

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FRIENDLY POWER COMPANY LLC, FRIENDLY POWER
COMPANY, INC., FRIENDLY POWER FRANCHISE
COMPANY, SCOTT J. LEVINE, SABRINA LEVINE,
AND DWIGHT H. STEPHENS,

Defendants,

RICH HOLDINGS, INC., RICH MANAGEMENT, INC.,
CYBER-TECH MARKETING & CONSULTING, INC.,
AND PACKARD ENERGY GROUP, INC.

Relief Defendants.

CASE NO.

98-2902

CIV - KING

COMPLAINT FOR
INJUNCTIVE AND
OTHER RELIEF

MAGISTRATE JUDGE
BANDSTRA

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S.D. OF FLA.-MIAMI
D.C.

Plaintiff, Securities and Exchange Commission ("SEC") alleges as follows:

INTRODUCTION

1. The SEC brings this action to enjoin Defendants from violating the federal securities laws in connection with the fraudulent sale of unregistered securities. From November, 1997 to July, 1998, Friendly Power (the entities defined in paragraphs 3-5, below) a newly-formed group of companies run by a recidivist securities and commodities law violator based in Florida that purported to be in the business of selling electricity in California's recently restructured electrical market used a network of "boiler-rooms" that employed high-pressure telemarketing sales tactics to sell its unregistered securities to unsophisticated investors. These boiler-rooms made

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egregious misrepresentations to investors regarding, among other things, Friendly Power's risk, profitability, success and capitalization, the need to invest quickly, and, in some cases, their past business success. Defendants and Relief Defendants sold at least \$7.2 million of the unregistered Friendly Power securities, and on information and belief intended to sell up to \$70 million worth.

2. On July 17, 1998, the SEC filed a Complaint in the U.S. District Court for the Southern District of Florida against each of the Defendants named herein. Securities and Exchange Commission v. Friendly Power Company, LLC, et al., No. 98-1697-CIV-KING (hereinafter, "Friendly Power I"). In Friendly Power I, the SEC requested, and the Court granted, temporary and preliminary injunctive relief against all of the defendants in that case, froze their assets, and appointed a Receiver over the three of the boiler-rooms used by Friendly Power to sell the unregistered securities: Cyber-Tech Marketing & Consulting, Inc. ("Cyber-Tech"), Packard Energy Group, Inc. ("Packard Energy"), and Rich Management Corp. ("Rich Management"). On October 20, 1998, the Court entered Final Judgments of Permanent Injunctive Relief against Cyber-Tech, Packard Energy and Rich Management that reserved jurisdiction over the SEC's claim for disgorgement and penalties against these entities. On November 2, 1998, the SEC moved to voluntarily dismiss the case against the remaining defendants, without prejudice, which motion was granted by the Court on November 5, 1998. The Court's Order dismissing Friendly Power I permitted the SEC to re-file this action within ninety days.

DEFENDANTS

3. **Friendly Power LLC** (“Friendly Power LLC”) was incorporated as a Delaware limited liability company in April 1997. At least until May 1998, Friendly Power LLC was headquartered at 15280 N.W. 79th Court, Suite 251, Miami Lakes, Florida. Friendly Power LLC is licensed as an Electric Service Provider (“ESP”) in California and at all relevant times claimed to be in the business of selling electrical energy in California. Friendly Power LLC is an issuer of the unregistered securities that are the subject of this action.

4. **Friendly Power Company, Inc.** (“Friendly Power Inc.”) was incorporated in Florida in July 1997, and at least until May 1998, maintained its principal offices at the same suite occupied by Friendly Power LLC at 15280 N.W. 79th Court in Miami Lakes, Florida. Friendly Power Inc. is not licensed as an ESP and does not have any known business operations. Friendly Power Inc. is an issuer of the unregistered securities that are the subject of this action.

5. **Friendly Power Franchise Company** (“FPFC”) was incorporated in Colorado in August 1997, and at least until May 1998, also maintained its principal offices at the suite occupied by Friendly Power LLC and Friendly Power Inc. at 15280 N.W. 79th Court Miami Lakes, Florida. FPFC has no other business than to facilitate the issuance of the unregistered securities that are the subject of this action; FPFC is an issuer of these securities.

6. **Scott Jeffrey Levine** (“Levine”), age 39, resides in Plantation, Florida. At all times relevant to this action, he was the Chairman, Chief Executive Officer and President of Friendly Power LLC. Until recently, Levine, with his wife, was a 50% co-owner of Friendly Power LLC; Levine claims recently to have transferred his ownership interest in Friendly Power LLC to his

wife, making her the sole owner of the company. Levine is a director and the primary owner of the inactive Friendly Power Inc. In 1992, the Commodity Futures Trading Commission (“CFTC”) obtained a permanent injunction against Levine in the U.S. District Court for the Southern District of Florida for his role in a scheme to fraudulently solicit and trade commodity futures and options contracts. A CFTC Administrative Order issued in connection with the same conduct prohibits Levine from ever seeking to register with the CFTC in any capacity. Levine is also the subject of several recent state Cease-and-Desist Orders arising out of prior unregistered offerings of partnership interests. A Cease-and-Desist and Penalty Order entered by the State of Oregon against Levine in September 1997 found, among other things, that Levine defrauded investors by misrepresenting projected returns to investors, instructing investors to not worry about the risks stated in the offering materials, and failing to inform investors about the use of their funds and the actual risks associated with the investment.

7. **Sabrina Levine** (“S. Levine”), age 35, resides in Plantation, Florida and is Levine’s wife. S. Levine is the Secretary, Treasurer and now supposedly the sole owner of Friendly Power LLC, as well as the President and sole owner of FPFC.

8. **Dwight H. Stephens**, (“Stephens”), age 53, was the President of Cyber-Tech until that entity was placed into receivership in Friendly Power I. On information and belief, Stephens resided in Longwood, Florida during the period that Cyber-Tech sold the Friendly Power securities. Stephens now resides in Newport Beach, California. Stephens has a criminal record based on a 1987 guilty plea to felony violations of California’s securities laws. Stephens was also a defendant in a related civil action brought by the CFTC in connection with the criminal

violations. Stephens is currently named as a defendant in a pending SEC injunctive action for selling unregistered securities and for acting as an unregistered broker-dealer in connection with those sales. SEC v. MicroWest Industries, Inc., Civil Action No. 97-748 (LHM) (S.D. Cal.). He is the subject of at least one recent state Cease-and-Desist Order involving an unregistered offering of partnership interests. Stephens is not registered with the Commission as a broker or dealer. Stephens committed fraud in his offers and sales of the unregistered securities that are the subject of this action.

RELIEF DEFENDANTS

9. **Rich Holdings, Inc.**, (“Rich Holdings”), is a Florida corporation that received approximately \$398,966 in investors’ funds.

10. **Cyber-Tech**, was incorporated in Florida on or about November 14, 1996. Until it was placed into receivership in Friendly Power I, Cyber-Tech sold Friendly Power unregistered securities from a boiler-room sales operation located in Longwood, Florida. Cyber-Tech received about 40% of the proceeds of all Friendly Power securities that it sold.

11. **Packard Energy**, was incorporated in Florida in December 1997. Until it was placed into receivership in Friendly Power I, Packard Energy sold Friendly Power unregistered securities from a boiler-room sales operation located in Ft. Lauderdale, Florida. Packard Energy received about 40% of the proceeds of all Friendly Power securities that it sold.

12. **Rich Management**, is a Florida corporation. Until it was placed into receivership in Friendly Power I, Rich Management sold Friendly Power unregistered securities from a boiler-

room sales operation located in Miami Lakes, Florida. Rich Management received about 40% of the proceeds of all Friendly Power securities that it sold.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

14. Certain of the acts and transactions constituting violations of the Securities Act and the Exchange Act have occurred within the Southern District of Florida. The principal offices of Friendly Power LLC, Friendly Power, Inc., FPFC, Packard Energy, Rich Management and Rich Holdings are located within the Southern District of Florida. Levine and S. Levine reside within the Southern District of Florida.

15. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

THE STRUCTURE OF FRIENDLY POWER'S OFFERING

16. Friendly Power purportedly seeks to capitalize on California's recent deregulation of its electric utility industry by providing residential electric power in various counties in California. On April 1, 1998, California implemented the deregulation of its electric utilities market, giving ESPs such as Friendly Power the opportunity to compete with the state's investor-

owned utilities in the market for supplying electric power to residential and commercial customers.

17. Levine, who has a history of selling unregistered partnership interests to fund unsuccessful ventures, and S. Levine, conceived of the unregistered offering described below when they realized that in order to compete in California's newly deregulated market, Friendly Power LLC needed millions of dollars in initial capital. Levine and S. Levine proceeded to form FPFC as a means of both raising funds for Friendly Power LLC and of sharing the risk of the venture with the general public. Friendly Power's financing plan entailed having a series of newly-formed limited liability partnerships purchase franchises issued by FPFC, one franchise to each partnership. The Friendly Power partnerships amassed the funds used to acquire the franchises by selling interests in the partnerships to the general public through a network of boiler-room telemarketers.

The Friendly Power Franchises

18. Friendly Power's franchises purportedly operate in different geographic areas in California. In exchange for an up-front fee equal to \$2 per potential residential customer within the territory, each franchise purportedly acquires the right to one-half of the future profits, if any, from the sale of electricity by Friendly Power LLC to residential customers located within that franchise territory. The franchise fees payable to Friendly Power range between \$308,950 and \$892,150.

19. Although the franchises purport to operate in different counties in California in which Friendly Power intends to provide electricity, Friendly Power, Levine and S. Levine

continue to control the company's operations throughout California and their actions will determine the ultimate success or failure of the franchises and the partnerships.

20. Friendly Power intended to sell approximately 35 franchises to an equal number of partnerships in order to raise \$28 million for itself. Since (see below), Friendly Power received only about 40% of the funds invested by the public to purchase a Friendly Power partnership, Friendly Power planned to raise over \$70 million from the public.

The Friendly Power Partnerships Are Unregistered

21. Neither Friendly Power nor any partnerships affiliated with it filed any registration statement with the SEC.

The Telemarketing of The Friendly Power Partnerships

22. Friendly Power marketed its partnerships through a network of telemarketing boiler-rooms, including Cyber-Tech, Packard Energy and Rich Management. Partnership units sold by Cyber-Tech, Packard Energy and Rich Management cost between \$21,804 and \$32,694 each. Investors were able to purchase as little as a quarter of a unit.

23. Investors in the Friendly Power partnerships do not have any rights to participate in the conduct of Friendly Power's business. Friendly Power's telemarketers informed investors that they could be passive investors in the partnerships.

24. The network of unregistered boiler-rooms engaged by Friendly Power, including Cyber-Tech, Packard Energy and Rich Management, solicited investors nationwide through cold calls to the general public using high-pressure, "boiler-room sales" techniques. Many of the investors in Friendly Power partnerships have virtually no knowledge about the energy service

industry. The investors in Friendly Power partnerships are dispersed geographically throughout the nation. Many of these investors are also retired or elderly. Investors often invest their savings in Friendly Power, and many investors used funds from their individual retirement accounts to make their investments in Friendly Power.

FRIENDLY POWER'S ROLE IN THE OFFERING

25. Levine and S. Levine used the offering to raise money for Friendly Power's operations. Approximately 40% of the money raised from the public from the sale of Friendly Power partnership units went immediately to Friendly Power, while an additional 40% was immediately used to compensate the boiler-rooms. The monies paid to FPFC as franchise fees were used, among other things, to pay for Friendly Power LLC's advertising, its purchases of electricity, and the salaries of Levine and S. Levine (who received \$350,000 per year combined). Upon information and belief, Levine intended to use Cyber-Tech, Packard Energy, Rich Management and other boiler-rooms to sell a total of \$70 million worth of partnerships to raise funds for Friendly Power.

All of the Friendly Power Defendants Were Involved in the Offering

26. Together with the boiler-rooms, all three Friendly Power entities marketed the securities to investors.

27. Friendly Power LLC, Friendly Power Inc. and FPFC do not maintain separate corporate formalities. At all relevant times, S. Levine was the sole owner of Friendly Power LLC and FPFC and an officer of both companies; Levine was an officer of both Friendly Power

Inc. and Friendly Power LLC. In addition, the companies commingled funds and shared office space and employees.

Friendly Power Provided Certain Offering Documents

28. Friendly Power produced certain of the offering materials used by the boiler-rooms to solicit investors, including 20,000 copies of a sales brochure (which the boiler-rooms then provided to investors) that predicts Friendly Power's success. Levine reviewed and approved the brochure. Friendly Power sold these brochures to the boiler-rooms.

29. The brochure and basic partnership documentation were virtually identical for each partnership.

Friendly Power And A Telemarketer Shared Offices

30. Until at least May, 1998, Rich Management, one of the telemarketers selling the Friendly Power securities, shared space with Friendly Power in the same office suite in Miami Lakes, Florida. That office suite included Rich Management's telemarketing phone bank. One of Rich Management's sales agents was, at the same time he was selling the Friendly Power unregistered securities, a senior officer of FPFC, and several other Rich Management sales agents worked for Levine and S. Levine in previous offerings of unregistered securities.

Levine and S. Levine Spoke To Potential Investors

31. Levine spoke to many potential investors in Friendly Power partnerships.

Friendly Power And The Levines Received The Fruits of Fraud

32. Friendly Power LLC, Friendly Power, Inc. and FPFC received several million dollars of funds from the boiler-rooms fraudulent sales of Friendly Power partnerships. Additionally,

Levine and S. Levine each benefited from these fraudulent sales; at a minimum their salaries were paid from the proceeds of the fraudulent sales.

Friendly Power And The Telemarketers Have Pulled Similar Scams Together

33. Levine and the President of Rich Management, are long-time associates who have worked together virtually continuously for more than a decade. The vast majority of their business ventures have not only resulted in investor losses, but have resulted in regulatory actions by federal and state authorities.

34. In September 1997, while Friendly Power was planning its partnership offering, the State of Oregon issued a Cease-and-Desist Order against Levine and several others in connection with their unregistered sales of partnership units in the SMR venture, finding that they had defrauded investors. Many persons who worked for Levine on the SMR venture (at least one of whom was named in the Oregon Cease and Desist and Penalty Order) also sold Friendly Power securities as telemarketers for Rich Management, and the Rich Management sales agent that was also an officer of FPFC was a subject of the Oregon Order.

35. In April 1997, Levine consented to the entry of an Order of Prohibition against him by the State of Wisconsin Department of Financial Institutions in connection with his sale of SMR partnerships similar to those involved in the Oregon Order. The Wisconsin Order prohibits Levine, his agents, employees or anyone acting on his behalf from offering or selling unregistered securities in Wisconsin. At least one of the Friendly Power investors is located in Wisconsin.

36. Rich Management's marketing of the Friendly Power partnerships was similar to Levine's marketing of the SMR venture.

THE FRAUDULENT TELEMARKETING EFFORT

37. Using commercially-purchased lead lists, the telemarketers placed initial "cold calls" to prospective investors. After speaking with the prospective investor, the boiler-rooms immediately delivered various offering materials to investors by overnight courier or second-day mail. These materials included the high-quality, color brochure produced by Friendly Power and a seventeen page "Enrollment Document." The offering materials were virtually identical from Friendly Power partnership to partnership and from boiler-room to boiler-room. Soon after the prospective investors received these materials, a telemarketer telephoned the prospective investor again, utilizing high-pressure sales tactics to convince the prospect to purchase a partnership unit.

38. Friendly Power, through Cyber-Tech, Packard Energy, Rich Management and others, succeeded in raising at least \$7.2 million through the sale of these Friendly Power partnership units. In the course of selling the Friendly Power partnership units, the boiler-rooms and their sales agents, including Cyber-Tech and Stephens, made misrepresentations to investors. Some of those misrepresentations are described below.

Misrepresentations Concerning Friendly Power's Profitability And Success

39. The most glaring misrepresentations made by boiler-rooms were contained in worksheets that certain sales agents used, and figures that other sales agents cited, to convince investors that they would profit by investing in Friendly Power. The worksheet, which was partially blank when mailed to investors, purported to break down the revenues and costs that

each partnership would generate. All of the sales agents, whether they were taking investors through the worksheet or reciting figures over the telephone, used exaggerated estimates of market share and overstated average electric bills to show investors that the partnership revenues would be so high that they would receive returns of over 100% on their investments within the first year.

40. The sales agents claimed that Friendly Power would capture at least 10% of the residential electric customers in the partnership area. One Cyber-Tech sales agent even told one investor that 10% was a “ridiculously low” and “conservative” figure, while another claimed that Friendly Power already signed up 5% of the residential customers in San Diego County, an area of almost one million residences. All of the boiler-rooms also told investors that average electric bills in the various franchise territories range from \$110 to \$225 per month.

41. The figures used to produce these claims of extraordinary returns are untrue. First, the “Friendly Power Franchise Offering Circular” dated October 6, 1997, which was provided to all of the boiler-rooms, but was not provided by them to the Friendly Power investors, expressly provides under the heading “Earnings Claims” as follows:

We do not furnish or authorize our salespersons to furnish any oral or written information concerning the actual, average, projected, forecasted or potential sales, costs, income or profits. Actual results vary from Business to Business and we cannot estimate the results of any particular franchise. We are not bound by allegations of any unauthorized representations as to earnings, sales, profits, prospects or chances of success.

Thus, the boiler-rooms knew or should have known that Friendly Power did not authorize them to make any profit projections and would not stand behind any profit projections that they made to investors.

42. Second, while providing optimistic profit projections for Friendly Power, the boiler-room sales agents failed to tell investors that Levine predicts in published reports that Friendly Power will lose money for the next several years. In a Wall Street Journal article dated February 17, 1998, Levine stated that Friendly Power will lose "some \$5 million to \$7 million in the first few years" of operations. In a California Energy Markets article dated March 6, 1998, Levine also stated that Friendly Power will not make a profit until certain state-imposed charges lapse in the year 2002.

43. Third, the telemarketers' claims about market share and average electric bills are entirely fabricated. While the sales agents told investors that, based upon a 10% market share, they should experience triple-digit returns within the first year, Friendly Power has nowhere near that level of market penetration; for example, Friendly Power has no residential customers in San Diego, an area of 900,000 customers. Cyber-Tech's claim that Friendly Power has 5% of the San Diego market is untrue because Friendly Power has no residential customers in San Diego County, and when Cyber-Tech's sales agent made that representation in January 1998, Friendly Power did not even provide electric service in California.

44. Finally, the sales agents' misrepresent that Friendly Power and the partnerships will generate revenues from electric bills that range from \$110 to \$225 per month. In fact, the electricity portion of the bill, which is the only portion that Friendly Power receives and from

which investors receive income, is just a fraction of the total bill. As a result, the revenues of both Friendly Power and the partnerships will be far lower than the telemarketers represent.

Misrepresentations Regarding Friendly Power's Capitalization and Prior Offerings

45. Cyber-Tech and Stephens misrepresented that Friendly Power conducted an earlier, and successful, private offering. One Cyber-Tech sales agent falsely told a prospective investor that Friendly Power had already raised millions of dollars from a group of entities that invested \$5 million each in the company for a total of at least \$25 million.

46. In a subsequent conversation, Stephens misrepresented to that prospective investor that the California Public Utilities Commission ("CPUC") does not grant ESP licenses unless a company has a minimum capitalization of \$28 million, and that Friendly Power met all of the CPUC's requirements.

47. In fact, Friendly Power has not raised \$25 million from private investors, and its capitalization is far less than \$28 million.

48. Contrary to the misrepresentations of the boiler-rooms, Friendly Power's entire capitalization consisted of several million dollars provided by members of the general public who bought Friendly Power partnership units, and well under one million dollars contributed by Levine and S. Levine and one of Friendly Power's attorneys.

Misrepresentations Regarding Availability Of Partnership Units

49. Cyber-Tech and the other boiler-rooms used hard-sell techniques, including misrepresentations, that were designed to create a false sense of urgency in the investor.

50. One investor who bought a quarter-unit in a Friendly Power partnership sold by Cyber-Tech was told weeks after he purchased his quarter-unit that he needed to purchase another quarter-unit or he would be removed from the partnership and would miss out on profits. Based upon that misrepresentation, the investor purchased another quarter-unit. In truth, the partnership agreement does not require the removal of investors who only purchase a quarter unit.

Undisclosed Risk of Losing the Franchise

51. Although Friendly Power provided its Franchise Offering Circular to the boiler-rooms, the boiler-rooms did not provide this important document to investors in the Friendly Power partnerships, if at all, until after they invested their funds. The Franchise Offering Circular contains a number of provisions that would be material for an investor.

52. One of the most important provisions in the Franchise Offering Circular states that Friendly Power has the unilateral right to revoke a franchise's right of exclusivity to the franchise area if the franchisee does not achieve and maintain a 5% market share of residential electric power customers in the franchise territory within five years from the date of the Franchise Agreement. The boiler-rooms did not disclose this risk to investors in Friendly Power partnerships.

Failures To Disclose Disciplinary Histories

53. Stephens touted his own background as a commodities broker to at least one prospective investor, and boasted that he owned fifteen different companies. Stephens failed to disclose to that prospective investor his long disciplinary history, including his 1987 criminal

conviction for fraud in connection with the sale of securities and the related fraud action brought against him by the CFTC, or that his company, Cyber-Tech, has been disciplined on at least two occasions by state authorities for selling unregistered securities.

Inconsistent Disclosures of Risk

54. Many of the sales agents minimized the risk of an investment in Friendly Power by telling investors that Friendly Power would turn a profit and that investors could ignore the risk disclosures contained in the Enrollment Documents. One sales agent even told an investor that the risk disclosures in the Enrollment Documents were mere formalities and to ignore them.

COUNT I

(ALL DEFENDANTS)

**SALE OF UNREGISTERED SECURITIES IN
VIOLATION OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**

55. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

56. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described herein.

57. Since a date unknown but since at least November 1997 through July 17, 1998, Defendants Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine and Stephens, directly or indirectly:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;

(b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described herein,

without a registration statement having been filed or being in effect with the Commission as to such securities.

58. By reason of the foregoing, Defendants Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine and Stephens violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II

(STEPHENS)

**FRAUD IN VIOLATION OF
SECTION 17(a)(1) OF THE SECURITIES ACT**

59. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

60. Since a date unknown but since at least November 1997 through July 17, 1998, Defendant Stephens, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described herein, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

61. By reason of the foregoing, Defendant Stephens, directly and indirectly, violated, and unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT III

(STEPHENS)

**FRAUD IN VIOLATION OF
SECTIONS 17(a)(2) AND 17(a)(3) OF THE SECURITIES ACT**

62. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

63. Since a date unknown but since at least November 1997 through July 17, 1998, Defendant Stephens, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described herein: (i) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and (ii) engaged in transactions, practices and courses of business which operated and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

64. By reason of the foregoing, Defendant Stephens, directly and indirectly, violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

COUNT IV

(STEPHENS)

**FRAUD IN VIOLATION OF
SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5**

65. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

66. Since a date unknown but since at least November 1997 through July 17, 1998, Defendant Stephens, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud; (ii) 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 (iii) engaged in acts, practices and courses of business which operated and will operate as a fraud upon the purchasers of such securities.

67. By reason of the foregoing, Defendant Stephens, directly or indirectly, 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, 17 C.F.R. § 240. 10b-5, thereunder.

COUNT V

(STEPHENS)

**OPERATING AS AN UNREGISTERED BROKER-DEALER
IN VIOLATION OF SECTION 15(a)(1) OF THE EXCHANGE ACT**

68. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

69. Since a date unknown but since at least November 1997 through July 17, 1998, Defendant Stephens, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, engaged in the business of effecting transactions in securities for the accounts of others and induced and effected the purchase and sale of securities while not associated with a broker-dealer that was registered with the SEC in accordance with the provisions of Section 15(b) of the Exchange Act.

70. By reason of the foregoing, Defendant Stephens, directly or indirectly, violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78j(a)(1).

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that Defendants Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine and Stephens committed the violations of the federal securities laws alleged herein.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining:

(a) Defendants Friendly Power LLC, Friendly Power Inc., FPFC, Levine and S. Levine, their officers, agents, servants, employees, attorneys, and all persons in active concert or

participation with them, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

(b) Defendant Stephens and all persons in active concert or participation with him, from violating: (1) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); (2) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (3) Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3); (4) 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 (5) Section 15(a)(1) of the Exchange Act, 15 U.S.C. §§ 78o(a)(1).

III.

Disgorgement

Issue an Order requiring Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine, Stephens, and Rich Holdings, to disgorge all profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

IV.

Penalties

Issue an Order directing Defendants Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine and Stephens to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and also directing Defendant Stephens to pay civil fines and/or penalties pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

V.

Asset Freeze and Accounting

Issue an Order temporarily freezing the assets of Stephens, and temporarily freezing any assets of Friendly Power LLC, Friendly Power Inc., FPFC, Levine, S. Levine and Rich Holdings insofar as those assets contain, or are derived from, funds raised from investors in the Friendly Power partnerships marketed by Cyber-Tech, Packard Energy and Rich Management, until further Order of the Court, and requiring an accounting by each of these persons and entities.

VIII.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

IX.

Retention of Jurisdiction

Further, the SEC respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered,

or to entertain any suitable application or motion by the SEC for additional relief within the jurisdiction of this Court.

Respectfully submitted,

November 24, 1998



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**SECURITIES AND EXCHANGE
COMMISSION**
1401 Brickell Avenue, Suite 200
Miami, Florida 33131
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JS 44
(Rev. 12/96)

CIVIL COVER SHEET 98-2902

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 1977, is designed for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS
SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS FRIENDLY POWER COMPANY, LLC, FRIENDLY POWER COMPANY, INC., FRIENDLY POWER FRANCHISE COMPANY, SCOTT J. LEVINE, SABINA DEVINE, and DWIGHT H. STEPHENS, Defendants, RICH HOLDINGS, INC, RICH MANAGEMENT, INC., CYBER-TECH MARKETING & CONSULTING, INC and PARKLAND ENERGY GROUP, INC.,

CIV. KING
MAGISTRATE JUDGE
BANDSTRA
CASE NO. 98-2902
DATE 11/24/98
PL. 311
T. 11
H. 11
M. 11
J. 11
S. 11
C. 11
O. 11
F. 11
D. 11
A. 11
G. 11
E. 11
H. 11
I. 11
L. 11
N. 11
O. 11
P. 11
Q. 11
R. 11
S. 11
T. 11
U. 11
V. 11
W. 11
X. 11
Y. 11
Z. 11

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

(IN U.S. PLAINTIFF CASES) BADE Relief
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Depend- ants.

A. Date/98cv 2902/ King/ Bandstra

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)
Mitchell E. Herr, Esq. (305) 982-6336
SEC, 1401 Brickell Ave., Suite 200
Miami, FL 33131

ATTORNEYS (IF KNOWN)
David M. Garvin, Esq. (305) 371-8101
1401 Brickell Ave., Suite 200
Miami, FL 33131

(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 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input 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 | PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA - 1395ff. <input type="checkbox"/> 862 Black Lung - 923 <input type="checkbox"/> 863 DIWC DIWW - 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI - 405(g) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions A OR B |
| A REAL PROPERTY | A CIVIL RIGHTS | PRISONER PETITIONS | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing, Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence HABES CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

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)

15 U.S.C. §§ 77e(a) and 77e(c); 15 U.S.C. § 77q(a)(1); 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, 15 U.S.C. § 78j(a)(1).

LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case) **Violations of the anti-fraud, broker-dealer and registration provisions o**

VII. REQUESTED IN COMPLAINT: **the federal securities demand \$** CHECK YES only if demanded in complaint: **Perm. Inj., Disgorgement, PUNY DEMAND:** YES NO **penalties, acct., asset freeze**

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE James Lawrence King DOCKET NUMBER 98-1697-CIV

DATE 11/24/98 SIGNATURE OF ATTORNEY OF RECORD Mitchell E. Herr, Regional Trial Counsel

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____