

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

FIRST CAPITAL SERVICES, INC.,  
U.S. CAPITAL FUNDING, INC.,  
LARRY SCHWARTZ and  
RAPHAEL "RAY" LEVY,

Defendants.

Case No. **00-8445**  
**CIV-MIDDLEBROOKS**  
MAGISTRATE JUDGE  
BANDSTRA

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendants First Capital Services, Inc. ("First Capital"), U.S. Capital Funding, Inc. ("U.S. Capital"), Larry Schwartz ("Schwartz"), and Raphael "Ray" Levy ("Levy") (collectively "Defendants"), alleges the following:

**SUMMARY**

1. This action involves the fraudulent offering of unregistered securities in the form of promissory notes. The scheme was devised and carried out by Schwartz and Levy, the chief executive officers and control persons of First Capital and U.S. Capital, respectively.

2. From at least 1995 through November 1999, Schwartz and Levy used a nationwide network of insurance agents to induce more than 600 investors in twenty-seven states to purchase over \$50 million in promissory notes that promised to pay annual rates of interest of 9.25% and higher.

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3. Schwartz and Levy represented that investors' principal and the payment of interest was guaranteed or insured against loss, and that the investment was risk-free. They also represented that First Capital and U.S. Capital would segregate and use investor funds solely to purchase insured corporate accounts receivable or accounts receivable owed by federal, state or local government entities.

4. These representations to investors were false and misleading. The promissory notes were neither insured nor guaranteed, and the investment was not risk-free. Moreover, neither First Capital nor U.S. Capital used investor funds exclusively in the manner represented. Instead, First Capital and U.S. Capital used a portion of investor funds to pay interest and to return principal to other investors in typical Ponzi scheme fashion. Further, First Capital purchased risky receivables that were neither insured nor owed by government entities, and it made risky long-term loans, including to companies with direct or indirect ties to Schwartz.

5. The scheme collapsed in the summer of 1999 when the influx of new investor funds slowed. By the end of 1999, U.S. Capital had defaulted on approximately \$37 million owed to investors who had purchased the notes.

6. By engaging in the conduct described in this Complaint, the Defendants violated and, unless enjoined, will continue to violate Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and, as to U.S. Capital and Levy, Section 15(a) of the Exchange Act.

7. Accordingly, the Commission seeks the entry of a permanent injunction prohibiting the Defendants from further violations of the federal securities laws. The Commission also seeks the imposition of civil monetary penalties against the Defendants due to

the egregious nature of their fraud, as well as disgorgement of the Defendants' ill-gotten gains plus prejudgment interest.

### **JURISDICTION AND VENUE**

8. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

9. The Commission seeks the entry of a permanent injunction and the disgorgement of ill-gotten gains pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)]. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

10. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa]. Venue is proper in the Southern District of Florida because certain of the Defendants' conduct alleged herein took place in this District.

11. In connection with the conduct described in this Complaint, the Defendants, directly or indirectly, made use of the mails or the means or instruments of transportation and communication in interstate commerce.

### **DEFENDANTS**

12. First Capital is a Florida corporation located in Boca Raton, Florida, which purports to be in the business of purchasing accounts receivable and making investments and loans. On or about May 12, 2000, First Capital filed a voluntary petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. The matter is pending in the U.S. Bankruptcy Court for the Southern District of Florida as *In re First Capital Services, Inc.*, Case No. 00-32103.

13. U.S. Capital is a Florida corporation located in Lake Worth, Florida, which purports to be in the business of raising money from individual investors and making commercial loans.

14. Larry Schwartz, age 51, is a resident of Boca Raton, Florida. He is the president, majority shareholder and control person of First Capital. He also owns or controls numerous other privately-held Florida companies. He is a recidivist securities law violator.

15. Raphael "Ray" Levy, age 51, is a resident of Lake Worth, Florida. He is the owner and sole director of U.S. Capital. He also owns or controls a viatical sales operation (American Benefits Service), a mortgage lending company (Asset Base Management), and an insurance company (Levy Insurance Agency), all of which share office space with U.S. Capital. In a separate action, the Commission has sued American Benefits Service and Levy for fraud in connection with the sale of viaticals. That action is pending in this District as *SEC v. Brandau*, Civil Action No. 00-6618. Levy was previously fined by the State of Florida Department of Insurance in connection with an unlawfully issued worker's compensation certificate.

#### **STATEMENT OF FACTS**

##### **First Capital Issues and Sells Unregistered Securities in the Form of Promissory Notes**

16. In or around 1992, Schwartz formed First Capital. From 1995 through 1997, First Capital sold approximately \$7 million of unregistered securities in the form of promissory notes. The notes required a minimum investment of \$25,000 and paid annual rates of interest of 9.25% and higher. The notes had maturity dates ranging from six to twelve months. Investors could and did renew the notes for additional terms. No registration statement was ever filed or in effect for this offering.

17. First Capital marketed the promissory notes through at least four sales agents who earned commissions of between 3% and 6%. Schwartz represented to agents that First Capital would use investor funds raised through selling the notes to engage in a commercial factoring business. Commercial factoring is a financing method whereby a "factor" purchases accounts receivable at a discount from a "client" who is unable or unwilling to wait the thirty or more days that it may take to receive payment on a commercial invoice. In exchange for receiving partial payment on an invoice up-front, the client assigns to the factor the right to receive payment from the invoice debtor, and the client also pays interest to the factor. Schwartz represented to agents that First Capital would use investor funds solely to purchase either corporate accounts receivable that were insured by First Capital's credit insurance policy or receivables owed by government entities. Schwartz also represented to agents that the notes were not securities and were thus exempt from registration under federal and state securities laws.

18. Schwartz gave agents a brochure explaining the promissory note program. The brochure represented that investor funds would be used to purchase insured corporate accounts receivable or receivables owed by government entities. The brochure represented that investor funds would be safe by using terms like "rock solid safety" and "fixed principal" and by representing that investors could obtain high yields without exposure to greater risk. The brochure emphasized these statements by identifying large, well-known companies as the debtors whose invoices First Capital would purchase. Finally, the brochure represented that there was no sales charge for purchasing a note. Agents repeated Schwartz's representations and distributed the brochure to investors and potential investors.

19. Schwartz's representations, including those in the brochure, were false and misleading. The promissory notes were neither safe nor guaranteed. First Capital did not

segregate investor funds and did not use investor funds solely to purchase insured corporate accounts receivable or receivables owed by government entities. Instead, First Capital commingled investor funds with funds used to purchase receivables that were neither insured nor owed by government entities and with funds used to make risky long-term loans, including loans to companies with direct or indirect ties to Schwartz. In addition, investors paid a sales charge in the form of a commission to sales agents.

### **Levy Sells First Capital Notes**

20. In approximately 1993, Levy met Schwartz through a First Capital sales agent. Shortly thereafter, Levy began selling First Capital notes to his customers. From 1993 through 1997, Levy sold more than \$3 million of First Capital notes.

21. Levy did not perform due diligence before deciding to sell the First Capital promissory notes. While he obtained a copy of the declarations page of First Capital's insurance policy and called the insurance agent to confirm that the policy was in force, the declarations page revealed that First Capital had only \$2 million in coverage – far less than the amount of investor funds that First Capital had invested in its factoring business. Levy did not confirm the identity of First Capital's clients or factoring debtors, and he did not contact any of the individuals who had purchased notes from First Capital.

### **Levy and Schwartz Continue the Offering of Unregistered Securities through U.S. Capital**

22. In September 1997, the Comptroller's Office of the State of Florida informed First Capital that its notes appeared to be securities that were required to be registered under state law. In December 1997, following negotiations with the State of Florida, First Capital represented that it would retire all outstanding notes as they came due and would stop issuing new notes.

23. Instead of terminating the program, however, Schwartz persuaded Levy to establish a new company to issue and sell promissory notes that would fund First Capital's factoring operations. In approximately January 1998, as a result of his discussions with Schwartz, Levy established U.S. Capital, which soon began issuing, offering and selling unregistered securities in the form of six-month promissory notes.

24. To induce Levy to enter into this arrangement, Schwartz agreed that First Capital would pay U.S. Capital 10% of the amount it raised from investors by selling the promissory notes. Schwartz and Levy agreed that U.S. Capital would receive its payments up-front by providing First Capital with only 90% of all funds raised by U.S. Capital from selling the notes. They also agreed that if an investor rolled over his investment for an additional six-month term, U.S. Capital could receive its payment by deducting an additional 10% from new investor funds or through funds sent by First Capital. Levy agreed that U.S. Capital would use these funds to make monthly interest payments to investors and to pay commissions to sales agents. First Capital's obligation to repay the monies received from U.S. Capital was to be reflected in a series of promissory notes executed by First Capital to U.S. Capital.

25. The notes which U.S. Capital sold to investors required a minimum investment of \$25,000 and offered annual rates of interest ranging from 9.25% to 12%, depending on the amount allocated to sales commissions. Investors had the option of receiving monthly interest payments or allowing the interest to accrue until the expiration of the note. The notes had a six-month maturity date, but approximately 90% of investors rolled their notes over for additional six-month terms. If an investor elected to terminate his note, Levy used new investor funds or obtained money from First Capital to satisfy the redemption request.

26. To market the notes, Levy hired two of the original sales agents used by First Capital. In addition, he recruited and trained between 20 and 30 insurance agents from a network of 600 to 700 agents whom he had met through insurance seminars and who were already selling viaticals for another of Levy's companies. U.S. Capital paid agents, including Levy, commissions ranging from 4% to 10% on each note sold. Some of the agents retained sub-agents, whose commissions were paid from the agents' commissions.

27. From January 1998 through November 1999, U.S. Capital sold approximately \$48 million in promissory notes to more than 600 investors from twenty-seven states. U.S. Capital transferred approximately \$23 million of this amount to First Capital. Under its agreement with First Capital, U.S. Capital retained approximately \$11 million of the amount raised. U.S. Capital commingled this money, which came from new investors, in accounts used to pay interest and return principal to prior investors.

28. From 1998 through the present, Levy has received from U.S. Capital, through a company and a trust that he controls, approximately \$1.3 million. Schwartz received a salary from First Capital of approximately \$89,000 in 1998. In addition, as discussed below, First Capital used funds raised from investors to make transfers to several entities owned or controlled by Schwartz.

#### **False and Misleading Statements to Investors**

29. Schwartz represented to Levy that First Capital would use investor funds raised through the sale of promissory notes solely to purchase insured corporate receivables or receivables owed by government entities.



30. Schwartz also met with, and provided information to, at least three of the agents whom Levy had recruited for the program. Schwartz represented to the agents that the State of Florida had recently audited First Capital and had pronounced the company sound.

31. With Schwartz's knowledge and consent, Levy copied documents that he had previously received from First Capital, including the brochure with its representations about safety and insurance, blank promissory notes representing that investor funds would be used to purchase only insured corporate receivables or receivables owed by government entities, and UCC-1 forms purporting to grant a security interest in accounts receivable purchased by First Capital. Levy inserted U.S. Capital's name on the front of the brochure and amended the promissory note and UCC-1 form so that U.S. Capital rather than First Capital was identified as the debtor.

32. With Schwartz's knowledge and consent, Levy repeated Schwartz's description of the program to U.S. Capital's sales agents. Further, Levy provided agents with the brochure, the sample promissory note, and the UCC-1 form. Levy represented to agents that the notes were an insured and safe high-yield investment. Levy also represented to agents that if a debtor failed to pay a receivable purchased with investor funds, First Capital's credit insurance would reimburse First Capital, which would in turn pay U.S. Capital, thus allowing U.S. Capital to pay investors in full. Levy also represented to agents that the notes were not securities and were thus exempt from registration under federal and state securities laws.

33. Agents repeated the representations by Schwartz and Levy to investors and potential investors, many of whom were elderly, in ill health, and living on fixed incomes. Agents also distributed the brochure and sample promissory note to investors and potential investors. When communicating with investors and potential investors, agents emphasized the

purported safety of the note program. For example, agents represented to investors that the notes were bonded, insured, guaranteed, or so safe that there was no risk of loss of principal. Certain agents also told investors that the State of Florida had audited First Capital and pronounced the company sound.

34. These representations were false and misleading. For example, the representations that the promissory notes offered rock-solid safety, fixed principal, and no exposure to greater risk were false and misleading because, as early as January 1998, First Capital's business had essentially collapsed and it was operating as a Ponzi scheme by using new investor funds to make payments of principal and interest to prior investors. Indeed, by the summer of 1999, while the offering was still ongoing, First Capital had begun to default on millions of dollars owed to U.S. Capital, and thus to investors, under the notes.

35. The representations that First Capital's insurance policy would effectively protect investor funds were false and misleading in several respects. First, although First Capital did engage in factoring, many of the receivables that it purchased were neither insured corporate receivables nor receivables owed by government entities. Second, First Capital's insurance policy contained a coverage limit of \$2 million, far less than the amount of investor funds that First Capital invested in its factoring business. Third, the policy did not provide coverage if the debtor refused to pay an invoice because of dissatisfaction with the underlying goods or services received. Lastly, the policy insured only First Capital, not investors, and thus did not protect investors against default by First Capital or U.S. Capital.

36. The representations that investor funds would be used solely to invest in insured corporate receivables or receivables owed by government entities were false and misleading in several respects. First, U.S. Capital used a portion of investor funds to make interest and

principal payments to other investors. Second, First Capital used a portion of investor funds to purchase receivables that were neither insured corporate receivables nor receivables owed by government entities. Lastly, First Capital used a portion of investor funds to make loans and other transfers to several affiliated entities, including Seahawk Deep Ocean Technology (a Florida-based entity that rents a boat used to recover sunken treasure), Vanderbilt Square a/k/a Treasures Exhibits International, Inc. (a public company controlled by Schwartz), American Consolidated Amusements (a Schwartz-controlled entity that purports to be in the gaming industry), and a firm that allegedly built roads for a real estate development owned by a Schwartz-controlled affiliate.

37. The representations that there was no sales charge for purchasing a promissory note were false and misleading because investors were required to pay a sales charge in the form of a commission to their sales agent.

38. The representation that the State of Florida had audited First Capital and had pronounced it sound was false and misleading because the State of Florida had conducted an investigation into the activities of First Capital, not a routine examination. Indeed, the State of Florida subsequently filed an enforcement action against First Capital and Schwartz with respect to the promissory note program.

39. In 1999, Levy revised the brochure again to substitute U.S. Capital's name for First Capital's in the description of the factoring program. The revised brochure stated that U.S. Capital had been involved in commercial factoring since 1992 and had purchased in excess of \$225,000 million in accounts receivable since December 1997. The revised brochure further stated that U.S. Capital would only finance corporate receivables that were underwritten and insured by an A+ rated insurance company and that its factoring business was sound and

profitable. These representations were false and misleading because U.S. Capital never engaged in factoring, and its operations were neither underwritten nor insured by an A+ rated insurance company.

### **The Scheme Collapses**

40. Beginning in June 1999, U.S. Capital's agents sold dramatically fewer promissory notes than during the prior six-month period, thereby significantly reducing U.S. Capital's incoming cash flow. The sharp decline in sales of the notes may have been due in part to negative publicity arising from the government's investigation of Levy's viaticals business. In addition, in approximately July 1999, First Capital began defaulting on its notes to U.S. Capital. As a result, in approximately August 1999, U.S. Capital began defaulting on the payment of interest and the return of principal to investors.

41. During this period, Schwartz and Levy attempted to lull agents, who in turn lulled investors, about the safety of their investments. Schwartz, Levy and persons acting on their behalf represented to agents that investor funds were safe and would soon be returned. For example, two Maine investors who had purchased \$85,000 in promissory notes were assured that their investment was safe and were falsely told that Levy had been exonerated in connection with the fraudulent sale of viaticals.

42. In October 1999, U.S. Capital filed a lawsuit against First Capital alleging that by August 1999, First Capital had defaulted on the payment of approximately \$22 million owed under promissory notes to U.S. Capital.

43. On February 28, 2000, Schwartz and Levy sent investors a letter offering to pay them 67.5% of the principal due, if funds became available in the future, in exchange for a

release from liability. Schwartz and Levy admitted, however, that neither First Capital nor U.S. Capital currently had the money to make such a payment.

44. On May 12, 2000, as noted above, First Capital filed a voluntary petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.

45. U.S. Capital has made only sporadic payments to investors since the end of 1999. At present, approximately \$37 million of its notes are outstanding. This amount includes principal owed to investors who have demanded, but not received, the return of their investment.

**FIRST CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Offer and Sale of Unregistered Securities  
[Violation of Section 5(a) of the Securities Act]**

46. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

47. The Defendants, directly or indirectly, acting intentionally, knowingly or recklessly: (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise, as to which no registration statement was in effect and for which no exemption from registration was available; or (b) for the purpose of sale or for delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities for which no registration statement was in effect and for which no exemption from registration was available.

48. As a result, the Defendants violated and, unless enjoined, will continue to violate Section 5(a) of the Securities Act [15 U.S.C. §77e(a)].

**SECOND CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Offer and Sale of Unregistered Securities  
[Violation of Section 5(c) of the Securities Act]**

49. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

50. The Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, 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 a prospectus or otherwise, securities as to which no registration statement had been filed and for which no exemption from registration was available.

51. As a result, the Defendants violated and, unless enjoined, will continue to violate Section 5(c) of the Securities Act [15 U.S.C. §77e(c)].

**THIRD CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Fraud in the Offer and Sale of Securities  
[Violation of Section 17(a) of the Securities Act]**

52. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

53. The Defendants, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in

transactions, practices or courses of business which operated as a fraud or deceit upon the purchasers of the securities.

54. As a result, the Defendants violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

**FOURTH CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Fraud in Connection with the Purchase and Sale of Securities  
[Violation of Section 10(b) of the Exchange Act and Rule 10b-5]**

55. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

56. The Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

57. As a result, the Defendants 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].

**FIFTH CLAIM FOR RELIEF  
AGAINST U.S. CAPITAL AND LEVY**

**Failure to Register as a Broker-Dealer  
[Violation of Section 15(a) of the Exchange Act]**

58. The Commission repeats and incorporates by reference the allegations in Paragraphs 1-45 of the Complaint as if set forth fully herein.

59. U.S. Capital and Levy: (a) are either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange); (b) made use of the mails or of the means or instrumentalities of interstate commerce to effect transactions in, or to induce the purchase of, securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills); and (c) were not registered as a broker-dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

60. As a result, U.S. Capital and Levy violated and, unless enjoined, will continue to violate Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

**SIXTH CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Civil Monetary Penalties  
[Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act]**

61. The Commission repeats and incorporates by reference the allegations in paragraphs 1-60 of the Complaint as if set forth fully herein.

62. The violations by Defendants identified in this Complaint involved fraud, deceit, manipulation, or deliberate or reckless disregard of regulatory requirements and directly or



indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

63. As a result, the Defendants are liable for civil monetary penalties 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)], in an amount to be determined by the Court.

**SEVENTH CLAIM FOR RELIEF  
AGAINST ALL DEFENDANTS**

**Unjust Enrichment**

64. The Commission repeats and incorporates by reference the allegations in paragraphs 1-45 of the Complaint as if set forth fully herein.

65. The Defendants received the proceeds described above under circumstances dictating that, in equity and good conscience, they should not be allowed to retain such proceeds.

66. As a result, the Defendants are liable for unjust enrichment and should be required to return their ill-gotten gains, in an amount to be determined by the Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

- A. Find that the Defendants committed the violations alleged in this Complaint;
- B. Enter a permanent injunction restraining the Defendants and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

- 1. Section 5(a) of the Securities Act [15 U.S.C. §77e(a)],

2. Section 5(c) of the Securities Act [15 U.S.C. §77e(c)],
3. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)],
4. 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], and
5. as to U.S. Capital and Levy, Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)];

C. Order the Defendants to pay appropriate civil monetary penalties 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)];

D. Require the Defendants to disgorge their ill-gotten gains, including prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court;

E. Appoint a receiver for U.S. Capital;

F. Require the Defendants to provide written accountings to the Commission identifying:

1. All assets and liabilities of First Capital and U.S. Capital;
2. All monies directly or indirectly received from investors by First Capital,

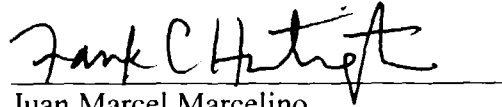
U.S. Capital, Schwartz and Levy; and

3. All uses of investor funds.

G. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



Juan Marcel Marcelino  
District Administrator

Frank C. Huntington  
Senior Trial Counsel  
Mass. Bar No. 544045

ATTORNEYS FOR PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION  
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(617) 424-5940 fax

Dated: <sup>May</sup> ~~June~~ 3, 2000

# CIVIL COVER SHEET 08-8445

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

### I. (a) PLAINTIFFS

US Securities and Exchange Commission

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

### DEFENDANTS

First Capital Services, Inc.  
U.S. Capital Funding, Inc.,  
Larry Schwartz and  
Raphael "Ray" Levy

**MAGISTRATE JUDGE  
BANDSTRA**

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Palm Beach (IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Franklin Huntington, Esquire  
US Securities & Exchange Commission

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

### 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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### 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)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

### V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS		FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Millier Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans - Excl. Veterans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> B 610 Agriculture Act <input type="checkbox"/> B 620 Other Food & Drug <input type="checkbox"/> B 625 Drug Related Seizure of Property 21 USC 881  <input type="checkbox"/> B 630 Liquor Laws <input type="checkbox"/> B 640 RR & Truck <input type="checkbox"/> B 650 Airline Regs <input type="checkbox"/> B 660 Occupational Safety/Health <input type="checkbox"/> B 690 Other	<input type="checkbox"/> A 422 Appeal 28 USC 158 <input type="checkbox"/> A 423 Withdrawal 28 USC 157  <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> A 820 Copyrights <input type="checkbox"/> A 830 Patent <input type="checkbox"/> A 840 Trademark	<input type="checkbox"/> A 400 State Reapportionment <input type="checkbox"/> A 410 Antitrust <input type="checkbox"/> A 430 Banks and Banking <input type="checkbox"/> A 450 Commerce/ICC Rates/etc <input type="checkbox"/> A 460 Deportation <input type="checkbox"/> A 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> A 810 Selective Service <input checked="" type="checkbox"/> A 850 Securities/Commodities/Exchange <input type="checkbox"/> A 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> A 891 Agricultural Acts <input type="checkbox"/> A 892 Economic Stabilization Act <input type="checkbox"/> A 893 Environmental Matters <input type="checkbox"/> A 894 Energy Allocation Act <input type="checkbox"/> A 895 Freedom of Information Act <input type="checkbox"/> A 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> A 950 Constitutionality of State Statutes <input type="checkbox"/> A 890 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	B SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> A 210 Land Condemnation <input checked="" type="checkbox"/> A 220 Foreclosure <input type="checkbox"/> A 230 Rent Lease & Ejectment <input type="checkbox"/> A 240 Torts to Land <input type="checkbox"/> A 245 Tort Product Liability <input type="checkbox"/> A 290 All Other Real Property	<input type="checkbox"/> A 441 Voting <input type="checkbox"/> A 442 Employment <input type="checkbox"/> A 443 Housing/Accommodations <input type="checkbox"/> A 444 Welfare <input type="checkbox"/> A 440 Other Civil Rights	<input type="checkbox"/> B 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> B 530 General <input type="checkbox"/> A 535 Death Penalty <input type="checkbox"/> B 540 Mandamus & Other <input type="checkbox"/> B 550 Civil Rights <input type="checkbox"/> B 555 Prison Condition	<input type="checkbox"/> A 710 Fair Labor Standards Act <input type="checkbox"/> A 720 Labor/Mgmt. Relations <input type="checkbox"/> A 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> A 740 Railway Labor Act <input type="checkbox"/> A 790 Other Labor Litigation <input type="checkbox"/> A 791 Empl Ret Inc Security Act	<input type="checkbox"/> B 861 HIA (1395ff) <input type="checkbox"/> B 862 Black Lung (923) <input type="checkbox"/> B 863 DIWC/DIWW (405(g)) <input type="checkbox"/> B 864 SSID Title XVI <input type="checkbox"/> B 865 RS (405(g))	<input type="checkbox"/> A 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> A 871 IRS Third Party 26 USC 7609

### VI. CAUSE OF ACTION

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

Sections 17(a), 17(d), 10(b), 13(b)(5), 15(c), Rules 10b-5, 10b-3, 13b2-1 of the Exchange Act, Regulation T and Sections 206(1) and 206(2) of the Advisers Act

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

### VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

Perm. Inj., disgorgement, penalties  
CHECK YES only if demanded in complaint: JURY DEMAND:  YES  NO

### VIII. RELATED CASE(S) IF ANY

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

MAY 31, 2000

SIGNATURE OF ATTORNEY OF RECORD

Frank C. Huntington

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_