

FILED BY JL D.C.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CARL W. BIERKE
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIAMI

UNITED STATES SECURITIES AND	:
EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
v.	:
	:
GATEWAY TECHNOLOGIES, INC.; THE CHEYENNE	:
HOLDING CORP.; RANDOLPH S. ROSS AND	:
TIMOTHY J. KAVANAGH,	:
	:
Defendants,	:

CIVIL ACTION NO.
99 - 8378
CIV-ZLOCH
MAGISTRATE JUDGE
SELTZER

COMPLAINT

Plaintiff United States Securities and Exchange Commission, for its complaint, alleges as follows:

SUMMARY

1. Gateway Technologies, Inc. ("Gateway"), The Cheyenne Holding Corp. ("Cheyenne"), Randolph S. Ross ("Ross") and Timothy J. Kavanagh ("Kavanagh") are currently perpetrating a fraudulent scheme whereby investors are being guaranteed returns based on monthly subscription fees from users of a Gateway Internet telephony system that is not currently operating and has no subscribers. They have raised over \$500,000 through sales of securities in Gateway to investors nationwide through The Cheyenne Holding Corp. ("Cheyenne"), a sales office in Florida. Investors in Gateway pay a minimum of \$5,000 in units that are to be used to purchase hardware and software to construct an Internet telephony system in five states.

Investors are "guaranteed" to receive a sliding scale return on their investment every ninety days ranging from \$300 on a \$10,000 investment to \$12,000 on a \$100,000 investment for the twelve month duration of the investment, plus a 20% return on their investment at the end of the twelve months from the profits of Gateway. This would amount to annual returns ranging from 32%, or \$3200, on an investment of \$10,000 to 68%, or \$68,000, on a \$100,000 investment. For an investment of \$100,000, investors may purchase an equity position that, in addition to the above "guaranteed" return, also "guarantees" a pro rata share of 100% of the profits of Gateway. This alone will amount to a \$450,000 annual return on a \$100,000 investment. Thus the total annual return on an investment of \$100,000 is \$518,000.

2. Defendants Gateway, Cheyenne, Ross and Kavanagh, directly and indirectly, are now and have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78j(b) and 78o(a)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

3. The Commission, pursuant to the authority granted to it by Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], has promulgated Rule 10b-5 which was in effect at all times relevant to this Complaint and is still in effect.

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) and (e) of the Exchange

Act [15 U.S.C. §78u(d) and (e)] for an order permanently restraining and enjoining Defendants and granting other equitable relief.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77u(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77u] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, each of the Defendants, directly and indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

7. Defendants Cheyenne, Ross and Kavanagh are residents of Florida. In addition, certain of the transactions, acts, practices and courses of business constituting the violations of law alleged herein occurred within this judicial district.

DEFENDANTS

8. Gateway, based in Santa Monica, California, is a corporation that was incorporated under the laws of California on July 6, 1998.

9. Cheyenne, based in Delray Beach, Florida, is a corporation that was incorporated under the laws of Florida on August 28, 1998. Cheyenne sold securities for Gateway.

10. Ross is a resident of Florida and is a principal of Cheyenne.

11. Kavanagh is a resident of Florida and is a salesperson for Cheyenne.

FACTS

The Investment

12. Beginning in or before September 1998, Gateway began issuing investments in units and equity positions.

13. Units and equity positions in Gateway were offered for sale and sold through interstate telephone calls by salespeople employed by Cheyenne. The salespeople cold called people nationwide.

14. Most of the persons solicited for investment in Gateway had no previous association with Gateway or Cheyenne.

15. Investors in Gateway paid a minimum of \$5,000 to purchase units that were purportedly to be used to establish an Internet telephony system in five western states. The first portion of the five state Internet telephony system was to be established between Portland, Oregon and Vancouver, Washington. Investors sent their investments to Gateway by wire, regular mail and Federal Express.

16. Investors had no control over the purchasing of hardware or software for the Internet telephony system nor any control over the location of the system.

17. Investor money was pooled to purchase hardware and software for the Internet telephony system. Returns to the investors were allegedly to be generated from subscribers to the Internet telephony system who would each pay a thirty dollar monthly fee for use of the system.

18. The term of the investment was twelve months. At the end of each ninety day period during the twelve months investors were guaranteed to receive a sliding scale return on their investment ranging from \$300 on a \$10,000 investment to \$12,000 on a \$100,000 investment.

19. Investors could submit a letter stating the termination of the agreement 30 days in advance of the 90 day distribution date in order to receive a return of their principal plus their 90 day distribution amount.

20. Investors who remained for the entire twelve month period would receive an additional distribution in the amount of 20% of their investment at the end of the twelve month period. At that time, investors would also receive back their principal investment.

21. Investors who invested \$100,000 or more could purchase an equity position in Gateway. They were subject to the same conditions as the unit investors and would receive the same guaranteed 90 day returns and 20% distribution at the end of the twelve month period. However, they would also receive a return equal to 0.5% of the year-end after tax profits of Gateway for every \$100,000 they invested. This alone would amount to a \$450,000 return on a \$100,000 investment. Thus the total annual return on an investment of \$100,000 was purported to be \$518,000. They were also to receive their principal investment back at the end of twelve months.

23. The distributions to unit purchasers and equity investors were to be paid from subscribers to Gateway's Internet telephony system; however, initially, investors would be paid from an "equity fund," thus guaranteeing their returns. Investors were told that the "primary

function of the equity fund is to provide monetary support to the company's distribution timetable to the 12-month purchasers."

The Material Misrepresentations and Omissions

The Internet Telephony System is Not Operational and Verio, Inc. has not Permitted Gateway Access to its Subscriber Base

24. According to a Gateway News Flash dated February 10, 1999, which was sent to investors, the initial Portland-Vancouver system is expected to be operational by February 20, 1999. However, the system has never become operational. Although investors received this News Flash, no further information has been distributed to investors to inform them that the system was not operational as of February 20, 1999.

25. According to a Gateway News Flash dated December 3, 1998, which was sent to investors, Verio, an Internet service provider that was to install the Internet telephony hardware, had permitted Gateway to use its subscriber base. Ross, Kavanagh and other salespeople at Cheyenne have represented to investors that Gateway is using Verio's subscriber base and therefore currently has 70,000 subscribers. However, Verio has stated that it has not, and would never, allow Gateway access to Verio's subscriber base.

26. Without an operating system, and with no subscribers, Gateway cannot generate the ninety day returns it has guaranteed investors.

Gateway has Misrepresented the Costs Associated with the Internet Telephony System

27. Both Gateway's offering documents and the sales scripts utilized by Cheyenne salespersons misrepresent the costs associated with the Internet telephony system. Both represent

that, for a flat thirty dollar monthly fee, subscribers to the system will be able to call toll free anywhere in the five-state Internet telephony system. Investors are not told that there will be long distance charges from the point of origin of the call to the Internet telephony hardware and from the hardware to the point of termination of the call. Origin charges will be borne by the subscriber and termination charges will be borne by Gateway. Such charges would reduce the anticipated profits of Gateway and would in turn reduce the profits that are to be distributed to investors.

Gateway has not Made its Guaranteed Distributions to Investors

28. Some investors received their first distribution checks but these investors have yet to receive further distributions, which were due in March and April 1999.

Gateway has not Permitted Investors to Withdraw from their Investments

29. Contrary to the language in the Gateway offering documents, investors who have requested to withdraw from their investment have not had their principal returned.

Gateway has Misrepresented the Possibility of Being Acquired

30. Ross and Kavanagh have misrepresented to investors that Gateway will soon be acquired by Verio, Inc. and that, when Gateway is acquired, investors will receive 10-20 times the amount of their investment. Verio, Inc., however, has no plans to acquire Gateway.

31. Sales of Gateway have continued until at least May 3, 1999.

Unregistered Broker-Dealers

32. Cheyenne, Ross and Kavanagh effected transactions in, offered for sale and sold the securities of Gateway by means of the mail, telephones and other means and instrumentalities of interstate commerce while not registered with the Commission as a broker-dealer.

((

First Cause of Action

(Violations of §10(b) and Rule 10b-5 of the Securities Exchange Act of 1934)
[15 U.S.C. §§78j(b) and 17 C.F.R. §240.10b-5]

33. Plaintiff repeats and realleges Paragraphs 1 through 32 above.

34. Defendants Gateway, Cheyenne, Ross and Kavanagh, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or 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; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities in violation of 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.

35. By reason of the foregoing, these Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and unless restrained and enjoined will continue to do so.

Second Cause of Action

(Violations of §17(a)(1) of the Securities Act of 1933)
[15 U.S.C. §77q(a)]

36. Plaintiff repeats and realleges Paragraphs 1 through 32 above.

37. Defendants Gateway, Cheyenne, Ross and Kavanagh, with scienter, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly employed devices, schemes or artifices to defraud in violation of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)].

38. By reason of the foregoing, these Defendants violated Section 17(a)(1) of the Securities Act and unless restrained and enjoined will continue to do so.

Third Cause of Action

(Violations of §§17(a)(2) and (3) of the Securities Act of 1933)
[15 U.S.C. §§77q(a)(2) and (3)]

39. Plaintiff repeats and realleges Paragraphs 1 through 32 above.

40. Defendants Gateway, Cheyenne, Ross and Kavanagh, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly (a) obtained money or property by means of untrue statements of material facts or omissions 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; or (b) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities in violation of Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§77q(a)(2) and (3)].

41. By reason of the foregoing, these Defendants violated Sections 17(a)(2) and (3) of the Securities Act and unless restrained and enjoined will continue to do so.

Fourth Cause of Action

(Violations of §15(a) of the Securities Exchange Act of 1934)
[15 U.S.C. §78o(a)]

42. Plaintiff repeats and realleges Paragraphs 1 through 32 above.

43. Defendants Cheyenne, Ross and Kavanagh, either persons other than natural persons or natural persons not associated with a broker-dealer which is a person other than a natural person, made use of the mails or other means or instrumentalities of interstate commerce, or

attempted to induce the purchase or sale of securities while not registered with the Commission as a broker-dealer in violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

44. By reason of the foregoing, these Defendants violated Section 15(a) of the Exchange Act thereunder and unless restrained and enjoined will continue to do so.

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enter an injunction, preliminarily during the pendency of this action and permanently thereafter, restraining and enjoining Defendants Gateway, Cheyenne, Ross and Kavanagh, their subsidiaries, officers, directors, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, and each of them, from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

II.

Enter an injunction, preliminarily during the pendency of this action and permanently thereafter, restraining and enjoining Defendants Gateway, Cheyenne, Ross and Kavanagh, their subsidiaries, officers, directors, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act.

III.

Enter an injunction, preliminarily during the pendency of this action and permanently thereafter, restraining and enjoining Defendants Cheyenne, Ross and Kavanagh, their

subsidiaries, officers, directors, agents, servants, employees, and attorneys-in-fact, and all persons in active concert or participation with them, and each of them, from violating, directly or indirectly, Section 15(a) of the Exchange Act.

IV.

Order Defendants and their officers, agents, servants, employees and attorneys, to disgorge all illegal gains, together with prejudgment interest.

V.

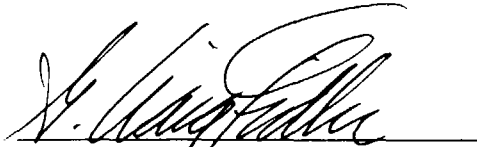
Order Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

VI.

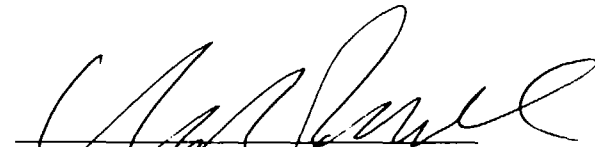
Grant any and all such other relief as this Court may deem just or appropriate.

Dated: May 18, 1999

Respectfully submitted,



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CIVIL COVER SHEET 99-8378 CIV-260CH

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading 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 required 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

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

A-Palm Beach / 99 cv 8378 / zloch / seltzer

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

**G. Craig Fidler, Esq. (303) 844-1044
Jennifer A. Ostrom, Esq. (303) 844-1047**

SEC, 1801 California St., Suite 4800, Denver, CO

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

DEFENDANTS

GATEWAY TECHNOLOGIES, INC.; THE CHEYENNE HOLDING CORP.; RANDOLPH S. ROSS AND TIMOTHY J. KAVANAGH

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

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

ATTORNEYS (IF KNOWN)

*99 MAY 19 PM 12:50
CIVIL DIST. CLERK
S.D. OF FLA.-HIA
JL*

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

(For Diversity Cases Only) (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 checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans 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))	<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	A LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input checked="" 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 HABEAS 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	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt Relations <input type="checkbox"/> 730 Labor Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 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)

15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5, 15 U.S.C. § 77q(a), 15 U.S.C. § 78o(a).

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case) **Violations of the antifraud and broker-dealer registration provisions of the federal securities laws.**

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

TRO, Asset Freeze,

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FEE _____ JUDGE _____ MAG JUDGE _____