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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_

1 Sandra J. Harris  
2 William E. White  
3 Kelly Bowers  
4 Jolie F. Zimmerman

5 Attorneys for Plaintiff  
6 Securities and Exchange Commission  
7 5670 Wilshire Blvd., 11th Floor  
8 Los Angeles, CA 90036  
9 Telephone: (213) 965-3998

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 \_\_\_\_\_ :  
14 SECURITIES AND EXCHANGE COMMISSION, :

15 Plaintiff, :

16 v. :

17 AMERICAN GROWTH CAPITAL CORP., :  
18 AMERICAN GROWTH FUND I, LP, :  
19 GROWTH CAPITAL RESOURCES CORP., :  
20 CAPITAL GROWTH FUND I, LP, :  
21 DONNA L. SNYDER, CHARLES E. :  
22 DUQUETTE, ROBERT K. KELLY, :  
23 HUGO V. CIANCIULLI, WILLIAM M. :  
24 MCNARY, EMANUEL B. NEDWICK, :  
25 JEROME L. GLAZOV, AND :  
26 CHRISTOPHER A. PAULICK, :

27 Defendants. :

Civil Action No.

**97- 5993 RAP (IGx)**

COMPLAINT

28 Plaintiff Securities and Exchange Commission (the  
29 "Commission"), for its complaint, upon information and belief,  
30 alleges as follows:

JURISDICTION

31 1. This Court has jurisdiction over this action pursuant  
32 to Section 22(a) of the Securities Act of 1933 ("Securities Act")  
33 [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Securities

1 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(e) and  
2 78aa], Section 214 of the Investment Advisers Act of 1940  
3 ("Advisers Act") [15 U.S.C. § 80b-14], and Section 44 of the  
4 Investment Company Act of 1940 ("Investment Company Act") [15  
5 U.S.C. § 80a-43]. Defendants American Growth Capital Corp.  
6 ("American Growth"), American Growth Fund I, LP ("A.G. Fund"),  
7 Growth Capital Resources Corp. ("Growth Capital"), Capital Growth  
8 Fund I, LP ("C.G. Fund"), Donna L. Snyder ("Snyder"), Charles E.  
9 Duquette ("Duquette"), Robert K. Kelly ("Kelly"), Hugo V.  
10 Cianciulli ("Cianciulli"), William M. McNary ("McNary"), Emanuel  
11 B. Nedwick ("Nedwick"), Jerome L. Glazov, aka Jerry Baker  
12 ("Glazov"), and Christopher A. Paulick ("Paulick") have, directly  
13 or indirectly, made use of the means or instrumentalities of  
interstate commerce and/or of the mails in connection with the  
15 securities transactions described in this Complaint.

16 SUMMARY

17 2. This is an action for fraud in the offer and sale of  
18 unregistered securities in two investment funds by two  
19 unregistered investment advisers. Defendants have, among other  
20 things, misused investor proceeds to pay themselves undisclosed  
21 compensation and/or allowed an undisclosed control person to  
22 manage the investment companies.

23 3. Defendants American Growth, A.G. Fund, Snyder, and  
24 Duquette raised approximately \$7.4 million from over 300  
25 investors nationwide through sales of interests in A.G. Fund, an  
26 investment fund that invests in pre-public, emerging growth  
companies ("investee companies"). In their representations to



investors, these Defendants misrepresented and omitted material facts regarding: management of A.G. Fund; misappropriation of at least \$1.6 million in investor proceeds; American Growth's participation in the distribution of investee company securities; and misappropriation of substantial amounts of money raised in the name of and on behalf of an investee company.

4. Defendants Growth Capital, C.G. Fund, Duquette, Kelly, Cianciulli, and McNary raised over \$480,000 from at least 27 investors in several states through sales of interests in C.G. Fund, another investment fund. In their representations to investors, these Defendants misrepresented and omitted material facts regarding: management of C.G. Fund; undisclosed expenses and payments to principals; and an undisclosed kickback Growth Capital received in connection with one of C.G. Fund's investments.

5. Defendants Nedwick, Glazov, and Paulick offered and sold investments in A.G. Fund.

6. In their communications with investors, Defendants Nedwick, Glazov, and Paulick misrepresented and omitted material facts to investors regarding undisclosed commissions and/or overrides (commissions on commissions).

7. The Commission seeks relief for Defendants' violations of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)], Sections 10(b) and 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o(a)(1)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and

80b-6(2)], and Sections 7(a) and 17e(1) of the Investment Company Act [15 U.S.C. §§ 80a-7 and 80a-17(e)(1)]. Specifically, the Commission requests that this Court enjoin Defendants from any future violations of the securities laws, order Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and Paulick to disgorge all benefits obtained by virtue of their illegal conduct, together with prejudgment interest thereon, order Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and Paulick to pay civil penalties, and appoint a permanent receiver over Defendants American Growth, A.G. Fund, Growth Capital, and C.G. Fund.

THE DEFENDANTS

8. American Growth Capital Corp. ("American Growth") is a Nevada corporation formed in 1994 with its principal place of business in Las Vegas, Nevada. From April 1994 through May 1996, American Growth maintained its principal place of business in Fountain Valley, California. American Growth registered with the Commission as an investment adviser on September 16, 1996. American Growth is the general partner of A.G. Fund.

9. American Growth Fund 1, LP ("A.G. Fund") is a California limited partnership managed by American Growth. On April 1, 1996, A.G. Fund elected to be regulated as a business development company ("BDC") pursuant to Section 54 of the Investment Company Act [15 U.S.C. § 80a-54]. A.G. Fund raised approximately \$7.4 million from over 300 investors nationwide.

\*



10. Growth Capital Resources Corp. ("Growth Capital") is a Nevada corporation formed in 1996 with its principal place of business in Las Vegas, Nevada. Growth Capital is the general partner of C.G. Fund.

11. Capital Growth Fund 1, LP ("C.G. Fund") is a Nevada limited partnership managed by Growth Capital. From May through November 1996, C.G. Fund raised over \$480,000 from 27 investors in several states.

12. Donna L. Snyder ("Snyder"), 41, resides in Las Vegas, Nevada. Snyder is Secretary/Treasurer, a director, and a 90% shareholder of American Growth.

13. Charles E. Duquette ("Duquette"), 60, resides in Las Vegas, Nevada. Duquette has been an undisclosed control person of American Growth, A.G. Fund, Growth Capital, and C.G. Fund, and is a 25% shareholder of Growth Capital. In April 1993, Duquette was ordered to cease and desist from engaging in the fraudulent offer and sale of securities by the New Mexico Securities Division. In re Gerald Alfred Borlin, Charles Edward Duquette, A. David Mendez, Denis Benson, Environetics, Inc., Equity Leasing Program 90-I, and Techstar Corp. (Order No. 93-91-096-58(CD)), NM Secs. Div., 1993 New Mex. Sec. LEXIS 17, April 20, 1993.

14. Robert K. Kelly ("Kelly"), 62, resides in Las Vegas, Nevada. Kelly was a director of American Growth from approximately May to December 1995, when he resigned. Kelly currently is Secretary/Treasurer, a director, and a 25% shareholder of Growth Capital.

\*

15. Hugo V. Cianciulli ("Cianciulli"), 45, resides in Las Vegas, Nevada. He currently is President, a director, and a 25% shareholder of Growth Capital.

16. William M. McNary ("McNary"), 49, resides in Henderson, Nevada. McNary has been Chief Financial Officer, Vice President, a director, and a 25% shareholder of Growth Capital since September 1996.

17. Emanuel B. Nedwick ("Nedwick"), 54, resides in West Hills, California. Nedwick sold units in A.G. Fund from at least August 1994 until July 1995.

18. Jerome L. Glazov, aka Jerry Baker ("Glazov"), 54, resides in Paradise Valley, Arizona. Glazov sold units in A.G. Fund. Glazov also supervised sales agents who sold units in A.G. Fund and preferred stock in two A.G. Fund investee companies from November 1994 through March 1996.

19. Christopher A. Paulick ("Paulick"), 38, resides in North Hollywood, California. From at least November 1994 through March 1995, Paulick owned and operated a sales organization that sold interests in A.G. Fund and was not registered with the Commission as a broker-dealer.

#### GENERAL ALLEGATIONS

##### The Securities

20. From April 1994 through approximately October 1995, Defendants American Growth, A.G. Fund, Snyder, and Duquette offered and sold investments in A.G. Fund. According to its offering documents, A.G. Fund is a limited partnership whose investment objective is "to invest its assets and/or provide



management services and venture capital in emerging and  
2 established business operations which demonstrate potential for  
3 long term capital growth and which would benefit from public  
4 ownership."

5 21. From at least May through November 1996, Defendants  
6 Growth Capital, C.G. Fund, Duquette, Kelly, and Cianciulli  
7 offered and sold investments in C.G. Fund. McNary participated  
8 in these sales from September through November 1996. C.G. Fund's  
9 investment objective is almost identical to that of A.G. Fund:  
10 "to invest its assets in pre-public, and established business  
11 operations which demonstrate potential for long-term growth and  
12 would benefit from public ownership or [in] companies which are  
13 already public and would benefit from secondary public  
financing."

15 22. Essentially, A.G. Fund and C.G. Fund (collectively  
16 referred to herein as the "Funds") each aim to develop a  
17 portfolio of investee companies and provide these companies with  
18 financial and/or managerial assistance in order to take the  
19 companies public.

20 23. From April 1994 to April 1996, A.G. Fund was not  
21 registered with the Commission as an investment company.

22 24. At no time has C.G. Fund ever been registered with the  
23 Commission as an investment company.

24 The Offer and Sale of the Securities

25 25. Defendants have solicited prospective investors for  
26 A.G. Fund and/or C.G. Fund on a nationwide basis, and have  
solicited investors in this judicial district. Defendants

(except Defendant McNary) have offered and sold the securities to the public through general solicitations.

26. Defendants American Growth, A.G. Fund, Snyder, and Duquette have offered and sold investments in A.G. Fund through at least five independent sales agents and through at least four unregistered brokerage firms and three registered brokerage firms. Defendants American Growth, Snyder, Duquette, Nedwick, Glazov, Paulick each have participated in the offer and sale of A.G. Fund.

27. Defendants Growth Capital, C.G. Fund, Duquette, Kelly, Cianciulli, and McNary have offered and sold investments in C.G. Fund through registered brokerage firms. Defendants Growth Capital, Duquette, Kelly, Cianciulli, and McNary each have participated in the offer and sale of C.G. Fund.

28. Offerings of interests in the Funds were not registered with the Commission.

29. From at least December 1994 through March 1995, Defendants Paulick and Glazov operated a sales organization that sold investment interests in A.G. Fund through sales agents, including Defendant Glazov, who were not affiliated with a brokerage firm that was registered with the Commission.

30. During the relevant time period, Defendants Paulick and Glazov were not registered with the Commission as broker-dealers, nor was the sales organization they operated.

31. From at least December 1994 through March 1995, Defendants Snyder and Duquette assisted Paulick and Glazov in the sale of interests in A.G. Fund through this sales organization by



mailing offering documents to investors, paying salaries to  
2 clerical staff, and paying commissions to sales agents.

3 The Use of Investor Funds

4 American Growth and A.G. Fund

5 32. From April 1994 through October 1995, Defendants  
6 American Growth, Snyder, and Duquette raised almost \$7.4 million  
7 from investors. While they represented to investors that they  
8 would use investor funds primarily for investment in investee  
9 companies, in fact American Growth, Snyder, and Duquette used  
10 investor funds as follows:

- 11 a. \$2,920,000 for investment in seven investee  
12 companies;
- 13 b. approximately \$1,100,000 (15%) in disclosed  
14 commissions and other selling expenses to sales  
15 agents;
- 16 c. at least \$945,000 in investee companies that  
17 conducted no business and were owned and  
18 controlled by Defendants Duquette and Snyder  
19 ("sham investments");
- 20 d. at least \$185,600 in undisclosed commissions and  
21 other selling expenses on sales of A.G. Fund;
- 22 e. at least \$243,000 in undisclosed expenses and  
23 payments to Defendants Snyder and Duquette;
- 24 f. at least \$225,000 in undisclosed, excessive  
25 management fees paid to Defendant American Growth;
- 26 g. at least \$16,000 in undisclosed commissions and  
27 other selling expenses paid on sales of interests

in an unrelated investment fund.

The Use of Investor Funds

Growth Capital and C.G. Fund

33. From at least May through November 1996, Defendants Growth Capital, Duquette, Kelly, and Cianciulli raised over \$480,000 from investors. McNary participated in this activity from September through November 1996. Although they represented that investor funds would be used primarily for investment in investee companies, Growth Capital, Duquette, Kelly, Cianciulli, and McNary used this money as follows:

- a. at least \$200,000 for investment in investee companies;
- b. at least \$44,000 in undisclosed payments to Defendants Kelly, Cianciulli, and McNary;
- c. at least \$12,500 in undisclosed, excessive management fees to Growth Capital.

Material Misrepresentations and Omissions of Material Facts by American Growth, Snyder, and Duquette

34. Defendants American Growth, Snyder, and Duquette have misrepresented and failed to disclose the following material facts to investors: (1) Defendant Duquette has acted as an undisclosed control person of American Growth and A.G. Fund; (2) American Growth, Snyder, and Duquette have misused and misappropriated investor funds through: (a) sham investments; (b) undisclosed commissions; (c) undisclosed expenses and payments to Defendants Snyder and Duquette; and (d) undisclosed, excessive management fees to Defendant American Growth; (3)



1 American Growth, Snyder, and Duquette have participated in the  
2 distribution of securities of A.G. Fund investee companies; and  
3 (4) American Growth, Snyder, and Duquette have misappropriated a  
4 substantial amount of the money raised in the name of and on  
5 behalf of one of A.G. Fund's investee companies.

6 Defendants American Growth, Snyder, and Duquette Failed to  
7 Disclose that Duquette Has Been a Control Person of  
8 American Growth and A.G. Fund

9 35. A.G. Fund's offering documents represent that American  
10 Growth's officers and directors include Defendants Snyder and  
11 Kelly. Defendant Duquette is not listed as an officer or  
12 director of American Growth.

13 36. Despite these representations to investors, from April  
14 1994 through the present, Defendant Duquette has acted as an  
15 undisclosed control person of American Growth and A.G. Fund.

16 37. Defendant Duquette was involved in every aspect of the  
17 formation of American Growth and A.G. Fund, including:  
18 contributing start-up capital; meeting with potential selling  
19 entities, sales agents, and investee companies; and soliciting  
20 investors.

21 38. Defendant Duquette has been appointed to the board of  
22 directors of at least five of A.G. Fund's investee companies.

23 Defendants American Growth, Snyder, and Duquette  
24 Misrepresented How Investor Funds Will Be Used

25 39. A.G. Fund's offering documents estimate that investor  
26 proceeds will be spent as follows: (1) \$50,000 for offering  
27 expenses; (2) commissions and other selling expenses not to

exceed 15%; and (3) the remainder for investments in pre-public,  
2 emerging growth companies.

3 40. Despite their representations to investors, Defendants  
4 American Growth, Snyder, and Duquette have misused and  
5 misappropriated investor monies through: (1) sham investments;  
6 (2) undisclosed commissions on sales of A.G. Fund; (3)  
7 undisclosed payments to principals, expenses, and management  
8 fees.

9 Sham Investments

10 41. Contrary to their representations to investors,  
11 Defendants American Growth, Snyder, and Duquette caused A.G. Fund  
12 to make investments, totalling at least \$945,000, in at least two  
13 companies that conducted no business and were owned and  
controlled by Defendants Duquette and Snyder.

15 42. With respect to one of these companies, Defendants  
16 Snyder and Duquette caused the investment agreements between the  
17 company and A.G. Fund to be signed in the name of a deceased  
18 person.

19 43. Defendants Snyder, and Duquette used the investor  
20 monies transferred to these sham investee companies as follows:

- 21 a. at least \$466,000 to a company wholly controlled  
22 by Defendant Duquette;  
23 b. at least \$100,000 to Defendant Duquette  
24 personally;  
25 c. at least \$20,000 towards the purchase of  
26 Defendants Snyder and Duquette's residence;  
d. at least \$11,000 to another company owned and



2 controlled by Defendants Duquette and Nedwick and  
3 used to fund other investment programs.

4 Undisclosed Commissions

5 44. Defendants Snyder and Duquette used investor proceeds  
6 to pay at least \$185,600 in undisclosed commissions and other  
7 selling-related costs (in excess of the represented 15%). These  
8 costs included amounts used to pay overhead and other expenses of  
9 sales agents and brokerage firms selling A.G. Fund.

10 45. Defendants Snyder and Duquette also used an additional  
11 \$433,700 of the money invested in the sham investee companies  
12 (discussed above) to pay undisclosed commissions and other  
13 selling-related costs (in excess of the represented 15%). These  
14 costs included amounts used to pay overhead and other expenses of  
15 sales agents and brokerage firms selling A.G. Fund.

16 Undisclosed Payments to Principals,

17 Expenses, and Management Fees

18 46. Defendants American Growth, Snyder, and Duquette failed  
19 to disclose that A.G. Fund investor proceeds would be used to pay  
20 the officers and directors of American Growth.

21 47. Defendants American Growth, Snyder, and Duquette used  
22 investor proceeds to pay at least \$243,000 in undisclosed  
23 payments to Defendants Snyder and Duquette.

24 48. A.G. Fund's offering documents include provision for  
25 the reimbursement of expenses incurred by American Growth "or its  
26 affiliates" on behalf of A.G. Fund.

27 49. Contrary to their representations to investors,  
28 Defendants American Growth, Snyder, and Duquette used A.G. Fund

investors proceeds to pay expenses unrelated to A.G. Fund,  
including at least \$16,000 in commissions and other selling  
expenses on sales of investment interests in a second unrelated  
investment fund.

50. A.G. Fund's offering documents represent that American  
Growth will earn an annual management fee equal to 1% of the  
amount of A.G. Fund's initial offering. The offering documents  
further represent that the management fee will not be paid out of  
investor proceeds, but out of A.G. Fund's income.

51. Contrary to their representations to investors, in each  
calendar year 1994, 1995, and 1996, Defendants American Growth,  
Snyder, and Duquette caused American Growth to receive a \$75,000  
management fee that was: (1) based on the maximum amount to be  
raised, not the amount actually raised; and (2) paid out of  
investor proceeds, not A.G. Fund's income.

Defendants American Growth, Snyder, and Duquette Misrepresented  
That They Would Not Underwrite Investee Company Securities

52. A.G. Fund's offering documents represent that American  
Growth does not intend to be the underwriter of the securities of  
its investee companies.

53. Despite this representation, from at least August  
through December 1995, Defendants American Growth, Snyder, and  
Duquette, with the assistance of Defendants Nedwick and Glazov,  
participated in two private offerings conducted by two of its  
investee companies.

54. Defendants American Growth, Snyder, and Duquette also  
paid undisclosed commissions on sales of investee company stock



1 with A.G. Fund investor proceeds and with money raised in the  
2 name of and on behalf of one of the investee companies.

3 Defendants American Growth, Snyder, and Duquette Failed to  
4 Disclose That They Would Misappropriate Money Raised  
5 Through Sales of Investee Company Stock

6 55. From at least August through December 1995, Defendants  
7 American Growth, Snyder, and Duquette raised over \$800,000 in the  
8 name of and on behalf of one of A.G. Fund's investee companies.  
9 Defendants Snyder and Duquette then caused this money to be  
10 deposited into an escrow account controlled by Defendant  
11 Duquette.

12 56. Defendants Snyder and Duquette disbursed these funds at  
13 their discretion for various personal and business expenses,  
14 including almost \$270,000 to pay commissions to sales agents on  
15 sales of stock in another investee company and at least \$47,500  
16 to a company wholly owned and controlled by Defendant Duquette.

17 Material Misrepresentations and Omissions of Material Facts by  
18 Defendants Growth Capital, Duquette, Kelly,

19 Cianciulli, and McNary

20 57. Defendants Growth Capital, Duquette, Kelly, Cianciulli,  
21 and McNary have misrepresented and failed to disclose the  
22 following material facts to investors: (1) Defendant Duquette  
23 has acted as an undisclosed control person of Growth Capital and  
24 C.G. Fund; (2) Growth Capital, Duquette, Kelly, Cianciulli, and  
25 McNary have misused and misappropriated investor funds through:  
26 (a) undisclosed payments to Defendants Kelly, Cianciulli, and  
27 McNary; and (b) undisclosed, excessive management fees to Growth

Capital. Defendants Growth Capital and McNary also failed to disclose to investors that Growth Capital received an undisclosed payment (kickback) in connection with one of C.G. Fund's investments.

Defendants Growth Capital, Duquette, Kelly, Cianciulli, and McNary Failed to Disclose that Duquette Has Been a Control Person of Growth Capital and C.G. Fund

58. C.G. Fund's offering documents represent that Growth Capital's officers and directors are Defendants Kelly, McNary, and Cianciulli. Defendant Duquette is not listed as an officer or director of Growth Capital.

59. Despite these representations to investors, from at least May through September 1996, Defendant Duquette was a control person of Growth Capital and C.G. Fund.

60. Defendant Duquette was involved in every aspect of the formation of Growth Capital and C.G. Fund, including: drafting offering documents; contributing start-up capital; and meeting with potential selling entities, sales agents, and investee companies.

Defendants Growth Capital, Duquette, Kelly, Cianciulli, and McNary Misrepresented How Investor Funds Would Be Used

61. C.G. Fund's offering documents estimate that investor proceeds will be spent as follows: (1) \$50,000 for offering expenses; (2) commissions not to exceed 15%; and (3) the remainder for investments in pre-public, emerging growth companies.

\*



62. Despite their representations to investors, Defendants  
2 Growth Capital, Duquette, Kelly, Cianciulli, and McNary have  
3 misused investor proceeds through: (1) undisclosed payments to  
4 Defendants Kelly, Cianciulli, and McNary; and (2) undisclosed,  
5 excessive management fees paid to Growth Capital.

6 63. Defendants Growth Capital, Duquette, Kelly, Cianciulli,  
7 and McNary used investor proceeds to pay at least \$44,000 in  
8 undisclosed payments to principals, including \$20,000 to  
9 Defendant McNary and \$12,000 each to Defendants Kelly and  
10 Cianciulli.

11 64. C.G. Fund's offering documents represent that Growth  
12 Capital will earn an annual management fee equal to 2.5% of the  
13 amount of C.G. Fund's initial offering. The offering documents  
14 further represent that the management fee will not be paid out of  
15 investor proceeds.

16 65. Contrary to their representations to investors, in  
17 1996, Defendants Growth Capital, Duquette, Kelly, Cianciulli, and  
18 McNary caused Growth Capital to receive a \$12,500 management fee  
19 that was paid out of investor proceeds.

20 Defendants Growth Capital and McNary Failed to Disclose That  
21 Growth Capital Would Receive a Kickback in Connection  
22 With One of C.G. Fund's Investments

23 66. C.G. Fund's offering documents do not disclose that  
24 Defendant Growth Capital will receive fees or other compensation  
25 for causing C.G. Fund to make an investment in a particular  
26 investee company.

27 \*

67. Defendants Growth Capital and McNary caused Growth  
Capital to receive a \$7,500 payment for having C.G. Fund invest  
\$150,000 in an investee companies.

Material Misrepresentations and Omissions of Material Fact by  
Defendants Nedwick, Glazov, and Paulick

68. Defendants Nedwick, Glazov, and Paulick sold units in  
A.G. Fund with offering documents that represented that  
commissions would be 10%, with total selling expenses not to  
exceed 15%.

69. Defendants Nedwick, Glazov, and Paulick failed to  
disclose to investors in A.G. Fund that total commissions and  
other selling expenses in connection with A.G. Fund's offering  
exceeded the represented maximum of 15%.

70. Defendant Nedwick failed to disclose to investors that  
he received commissions exceeding the represented 10%.

71. Defendant Glazov failed to disclose to investors that  
he received commissions exceeding the represented 10% and that,  
on certain sales, he received overrides of 5.5% in addition to  
commissions paid to sales agents working under his supervision.

72. Defendant Paulick failed to disclose to investors that  
he received overrides of 9-10% in addition to commissions paid on  
sales by sales agents working under his direction.

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FIRST CLAIM

FRAUD IN THE OFFER OR SALE OF SECURITIES

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

(Against All Defendants Except A.G. Fund and C.G. Fund)

73. Paragraphs 2 through 72 of this Complaint are realleged and incorporated herein by reference.

74. Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and Paulick, and each of them, by engaging in the conduct described in Paragraphs 2 through 72 above, directly or indirectly, 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:

- a. with scienter, employed devices, schemes or artifices to defraud; or
- b. obtained money or property by means of untrue statements of material fact or by omitting 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 transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

\*

75. By reason of the foregoing, Defendants American Growth,  
2 Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary,  
3 Nedwick, Glazov, and Paulick, and each of them, violated and,  
4 unless restrained and enjoined, will continue to violate, Section  
5 17(a) of the Securities Act of 1933.

6 SECOND CLAIM

7 FRAUD IN CONNECTION WITH THE  
8 PURCHASE OR SALE OF SECURITIES

9 Section 10(b) of the Securities Exchange  
10 Act of 1934 [15 U.S.C. § 78j(b)] & Rule 10b-5  
11 thereunder [17 C.F.R. § 240.10b-5]

12 (Against All Defendants Except A.G. Fund and C.G. Fund)

13 76. Paragraphs 2 through 72 of this Complaint are realleged  
and incorporated herein by reference.

15 77. Defendants American Growth, Growth Capital, Snyder,  
16 Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and  
17 Paulick, and each of them, by engaging in the conduct described  
18 in Paragraphs 2 through 72, directly or indirectly, in connection  
19 with the purchase or sale of securities, by the use of means or  
20 instrumentalities of interstate commerce, or of the mails, or of  
21 a facility of a national securities exchange, with scienter:

- 22 a. employed devices, schemes or artifices to defraud;  
23 b. made untrue statements of material facts or  
24 omitted to state material facts necessary in order  
25 to make the statements made, in the light of the  
26 circumstances under which they were made, not  
misleading; or



2 c. engaged in acts, practices or courses of business  
3 which operated or would operate as a fraud or  
4 deceit upon other persons.

5 78. By reason of the foregoing, Defendants American Growth,  
6 Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary,  
7 Nedwick, Glazov, and Paulick, and each of them, violated and,  
8 unless restrained and enjoined, will continue to violate, Section  
9 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5  
10 thereunder.

11 THIRD CLAIM

12 FRAUD ON INVESTMENT ADVISERS CLIENTS

13 Sections 206(1) and (2) and 209 of the  
14 Investment Advisers Act of 1940

15 [15 U.S.C. § 80b-6]

16 (Against All Defendants Except A.G. Fund and C.G. Fund)

17 79. The allegations contained in paragraphs 2 through 72 of  
18 this Complaint are realleged and incorporated by reference.

19 80. Defendants American Growth and Growth Capital, and each  
20 of them, by engaging in the conduct described in Paragraphs 2  
21 through 72, directly or indirectly, by the use of means or  
22 instrumentalities of interstate commerce, or of the mails:

23 a. employed devices, schemes or artifices to defraud  
24 their clients and prospective clients; or

25 b. with scienter, engaged in transactions, practices,  
26 or courses of business which operated or would  
27 operate as a fraud or deceit upon clients and  
28 prospective clients.

1 81. By reason of the foregoing, Defendants American Growth  
2 and Growth Capital, and each of them, violated and, unless  
3 restrained and enjoined, will continue to violate, Sections  
4 206(1) and (2) of the Investment Advisers Act of 1940.

5 82. Defendants Snyder and Duquette, and each of them, by  
6 engaging in the conduct described in Paragraphs 2 through 72,  
7 aided and abetted American Growth's violations and, unless  
8 restrained and enjoined, will continue to aid and abet American  
9 Growth's violations, of Sections 206(1) and (2) of the Investment  
10 Advisers Act of 1940.

11 83. Defendants Duquette, Kelly, Cianciulli, and McNary, and  
12 each of them, by engaging in the conduct described in Paragraphs  
13 2 through 72, aided and abetted Growth Capital's violations, and,  
14 unless restrained and enjoined, will continue to aid and abet  
15 Growth Capital's violations of Sections 206(1) and (2) of the  
16 Investment Advisers Act of 1940.

17 FOURTH CLAIM

18 OFFER AND SALE OF UNREGISTERED SECURITIES

19 Section 5(a) and 5(c) of the Securities Act of 1933

20 [15 U.S.C. §§ 77e(a) and 77e(c)]

21 (Against Defendants American Growth, A.G. Fund, Snyder,  
22 Duquette, Nedwick, Glazov, and Paulick)

23 84. The allegations contained in paragraphs 2 through 72 of  
24 this Complaint are realleged and incorporated by reference.

25 85. American Growth, A.G. Fund, Snyder, and Duquette, and  
26 each of them, from April 1994 through October 1995, by engaging  
27 in the conduct described in paragraphs 2 through 72 above,



1 directly or indirectly, through use of the means or instruments  
2 of transportation or communication in interstate commerce or the  
3 mails, offered to sell or sold securities in the form of  
4 investment contracts described to investors, as limited  
5 partnership interests, or, directly or indirectly, carried or  
6 caused such securities to be carried through the mails or in  
7 interstate commerce, for the purpose of sale or delivery after  
8 sale.

9       86. Defendants Nedwick, Paulick, and Glazov, and each of  
10 them, by engaging in the conduct described in paragraphs 2  
11 through 72 above, directly or indirectly, through use of the  
12 means or instruments of transportation or communication in  
13 interstate commerce or the mails, offered to sell or sold  
14 securities in the form of investment contracts described to  
15 investors as limited partnership interests, or, directly or  
16 indirectly, carried or caused such securities to be carried  
17 through the mails or in interstate commerce, for the purpose of  
18 sale or delivery after sale.

19       87. No registration statement has been filed with the  
20 Commission or has been in effect with respect to these  
21 securities.

22       88. By reason of the foregoing, Defendants American Growth,  
23 A.G. Fund, Snyder, Duquette, Nedwick, Glazov, and Paulick, and  
24 each of them, violated, and, unless restrained and enjoined, will  
25 continue to violate Sections 5(a) and 5(c) of the Securities Act  
26 of 1933.

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FIFTH CLAIM

VIOLATIONS OF THE BROKER-DEALER REGISTRATION PROVISIONS

Section 15(a) (1) of the Securities Exchange Act of 1934

[15 U.S.C. § 78o(a) (1)],

(Against Paulick, Glazov, Snyder, and Duquette)

89. The allegations contained in paragraphs 2 through 72 are realleged and incorporated by reference.

90. Defendants Paulick and Glazov, from at least December 1994 through March 1995, by engaging in the conduct described in paragraphs 2 through 72 above, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in securities, without being registered as brokers or dealers in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], in violation of Section 15(a) (1) of the Exchange Act.

91. By reason of the foregoing, Defendants Paulick and Glazov violated, and unless restrained and enjoined will continue to violate, Section 15(a) (1) of the Exchange Act.

92. Defendants Snyder and Duquette, and each of them, from at least December 1994 through March 1995, by engaging in the conduct described in paragraphs 2 through 72 above, knowingly provided substantial assistance to Defendants Paulick's and Glazov's violations of Section 15(a) (1) of the Exchange Act.

93. By reason of the foregoing, Defendants Snyder, and Duquette, and each of them, aided and abetted Paulick's and Glazov's violations, and, unless restrained and enjoined, will continue to aid and abet Paulick's and Glazov's violations, of



Section 15(a) (1) of the Exchange Act.

SIXTH CLAIM

VIOLATIONS OF THE INVESTMENT COMPANY REGISTRATION PROVISIONS

Section 7(a) of the Investment Company Act of 1940

[15 U.S.C. § 80a-7]

(Against Defendants A.G. Fund and C.G. Fund)

94. The allegations contained in paragraphs 2 through 72 are realleged and incorporated by reference.

95. Defendant A.G. Fund, from April 1994 until April 1996, without being registered as an investment company in accordance with Section 7(a) of the Investment Company Act, by engaging in the conduct described in paragraphs 2 through 72 above, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce and:

- a. offered for sale, sold, or delivered after sale, securities or interests in securities; or offered for sale, sold, or delivered after sale such securities or interests, having reason to believe that such securities or interests would be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce; or
- b. purchased, redeemed, retired, or otherwise acquired or attempted to acquire securities or interests in securities; or
- c. engaged in business in interstate commerce.

\*

2 96. Defendant C.G. Fund, from May 1996 through the present,  
3 without being registered as an investment company in accordance  
4 with Section 7(a) of the Investment Company Act, by engaging in  
5 the conduct described in paragraphs 2 through 72 above, directly  
6 or indirectly, made use of the mails or means or  
7 instrumentalities of interstate commerce and:

- 8 a. offered for sale, sold, or delivered after sale,  
9 securities or interests in securities; or offered  
10 for sale, sold, or delivered after sale such  
11 securities or interests, having reason to believe  
12 that such securities or interests would be made  
13 the subject of a public offering by use of the  
14 mails or any means or instrumentality of  
15 interstate commerce; or  
16 b. purchased, redeemed, retired, or otherwise  
17 acquired or attempted to acquire securities or  
18 interests in securities; or  
19 c. engaged in business in interstate commerce.

20 97. By reason of the foregoing, Defendants A.G. Fund and  
21 C.G. Fund violated, and unless restrained and enjoined will  
22 continue to violate, Section 7(a) of the Investment Company Act.

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SEVENTH CLAIM

PROHIBITED AFFILIATED TRANSACTIONS

Section 17(e) (1) of the Investment Company Act of 1940

[15 U.S.C. § 80a-17(e) (1)]

(Against Growth Capital)

98. The allegations contained in paragraphs 2 through 72 are realleged and incorporated by reference.

99. Defendant Growth Capital, by engaging in the conduct described in paragraphs 2 through 72 above, as an affiliated person of an investment company (C.G. Fund), acting as agent, accepted compensation (beyond regular salary or wages from the investment company) for the purchase of property for the investment company, not in the course of Growth Capital's business as an underwriter or broker.

100. By reason of the foregoing, Defendant Growth Capital violated, and unless restrained and enjoined will continue to violate, Section 17(e) (1) of the Investment Company Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Defendants, and each of them, committed the violations charged and alleged herein.

II.

Permanently enjoin Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick,

2 Glazov, and Paulick, and each of them, from violating Section  
3 17(a) of the Securities Act and Section 10(b) of the Exchange Act  
4 and Rule 10b-5 thereunder.

5 III.

6 Permanently enjoin Defendants American Growth and Growth  
7 Capital, and each of them, from violating, and Defendants Snyder,  
8 Duquette, Kelly, Cianciulli, and McNary, and each of them, from  
9 aiding and abetting violations of, Sections 206(1) and (2) of the  
10 Advisers Act.

11 IV.

12 Permanently enjoin Defendants American Growth, A.G. Fund,  
13 Growth Capital, Snyder, Duquette, Nedwick, Glazov, and Paulick,  
14 and each of them, from violating Sections 5(a) and 5(c) of the  
15 Securities Act.

16 V.

17 Permanently enjoin Defendants Glazov and Paulick from  
18 violating, and Defendants Snyder and Duquette from aiding and  
19 abetting violations of, Section 15(a)(1) of the Exchange Act.

20 VI.

21 Permanently enjoin Defendants A.G. Fund and C.G. Fund from  
22 violating Section 7(a) of the Investment Company Act.

23 VII.

24 Permanently enjoin Defendant Growth Capital from violating  
25 Section 17(e)(1) of the Investment Company Act.

26 VIII.

27 Appoint a receiver over Defendants American Growth, A.G.  
28 Fund, Growth Capital, and C.G. Fund.



IX.

Order Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and Paulick, and each of them, to disgorge all benefits gained and losses avoided as a result of their illegal conduct and to pay prejudgment interest thereon.

X.

Order Defendants American Growth, Growth Capital, Snyder, Duquette, Kelly, Cianciulli, McNary, Nedwick, Glazov, and Paulick, and each of them, to pay civil penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)], and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)].

XI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

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XII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: August 12, 1997



Jolie F. Zimmerman  
Attorney for Plaintiff Securities and  
Exchange Commission