did not receive notice of this new request for documents from the SEC in accordance with the RFPA.

[27.] Bankers Trust Company of New York also received a letter which purports to "update" a prior subpoena issued before the date the RFPA became applicable to the SEC.

Plaintiffs did not receive notice of this action from the SEC in accordance with the RFPA. Similar “update” letters, all in violation of plaintiffs’ rights under the RFPA, were also sent by the SEC to Chemical Bank and the Royal Bank of Canada.

28. Each of the subpoenas served by the SEC since November of 1980 has failed reasonably to describe the financial records sought by the SEC. The financial records which the SEC has attempted to subpoena are not reasonably relevant to any legitimate SEC law enforcement inquiry within the jurisdictional authority of the SEC. In further violation of the RFPA, the SEC has failed altogether to give Customer Notices in certain circumstances. In those in which the SEC has purported to give notice, it has failed to state with reasonable specificity the nature of the law enforcement inquiry pursuant to which the subpoena was allegedly issued and has otherwise failed to comply with the RFPA.

[28a.] In December, 1980, the SEC staff advised Mr. A. Robert Abboud, former chairman of First Chicago Corporation, that his testimony would be taken in the course of the SEC investigation. In January, 1981, the SEC staff, by letters to counsel for Messrs. N. B. Hunt, W. H. Hunt and Lamar Hunt, requested that each of these plaintiffs execute a consent, pursuant to §1104 of the RFPA (12 U.S.C. §3404), to permit the SEC to inquire into their banking relationships with First National Bank of Chicago during the deposition of Mr. Abboud.

[28b.] Enclosed with each of the letters to counsel were a copy of a subpoena, dated April 16, 1980, addressed to First Chicago Corporation and a form of Customer Consent and Authorization for Access to Financial Records. These forms were executed and returned to the SEC by the plaintiffs to whom they were sent.

[28c.] The copies of the subpoenas sent to Messrs. W. H. Hunt, N. B. Hunt and Lamar Hunt were different than the subpoena actually served on the First National Bank of Chicago which was far broader than the subpoenas attached to the consent forms which these plaintiffs executed. Therefore, the SEC failed to give proper notice to plaintiffs of the scope of their consents. The SEC also attempted to elicit testimony on the basis of the improperly obtained consents in violation of Section 1104(a)(3) of the RFPA, 12 U.S.C. §3404(a)(3), which provides

that a consent is valid only if it “identifies the financial records which are authorized to be disclosed.”

[28d.] By letter, dated March 4, 1981, to counsel for First National Bank in Dallas, the SEC staff purported to amend the February 19, 1981 subpoena addressed to First National Bancshares, Inc. (see ¶23, above). No plaintiff received a customer notice with respect to this attempt to change the scope of the subpoena.

[28e.] On or after November 10, 1980, the SEC staff has sought to obtain financial records of one or more plaintiffs through telephone calls or other oral requests to financial institutions of which such plaintiffs are customers. As used throughout this Amended Verified Complaint, the term “financial records” is defined as set forth in Section 1101 of the RFPFA, 12 U.S.C. §3401, and includes not only the records themselves but also information derived therefrom.

[28f.] Section 1102 of the RFPFA, 12 U.S.C. § 3402, allows the SEC to seek and obtain customers’ financial records from a financial institution only through five specified access methods. Telephone calls and other oral requests are not included among the authorized access methods.

[28g.] Even if the RFPFA permitted the SEC to seek plaintiffs’ financial records from financial institutions through telephone calls or other oral requests, the RFPFA would require that the SEC provides plaintiffs with notice of such requests. The SEC has not provided plaintiffs with notice of any of its oral requests to financial institutions for plaintiffs’ financial records.

[28h.] On or after November 10, 1980, the SEC has obtained financial records within the purview of the RFPFA of one or more plaintiffs from one or more financial institutions (including the First National Bank of Chicago) of which such plaintiffs are customers. The SEC has obtained such financial records without providing notice to plaintiffs in violation of Section 1102 of the RFPFA, 12 U.S.C. § 3402.

[28i.] Members of the SEC staff have participated in one or more meetings with representatives of other government agencies (including the CFTC) at which the agencies’

respective investigations of plaintiffs were discussed. Upon information and belief, plaintiffs' financial records in the possession of the SEC were disclosed to the representative of the other government agencies who attended such meetings.

[28j.] The SEC has never provided notice to plaintiffs of its disclosure of their financial records to other agencies, has never obtained the other agencies' written certification that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agencies, and has never attempted to determine whether any such certification had been served upon plaintiffs. Such action by the SEC violates Section 1112 of the RFPFA, 12 U.S.C. § 3412.

[28k.] Upon information and belief, the SEC has sought and/or obtained plaintiffs' financial records from other government agencies without providing written certification that there is reason to believe that the records are relevant to a legitimate law enforcement investigation within the SEC's jurisdiction. Such action by the SEC violates Section 1112 of the RFPFA, 12 U.S.C. § 3412.

[28l.] Members of the SEC staff have admitted that they intentionally and deliberately engaged in conduct which violates plaintiffs' rights under the RFPFA. However, the SEC's responses to plaintiff's Requests for Admissions and the SEC General Counsel in his testimony have denied that the SEC staff has violated the RFPFA in conducting the SEC investigation.

[29.] Based upon the foregoing, plaintiffs' rights under the RFPFA have been and will continue to be violated by the SEC unless the relief plaintiffs seek is granted.

(b) The Legitimacy of the SEC Investigation
as a Law Enforcement Inquiry

[29a.] SEC employees have stated to other SEC staff and to counsel for the plaintiffs that the SEC intends to explore "every facet" of the "Hunt empire" and that "while the Hunts had operated their business affairs in private for many years, that was going to come to an end."

These statements by the SEC staff exhibit an intentional attempt to use the SEC investigation as a means to invade the privacy of the plaintiffs in violation of their constitutional rights.

[29b.] While the motion to quash the February 18, 1981, First National Subpoena was pending, an SEC staff member intentionally and deliberately destroyed an official SEC Supplemental Order of Investigation, dated February 27, 1981. This document directly relates to the issue raised in plaintiffs' March 2, 1981 motion to quash as to whether the SEC staff person who signed the subpoenas and "update letters" described above (¶'s 23-27) was an authorized officer of the Commission at the time the subpoenas and update letters were issued to the various financial institutions. This action violates, inter alia, the statutory prohibition against destroying a public record, 18 U.S.C. §2071, and the SEC's recently revised conduct regulation (45 Fed. Reg. 36064 (1980), amending 17 C.F.R. §200.735-10(k), subpart M).

[29c.] Upon information and belief, SEC staff members have disclosed confidential financial documents and information obtained in the course of its investigation, and confidential information pertaining to the investigation, to third parties who are not employees of the SEC or of any other government agency or department.

[29d.] Upon information and belief, SEC staff members on numerous occasions have participated in meetings and exchanged information and documents obtained in the course of the SEC Investigation with employees of other federal agencies and departments including, inter alia, employees of the CFTC and the Department of Justice and with the staffs of Congressional committees.

[29e.] The actions of the SEC staff described above (¶'s 29c and d) violate one or more controlling statutes and regulations including, inter alia, Section 24(b) of the 1934 Act, 15 U.S.C. 78x(b) (1976), the Trade Secrets Act, 18 U.S.C. §1905 (1976), the Privacy Act, 5 U.S.C. §552a(b) 1976), 17 C.F.R. §240.0-4 (1980), 17 C.F.R. §203.2 (1980); and the SEC's recently revised conduct regulation, 45 Fed. Reg. 36066 (1980), to be codified in 17 C.F.R. §200.3(b)(6)(i).

[29f.] SEC employees, on one or more occasions, sought the advice of the Chief Counsel to the SEC's Division of Enforcement as to whether the SEC should provide customer notices to plaintiffs in connection with the "update letters" described in paragraphs 26 and 27, above. Despite the Chief Counsel's advice that customer notices were required by the RFPA, the SEC staff ignored his advice and failed to provide plaintiffs with customer notices advising that the update letters had been sent.

[29g.] During the course of its investigation the SEC staff has issued subpoenas, sent "update letters", and otherwise sought and obtained financial information and documents from corporations which do not file reports with the SEC, are not covered by the SEC's Investigative Order and are not subject to the jurisdiction of the SEC.

[29h.] The SEC, through its counsel for professional responsibility and its ethics officer, is undertaking an investigation of its staff to determine whether disciplinary action is warranted against any of the SEC staff involved in the SEC Investigation. However, the SEC General Counsel has declined to have these staff members, some of whom have acknowledged intentionally violating plaintiffs' rights under the RFPA, removed from the SEC Investigation pending the completion of the internal investigation.

[29i.] The SEC has engaged in substantial unsupervised or improperly supervised activity during its investigation. The SEC internal RFPA procedures required that all subpoenas to financial institutions must be approved by a supervisor at least at the level of Assistant Regional Administrator or Assistant Director of the Division of Enforcement. No such supervisor approved the subpoenas described in paragraphs 23-25 above. The branch chief in charge of the investigation previously had been turned down for the position of Assistant Director because, inter alia, of insufficient supervisory experience. Even this branch chief did not review all the subpoenas. He did, however, review and edit the "update letters" prior to their being sent to the financial institutions. The excised subpoenas contained in the Customer Notices to plaintiffs were not reviewed by any supervisor, including the same branch chief.

[29j.] The legality of the SEC investigation as a legitimate law enforcement inquiry is undermined by the SEC's violations of the RFPA (§§s 21-28) and of the other statutes and regulations described above (§§s 29b-29h). These violations constitute bad faith on the part of the SEC staff as well as substantial governmental misconduct, and exhibit a deliberate and intentional pattern of conduct by the SEC to avoid the requirements of the RFPA and other statutes and regulations and to deprive plaintiffs' of their constitutional and statutory rights.

(c) Jurisdictional Abuses

[30.] The purpose and scope of the SEC investigation is defined and limited by the SEC investigative order. The SEC investigative order authorizes the SEC to investigate certain alleged "transactions, acts, and practices" that may have been "in possible violation of Sections 10(b), 13(a), 13(d) and 15(c) of the [Securities] Exchange Act [of 1934] and Rules 10b-5, 13a-1, 13a-11, 13a-13, 13d-1, and 15c3-1 promulgated thereunder" The SEC has manifested its intent, however, to explore a range of topics going far beyond the SEC investigative order, and the SEC has ignored, and continues to ignore, the specific limitations imposed by that order.

31. In subpoenas which the SEC has issued since November of 1980, the SEC has purported to describe its enforcement inquiry by listing every statute that may confer some enforcement jurisdiction upon it, and without seeking to limit the scope of the subpoenas to the statutes and rules set forth in the SEC investigative order. None of the statutes and SEC rules set forth in the SEC investigative order would be violated unless a challenged act or practice had some reasonably identifiable relationship to securities, securities transactions, or compliance with SEC disclosure or net capital requirements. A reading of the financial records sought through its subpoenas demonstrates that the SEC has improperly and illegally ranged far beyond its legitimate investigative jurisdiction.

32. The lines of inquiry evidenced in depositions conducted by the SEC in this investigation indicate that the SEC intends to pursue matters having no relationship to the SEC investigative order. In the deposition of Charles H. Mercer, for example, the SEC inquired into

areas that clearly invaded plaintiffs' right to privacy and were well beyond the parameters of the SEC investigative order. Likewise, in the deposition of James L. Parker, another Hunt Energy Corporation employee, the SEC has sought to delve into matters which, if permitted to continue, exceed the SEC's jurisdiction and constitute an abuse of the SEC's process.

33. This conduct by the SEC is in violation of the congressional delegation of power pursuant to which the SEC conducts investigations and the rules by which the SEC permits delegation of investigative authority within the agency.

34. Any investigation conducted by the SEC must be conducted pursuant to a legitimate, congressionally-authorized purpose and subpoenas issued must be relevant to that purpose. The SEC investigation, as it is currently being conducted, violates plaintiffs' Fourth and Fifth Amendment rights granted to them by the United States Constitution.

35. The SEC's conduct is continuing in nature. Unless properly enjoined, plaintiff's Fourth and Fifth Amendment rights will be irreparably violated in the future.

(d) Intrusion Upon Exclusive Jurisdiction of the CFTC

36. The scope of the SEC's investigative authority is limited not only by the agency's jurisdictional statutes and by its investigative order but also by the CFTC Act.

37. Section 2 of the CFTC Act vests the CFTC with "exclusive jurisdiction with respect to accounts, agreements. . . and transactions involving contracts of sale of a commodity for future delivery. . . ." 7 U.S.C. §2.

38. The SEC has ignored this congressional delegation of exclusive jurisdiction to the CFTC and has proceeded and continues to proceed with an investigation into commodity futures transactions that invades the CFTC's exclusive jurisdictional province. Unless properly enjoined, the SEC will continue to conduct its investigation beyond its jurisdictional authority and will continue to invade the exclusive jurisdiction of the CFTC.

WHEREFORE, plaintiffs request this Court to:

a. enter a preliminary and permanent injunction directing the SEC and its officers, agents, employees, attorneys, and all persons in active concert with the SEC who receive actual notice of the order:

1(a) To refrain from seeking or obtaining financial records pertaining to any plaintiff from a financial institution of which he is a customer, except pursuant to Section 21(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(h)(2), or Section 1109 of the Right to Financial Privacy Act, 12 U.S.C. § 3409;

(i) without serving upon such plaintiff a customer notice which reasonably describes the financial records which are sought in compliance with 12 U.S.C. § 3402;

(ii) without serving upon such plaintiff a customer notice which states with reasonable specificity the nature of the law enforcement inquiry in which the SEC is engaged in compliance with 12 U.S.C. § 3405;

(iii) by any access method (including but not limited to telephone calls, other oral requests, and update letters) other than those which the SEC may be authorized to use under 12 U.S.C. § 3402;

(iv) by administrative subpoena without serving a complete copy of that subpoena upon any plaintiff to whom the financial records being sought pertain in compliance with 12 U.S.C. § 3405(2); and

(v) without otherwise complying with the requirements of the RFPA.

1(b) To refrain from transferring financial records which pertain to any plaintiff and which have been obtained from a financial institution of which that plaintiff is a customer, and to refrain from receiving such records from another

government agency unless the requirements of 12 U.S.C. § 3412 have been and are satisfied.

1(c) To report to the Court in writing, within 30 days after the issuance of both the preliminary and permanent injunctions, respectively, concerning the measures the SEC has taken and will take to ensure compliance with such injunction and with the RFPA.

[2.] To provide a copy of any order herein requiring the SEC to comply with the Right to Financial Privacy Act to any United States District Judge from whom the SEC seeks permission to obtain plaintiffs' financial records from a financial institution on an ex parte basis pursuant to Section 21(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. §78u(h)(2), or Section 1109 of the Right to Financial Privacy Act, 12 U.S.C. §3409, or to seek such permission from this Court;

3. To limit the SEC investigation to seeking facts relevant to the specific matters described in the SEC's April 4, 1980, "Amended and Substituted Order Directing Private Investigation and Designating Officers to Take Testimony";

4. To refrain from seeking facts relating to matters within the exclusive jurisdiction of the Commodity Futures Trading Commission;

[b.] enter an order temporarily staying all proceedings, including discovery, in the SEC investigation until (i) this Court has ruled upon plaintiffs' motion for a permanent injunction and (ii) the internal SEC Investigation instituted by the SEC's counsel for professional responsibility has been concluded, the SEC has advised the Court and plaintiffs of the results of that investigation, and plaintiffs have had a reasonable opportunity to challenge the SEC's conclusions in Court;

[c.] issue an order, upon final adjudication of plaintiffs' motion for permanent injunctive relief, directing the SEC and its officers, agents, employees, attorneys, and all

persons in active concert with the SEC who shall receive actual notice of the order to refrain from conducting any further proceedings in SEC Investigation HO-1233 because that investigation has been irreparably tainted and prejudiced by violations of plaintiffs' rights by the SEC staff during the course of that investigation.

[d.] enter an order awarding plaintiffs;

1. the costs of this action;
2. attorneys' fees under the RFPA; and
3. such other and further relief as the Court may deem proper.

Respectfully submitted,

May 8, 1981

Ivan Irwin, Jr.
Roger Goldberg
Roderic G. Steakley
Brett A. Ringle

Attorneys for William Herbert
Hunt and Lamar Hunt

OF COUNSEL:

SHANK, IRWIN, CONANT,
WILLIAMSON & GREVELLE
3100 First National Bank Building
Dallas, Texas 75202

E. Barrett Prettyman, Jr.
Philip C. Larson
Daniel L. Taylor
Wendy Collins Perdue

Attorneys for Nelson Bunker Hunt

OF COUNSEL:

HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Paul L. Perito
John P. Wintrol

Attorneys for Houston B. Hunt,
Albert D. Huddleston and
Douglas H. Hunt

OF COUNSEL:

PERITO, DUERK, CARLSON
& PINCO, P.C.
1140 Connecticut Avenue, N.W. #400
Washington, D.C. 20036

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

W. H. HUNT, being duly sworn, deposes and says that he is one of the plaintiffs in this action; that he has read the foregoing Amended Verified Complaint and knows the contents thereof and the same are true of his own knowledge except as to any matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

W. H. HUNT

SUBSCRIBED AND SWORN TO BEFORE ME on this 8th day of May, 1981.

Notary Public in and for
Dallas County, Texas

My commission expires:
11-30-84

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Verified Complaint has been forwarded by air courier to the attorneys for Defendant:

Michael K. Wolensky, Esq.
Associate General Counsel

John P. Sweeney, Esq.
Assistant General Counsel

Richard M. Humes, Esq.
Special Trial Counsel

United States Securities and
Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

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Roger Goldberg