

FILED IN CLERK'S OFFICE

ORIGINAL

AUG 23 2005

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v

BARRY A BINGHAM

and

BINGHAM CAPITAL MANAGEMENT  
CORPORATION,

Defendants.

Civil Action No.:

**1:05-cv-2187**

**TWT**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The plaintiff, Securities and Exchange Commission ("Commission"), files this complaint and alleges the following:

**SUMMARY**

1. This case involves, among other things, the fraudulent sale of investments in a hedge fund and the misappropriation of hedge fund assets.

Plaintiff brings this action to enjoin violations of the federal securities laws by

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Consulted  
Pretrial Conference  
Title VI/ VII/ VIII  
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and to obtain relief from Bingham Capital Management Corporation (“Capital Management”), an unregistered investment adviser, and its chief executive officer and sole shareholder, Barry A. Bingham (“Bingham”) for their actions involving fraud in the offer and sale of securities, investment advisor fraud, and misappropriation of client funds.

2 Bingham and Capital Management’s sole client was a hedge fund organized in August 2000 as a limited partnership, Bingham Growth Partners, L.P (hereinafter “Growth Partners,” “the partnership,” or “the fund”) Under the terms of Growth Partners’ partnership agreement, Capital Management was entitled to an asset management fee of 0.25% of the value of the fund’s assets quarterly, as well as a percentage of trading profits; at the same time, it was obligated to provide Growth Partners’ limited partners, the investors, with accurate quarterly statements documenting the fund’s performance.

3 Between August 2000 and September 2002, Bingham and Capital Management sold approximately \$1,826,218 in limited partnership interests to at least 22 investors. Much of this amount was raised on the basis of Bingham’s misrepresentations about the fund’s past returns.

4. In the first quarter of 2001, Growth Partners suffered its first significant trading losses. In April 2001, Bingham and Capital Management began a pattern of misrepresenting the fund's performance to investors. The misrepresentations to investors continued and intensified over time, as did Growth Partners' trading losses.

5. From July 2001 through November 2002, Bingham and Capital Management misappropriated approximately \$141,637 in investor funds, some of which were in the form of commission rebates which Bingham and the brokerage firms involved called "soft dollar credits".

6. Bingham arranged with two separate brokerage firms for his client, Growth Partners, to pay inflated brokerage commissions for executing securities trades, with the additional commissions generating soft dollar credits. Without adequate disclosure to the Growth Partners' investors, Bingham then sought and received \$34,638 or more in soft dollar credit payments to Capital Management's creditors or to Capital Management directly.

7 Defendants Capital Management and Bingham, by virtue of their conduct, directly or indirectly, have engaged in and, unless enjoined, will engage in violations of Sections 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 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

### **JURISDICTION AND VENUE**

8. The Commission brings this action pursuant to Sections 20(b), (c) and (d) of the Securities Act [15 U.S.C. §§ 77t(b)-(d)], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d)-(e)], to enjoin the Defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

9. 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)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

10. The Defendants, directly and indirectly, have made use of the mails, the means and instrumentalities of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint

11 Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9], because certain of the transactions, acts, practices and courses of business constituting violations of the Securities Act, Exchange Act and Advisers Act have occurred within the Northern District of Georgia. Among other things, Bingham resides within, and Capital Management maintained its office and principal place of business within the Northern District of Georgia. Furthermore, investors in the Northern District of Georgia have been solicited to purchase, and have purchased, investments and purported investments through Capital Management, as set forth in this Complaint.

### **THE DEFENDANTS**

12. Bingham is presently in the custody of the United States Bureau of Prisons, having pled guilty to and been convicted of a single count of federal

securities fraud for his conduct relating to two of the Growth Partners investors. Previously and during all relevant times, he resided in Atlanta, Georgia. Since its inception in August 2000, Bingham has been the chief executive officer and sole shareholder of Capital Management. During this entire time, Bingham has exercised exclusive and complete control over Capital Management.

13. Capital Management is a Georgia Corporation with its principal place of business in Atlanta, Georgia.

14. Growth Partners is a Georgia Limited Liability Partnership with its principal place of business in Atlanta, Georgia. Growth Partners was organized as a hedge fund, the investors in which were its limited partners. Capital Management was the sole general partner of, and the investment adviser to, Growth Partners.

## **FACTS**

### **A. Starting a Hedge Fund and Concealing Market Losses**

15. In August 2000, Bingham formed both Capital Management, an investment adviser, and Growth Partners, a hedge fund.

16. As the sole officer and employee of Capital Management, Bingham managed Growth Partners and made all decisions regarding Growth Partners' trading in securities.

17. Under a partnership agreement between Capital Management and Growth Partners' investors, Bingham and Capital Management were entitled to an asset management fee of 0.25% of the value of Growth Partners' holdings each quarter, as well as to 20% of profits.

18. The partnership agreement also obligated Bingham to provide investors with quarterly reports accurately reflecting the performance of their investments no later than 45 days after the end of each calendar quarter.

19. From the inception of Growth Partners through March 31, 2001, Bingham and Capital Management raised a total of approximately \$521,537 from thirteen investors

20. In the first quarter of 2001 (January 1 through March 31), Growth Partners suffered market losses of approximately \$90,141.

21. Beginning in approximately April 2001, Bingham and Capital Management concealed Growth Partners' losses by misrepresenting the fund's return for the first quarter of 2001 to investors

22. In approximately April 2001, Bingham sent out a commentary letter to Growth Partners investors falsely claiming that the fund had "outpaced [the NASDAQ and S&P 500] quite handily by posting a gain of 5%" for the first quarter of 2001. At the time he made this statement, Bingham knew it to be false, and knew that Growth Partners had actually lost money during the quarter.

23. In the second quarter of 2001, Bingham raised approximately \$143,656 more from three new investors and one existing investor contributing additional funds. Growth Partners had an excellent quarter, with market gains of approximately \$155,056.

24. Bingham and Capital Management reported to investors in July 2001 that the fund was up 24.37% for the second quarter, a figure that, by itself, was not materially inaccurate. However, because Bingham omitted disclosing the material fact that he had misrepresented returns for prior periods and never corrected those



misrepresentations, investors were misled about both the total value of their individual interests in Growth Partners and about the fund's cumulative return for the year by these representations.

**B. Soliciting Additional Investments on the Basis of Continuing Misrepresentations**

25. In the third and fourth quarters of 2001, Bingham raised approximately \$650,188 more from three new investors and two existing investors contributing additional funds

26 The new investments in Growth Partners made during the third and fourth quarters of 2001 were made on the basis of misrepresentations by Bingham and Capital Management about Growth Partners' historic returns

27. For example, one investor relying on Bingham's misrepresentations erroneously calculated his return for the first half of 2001 to be 29%. Shortly thereafter, on July 13, 2001, he invested an additional \$400,000 in Growth Partners

28. In the third and fourth quarters of 2001, Growth Partners suffered trading losses totaling approximately \$1,141,242.

29. During the time these losses were being sustained, Bingham and Capital Management concealed the losses from investors by a pattern of misrepresentations concerning the fund's performance.

30. For example, on November 5, 2001, Bingham and Capital Management sent a fax to an investor stating "We had a decent October [2001], we were up 2.067% for the month." In reality, as Bingham knew, Growth Partners had suffered significant losses in October 2001.

31. Similarly, in December 2001, Bingham sent a fax to an investor stating that Growth Partner's returns for November 2001 had been almost 2%. In reality, as Bingham knew, Growth Partners had suffered significant losses in November 2001.

32. In early December 2001, Bingham and Capital Management told one investor that his account was worth \$510,168.65 as of November 30, 2001. Bingham knew this statement was false at the time he made it. In reality, the value of the investor's account had fallen to less than \$100,000 as of November 30, 2001.

33. In January 2002, Bingham and Capital Management mailed two other investors an undated performance report for Growth Partners for calendar year

2001. In the performance report, Bingham stated that the investors' joint account was worth \$77,015.27, and that this figure represented a gain of 29.41% over the value of their portfolio at the beginning of 2001. Bingham knew these statements to be false at the time he made them. Actually, the value of the investors' account at the end of 2001 had fallen to below \$5,000.

34. In January 2002, Bingham and Capital Management send two other investors a "Performance Report" indicating, among other things, that their stake in Growth Partners had earned 5.60% in the fourth quarter of 2001. Bingham knew this statement to be false. In fact, Growth Partners had suffered significant losses in the fourth quarter of 2001.

35. In approximately January 2002, Bingham and Capital Management sent one investor a statement showing the value of her holdings in Growth Partners to be \$145,895 on December 31, 2001, when it had actually fallen to approximately \$3,178. Based on this misrepresentation, on February 10, 2002, the investor added another \$50,000 to her Growth Partners investment.

**C. False Year-End 2001 Financial Statements**

36. In January 2002, Bingham prepared and distributed to investors a set of wholly fictitious financial statements for Growth Partners for 2001, including a

document purporting to be an “Independent Auditor’s Report” vouching for the statements’ conformity with generally accepted accounting principles.

37. The fictitious financial statements informed investors that Growth Partners’ assets were \$1,352,464 at year-end 2001, when their value had actually fallen to approximately \$200,000 or less. Bingham knew that the \$1,352,464 figure was inaccurate at the time he provided the fictitious financial statements to investors.

**D. Misrepresentations Continued until Growth Partners Lost All its Value**

38. From January through September 2002, Bingham raised approximately \$574,344 more in Growth Partners investments from two new investors and six existing investors contributing additional funds.

39. All \$574,344 of these new investments in Growth Partners made during 2002 were made on the basis of misrepresentations by Bingham and Capital Management about Growth Partners’ historic returns

40. In July 2002, for example, Bingham and Capital Management sent one investor statements indicating that her investments in Growth Partners had increased in value by 2.83% during the 2<sup>nd</sup> quarter of 2002. In reality, the investor’s interests had lost over 10% of their value during that period. On the basis of these

misrepresentations, on or about September 10, 2002, the investor contributed an additional \$7,400 to Growth Partners.

41. From January through September 2002, Growth Partners suffered approximately \$347,084 in trading losses.

42. Over the lifetime of Growth Partners, approximately \$293,842 was returned to investors in two separate payments. The second of these payments, for \$252,300, took place in September 2002. As a result of the \$252,300 payment, the approximately \$1,400,000 or more in net market losses Growth Partners suffered over its lifetime, and Bingham's misappropriations, Growth Partners was left with virtually no assets.

#### **E. Wrongful Takings of Investors Funds**

43 Between July 2001 and September 2002, Bingham and Capital Management misappropriated approximately \$108,955 in Growth Partners' investor assets through diverting new money coming into the partnership and through making transfers from Growth Partners' bank and/or brokerage accounts. These misappropriations were not disclosed to current or prospective investors.

#### **F. Soft Dollar Fraud**

44. Between July 2001 and November 2002, Bingham and Capital

Management additionally misappropriated from Growth Partners approximately \$34,638 of commission rebates which Bingham termed “soft dollar credits.”

45. Initially, Bingham and Capital Management obtained brokerage services for Growth Partners through Bank of America. In July 2001, Bingham and Capital Management opened up a second brokerage account for Growth Partners at Spear, Leeds & Kellogg, L.P. (“Spear Leeds”), now known as Goldman Sachs Execution & Clearing, L.P. Both of these brokerage accounts remained open until April 2002.

46. Bingham and Capital Management entered into an arrangement with Spear Leeds to provide so-called “soft dollar credits”, or rebates, of a portion of the commissions generated from securities trades ordered by Bingham and Capital Management in the Growth Partners portfolio.

47. In order to fund the arrangement, Bingham and Capital Management specifically negotiated with Spear Leeds for Growth Partners to pay a commission rate of \$0.06 per share, three times the rate that otherwise would have been available. Two-thirds of the commission dollars paid to Spear Leeds became so-called soft dollar credits.

48 Spear Leeds used the credits to pay approximately \$6,332 of vendor invoices submitted by Bingham or Capital Management, all of which were for non research-related “overhead” expenses of Capital Management such as phone services, legal services, office rent, and computer rental.

49. In April 2002, Bingham and Capital Management opened up a new brokerage account for Growth Partners with Electronic Trading Group, LLC (“ETG”), a firm for whom Bingham also worked as a proprietary stock trader. Bingham served as the registered representative for the Growth Partners account at ETG.

50. When Bingham opened up the ETG account for Growth Partners, he specifically negotiated a commission rate which was four times ETG’s going rate. Bingham and Capital Management received  $\frac{3}{4}$  of the commission dollars generated at ETG by Growth Partners’ trading back in the form of soft dollar credits

51. From the time the ETG account was opened through November 2002, Bingham and Capital Management sought and obtained payment of \$28,306 in soft dollar credits from ETG in 8 separate requests. All of the payments were made to Bingham or Capital Management directly, rather than to vendors.

52. Of the \$28,306 in soft dollar payments by ETG, only \$5,102 was purportedly reimbursements for research-related expenditures.

53. Of the remaining \$23,204 in soft dollar credits paid out by ETG, approximately \$13,843 was purportedly for reimbursements to Capital Management of its general business expenses, including rent.

54. Bingham and Capital Management also sought and received payments from ETG on the basis of invoices for Bingham's personal expenses.

55. After trading activity ceased in the Growth Partners account, in November 2002, ETG paid out the remaining soft dollar balance of \$8,856 to Capital Management, without Capital Management having provided any invoice for purported reimbursement

56. Bingham failed to disclose to Growth Partners investors, among other things, the fact that soft dollar credits went for his personal expenses, and that Growth Partners paid higher commission rates than otherwise would have been available to it in order to generate the soft dollar credits.

57. The soft dollar credits paid to Capital Management or for its benefit by Spear Leeds and ETG were the assets of Growth Partners, since it paid the brokerage commissions that generated them



**COUNT I--FRAUD**  
**Violations of Section 17(a)(1) of the Securities Act**  
**[15 U.S.C. § 77q(a)(1)]**

58. Paragraphs 1 through 57 are hereby realleged and are incorporated herein by reference.

59. From at least April 2001 through at least September 2002, Defendants Bingham and Capital Management, in the offer or sale of securities, directly or indirectly, employed devices, schemes, or artifices to defraud purchasers of such securities, all as more particularly described above.

60 Defendants Bingham and Capital Management knowingly, intentionally and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud

61. In engaging in such conduct, the Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

62. While engaging in the courses of conduct described above, Defendants Bingham and Capital Management, directly or indirectly, made use of the mails, or means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce.

63 By reason of the foregoing, Defendants Bingham and Capital Management violated, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**COUNT II—FRAUD**  
**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act[15 U.S.C. §§**  
**77q(a)(2) and 77q(a)(3)]**

64. Paragraphs 1 through 57 are hereby realleged and are incorporated herein by reference

65. From at least April 2001 through at least September 2002, Defendants Bingham and Capital Management, in the offer or sale of the securities described herein, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a) obtained money or property by means of untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b) engaged in transactions, practices, or courses of business which would and did operate as a fraud or deceit upon the purchasers of securities, all as more particularly described above.

66 By reason of the foregoing, Defendants Bingham and Capital Management violated, and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

**COUNT III--FRAUD**  
**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]**

67. Paragraphs 1 through 57 are hereby realleged and are incorporated herein by reference.

68. From at least April 2001 through at least November 2002, Defendants Bingham and Capital Management, in connection with the purchase or sale of securities described herein, by use of the means and instrumentalities of interstate commerce and by use of the mails, directly or indirectly:

- a) employed devices, schemes, or artifices to defraud;
- b) 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; and
- c) engaged in acts, practices, or courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities.

69 Defendants Bingham and Capital Management knowingly, intentionally and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, make untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, the Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

70 By reason of the foregoing, Bingham and Capital Management violated, and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(a)(2)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**COUNT IV--FRAUD**  
**Violations of Section 206(1) of the Advisers Act**  
**[15 U.S.C. § 80b-6(1)]**

71. Paragraphs 1 through 57 are hereby realleged and are incorporated herein by reference.

72. From at least April 2001 through at least November 2002, Defendants Bingham and Capital Management, acting as investment advisers, by use of the mails and the means and instrumentalities of interstate commerce, directly or indirectly, employed devices, schemes, and artifices to defraud one or more

advisory clients and/or prospective clients, all as more particularly described above.

73. Defendants Bingham and Capital Management knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants Bingham and Capital Management acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth

74 By reason of the foregoing, Bingham and Capital Management violated, and, unless restrained and enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)]

#### **COUNT V--FRAUD**

##### **Violations of Section 206(2) of the Advisers Act** **[15 U.S.C. § 80b-6(2)]**

75. Paragraphs 1 through 57 are hereby realleged and are incorporated herein by reference

76 From at least April 2001 through at least November 2002, Defendants Bingham and Capital Management, acting as investment advisers, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices and courses of business which would

and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients

77. By reason of the foregoing, Defendants Bingham and Capital Management violated, and, unless restrained and enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Securities and Exchange Commission respectfully prays for.

I

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants Bingham and Capital Management committed the violations alleged herein.

II.

Permanent injunctions enjoining Defendants Bingham and Capital Management, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, and each of them, whether as principals or as aiders and abettors, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)],

Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b) and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)]

### III.

An order requiring Bingham and Capital Management to disgorge all ill-gotten gains with prejudgment interest, to effect the remedial purposes of the federal securities laws

### IV

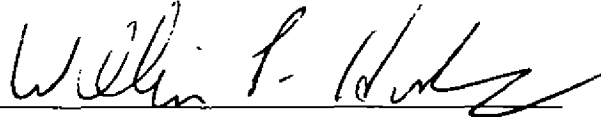
An order pursuant to Section 20(d) of the Securities Act, [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)], imposing civil penalties against Bingham and Capital Management

### V

Such other and further relief as this Court may deem just, equitable and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors

Dated this 23rd day of August, 2005.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William P. Hicks", written over a horizontal line.

William P. Hicks  
District Trial Counsel  
Georgia Bar No. 351649

A handwritten signature in black ink, appearing to read "Alana R. Black", written over a horizontal line.

Alana R. Black  
Staff Attorney  
Georgia Bar No 785045

COUNSEL FOR PLAINTIFF  
Securities and Exchange Commission  
3475 Lenox Road, N E., Suite 500  
Atlanta, Georgia 30326-1232  
Tel: (404) 842-7675  
Fax: (404) 842-7679



**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF GEORGIA**

**ATLANTA DIVISION**

**Securities and Exchange Commission,**

**SUMMONS IN A CIVIL CASE**

**Plaintiff,**

**V.**

**CASE NUMBER:**

**1:05-cv-2187**

**Barry A. Bingham**

**and**

**Bingham Capital Management  
Corporation.**

**Defendants.**

**TO: Barry A. Bingham  
c/o Wilmer Parker, Esq.  
Gillen Parker & Withers LLC  
One Securities Centre, Suite 1050  
3490 Piedmont Road, N. E.  
Atlanta, GA 30305-1743**

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

**William P. Hicks, Esq.  
Alex Rue, Esq.  
Securities and Exchange Commission  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326-1232**

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**LUTHER D. THOMAS**

**CLERK**

**AUG 22 2005**

**DATE**

  
**(BY) DEPUTY CLERK**

# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Securities and Exchange Commission,

## SUMMONS IN A CIVIL CASE

Plaintiff,

V.

CASE NUMBER:

1:05-cv-2187

Barry A. Bingham

and

Bingham Capital Management  
Corporation,

Defendants.

TO: Bingham Capital Management Corporation  
c/o Barry A. Bingham  
c/o Wilmer Parker, Esq.  
Gillen Parker & Withers LLC  
One Securities Centre, Suite 1050  
3490 Piedmont Road, N. E.  
Atlanta, GA 30305-1743

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

William P. Hicks, Esq  
Alex Rue, Esq.  
Securities and Exchange Commission  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326-1232

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

LUTHER D. TULLOCH

CLERK

AUG 23 2005

DATE

(BY) DEPUTY CLERK

ORIGINAL 1:05-cv-2187

JS44 (Rev 5/05 NDGA)

## CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

## I. (a) PLAINTIFF(S)

Securities and Exchange Commission

## (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANT(S)

Barry A. Bingham and  
Bingham Capital Management Corporation

## COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

Fulton

(IN U.S. PLTF. CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

William P. Hicks, Esq./Alana R. Black, Esq.  
Securities and Exchange Commission  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, GA 30326-1232 Tel No 404-842-7675

## ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 U.S. GOVERNMENT PLAINTIFF  
☐ 2 U.S. GOVERNMENT DEFENDANT  
☐ 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)  
☐ 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- | PLF                        | DEF  | PLF                        | DEF  |
|----------------------------|--|----------------------------|--|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 CITIZEN OF THIS STATE                   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE     |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 CITIZEN OF ANOTHER STATE                | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 FOREIGN NATION  |

## IV. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 ORIGINAL PROCEEDING  
☐ 2 REMOVED FROM STATE COURT  
☐ 3 REMANDED FROM APPELLATE COURT  
☐ 4 REINSTATED OR REOPENED  
☐ 5 TRANSFERRED FROM ANOTHER DISTRICT (SPECIFY DISTRICT)  
☐ 6 MULTIDISTRICT LITIGATION  
☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

## V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action taken by the SEC pursuant to violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Sections 206(1) & (2) of the Investment Advisers Act of 1940, and Rule 10b-5 thereunder.

- (IF COMPLEX, CHECK REASON BELOW)
- |   |   |
|---|---|
| <input type="checkbox"/> 1 Unusually large number of parties            | <input type="checkbox"/> 6 Problems locating or preserving evidence                 |
| <input type="checkbox"/> 2 Unusually large number of claims or defenses | <input type="checkbox"/> 7 Pending parallel investigations or actions by government |
| <input type="checkbox"/> 3 Factual issues are exceptionally complex     | <input type="checkbox"/> 8 Multiple use of experts                                  |
| <input type="checkbox"/> 4 Greater than normal volume of evidence       | <input type="checkbox"/> 9 Need for discovery outside United States boundaries      |
| <input type="checkbox"/> 5 Extended discovery period is needed          | <input type="checkbox"/> 10 Existence of highly technical issues and proof          |

CONTINUED ON REVERSE

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**VI. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)****CONTRACT - "0" MONTHS DISCOVERY TRACK**

- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL. VETERANS)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS

**CONTRACT - "4" MONTHS DISCOVERY TRACK**

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 198 FRANCHISE

**REAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 260 ALL OTHER REAL PROPERTY

**TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK**

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- ☐ 365 PERSONAL INJURY - PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

**BANKRUPTCY - "0" MONTHS DISCOVERY TRACK**

- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

**CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK**

- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ACCOMMODATIONS
- ☐ 444 WELFARE
- ☐ 440 OTHER CIVIL RIGHTS
- ☐ 445 AMERICANS WITH DISABILITIES - Employment
- ☐ 446 AMERICANS WITH DISABILITIES - Other

**PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK**

- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS (Filed Pro se)
- ☐ 555 PRISON CONDITIONS (Filed Pro se)

**PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK**

- ☐ 550 CIVIL RIGHTS (Filed by Counsel)
- ☐ 555 PRISON CONDITIONS (Filed by Counsel)

**FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK**

- ☐ 610 AGRICULTURE
- ☐ 620 FOOD & DRUG
- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- ☐ 630 LIQUOR LAWS
- ☐ 640 R.R. & TRUCK
- ☐ 650 AIRLINE REGS.
- ☐ 660 OCCUPATIONAL SAFETY/HEALTH
- ☐ 660 OTHER

**LABOR - "4" MONTHS DISCOVERY TRACK**

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- ☐ 740 RAILWAY LABOR ACT
- ☐ 760 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

**PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK**

- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK

**PROPERTY RIGHTS - "0" MONTHS DISCOVERY TRACK**

- ☐ 830 PATENT

**SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK**

- ☐ 881 HIA (1385R)
- ☐ 882 BLACK LUNG (923)
- ☐ 883 DRVC (405(g))
- ☐ 883 DMWV (405(g))
- ☐ 884 SSD TITLE XVI
- ☐ 885 RSI (405(g))

**FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK**

- ☐ 870 TAXES (U.S. PLAINTIFF OR DEFENDANT)
- ☐ 871 IRS - THIRD PARTY 28 USC 7609

**OTHER STATUTES - "4" MONTHS DISCOVERY TRACK**

- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ACC. RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 510 SELECTIVE SERVICE
- ☐ 675 CUSTOMER CHALLENGE 12 USC 3410
- ☐ 691 AGRICULTURAL ACTS
- ☐ 692 ECONOMIC STABILIZATION ACT
- ☐ 693 ENVIRONMENTAL MATTERS
- ☐ 694 ENERGY ALLOCATION ACT
- ☐ 695 FREEDOM OF INFORMATION ACT
- ☐ 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES
- ☐ 960 OTHER STATUTORY ACTIONS

**OTHER STATUTES - "0" MONTHS DISCOVERY TRACK**

- ☐ 410 ANTI-TRUST
- ☒ 850 SECURITIES / COMMODITIES / EXCHANGE

**OTHER STATUTES - "0" MONTHS DISCOVERY TRACK**

- ☐ ARBITRATION (CONFIRM/VACATE/ORDER/MODIFY)

(Note: Please mark underlying Nature of Suit as well)

\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

**VII. REQUESTED IN COMPLAINT: Permanent injunctions, disgorgement, prejudgment interest, & civil penalties.**

CHECK IF THIS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND ☐

JURY DEMAND ☐ YES ☐ NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_

DOCKET NO. \_\_\_\_\_

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES (CHECK APPROPRIATE BOX)

- ☐ 1 PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- ☐ 2 SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- ☐ 3 VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- ☐ 4 APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- ☐ 5 REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- ☐ 6 COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S):)

- ☐ 7 EITHER SOME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_ WHICH WAS DISMISSED. THIS CASE ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

DATE