

CAPITAL PACIFIC HOLDINGS INC

Form SC 13D/A

December 11, 2002

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 3)*

CAPITAL PACIFIC HOLDINGS, INC.

(Name of Issuer)

Common Stock, par value \$0.10 per share

(Title of Class of Securities)

14040104

(CUSIP Number)

Dale Dowers
4560 South Decatur, Suite 200, Las Vegas, NV 89103, (702)871-4545

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

December 5, 2002

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(b)(3) or (4), check the following box [].

Check the following box if a fee is being paid with the statement [].

(A fee is not required only if the reporting person: (1) has a previous statement on file reporting beneficial ownership of more than five percent of the class of securities described in Item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of five percent or less of such class.)(See Rule 13d-7.)

NOTE: Six copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d-1(a) for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(continued on following pages)
(Page 1 of (Total Pages) Pages)

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1 Name of Reporting Person S.S. or I.R.S. Identification No. of Above Person

Dale Dowers

2 Check the Appropriate Box if a Member of a Group*

(a) []
(b) [X]

3 SEC Use Only

4 Source of Funds* N/A

5 Check Box if Disclosure of Legal Proceeding is Required Pursuant to Items 2(d) or 2(e)

[]

6 Citizenship or Place of Organization

United States

| | | | |
|------------------------------------------------------------------------------------------------------|----|--------------------------|-----------|
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7 | Sole Voting Power | 0 |
| | 8 | Shared Voting Power | 4,113,657 |
| | 9 | Sole Dispositive Power | 0 |
| | 10 | Shared Dispositive Power | 4,113,657 |

11 Aggregate Amount Beneficially Owned by Each Reporting Person

4,113,657

12 Check Box if the Aggregate Amount in Row 11 Excludes Certain Shares*

[]

13 Percent of Class Represented by Amount in Row 11

30.1

14 Type of Reporting Person*

IN

***SEE INSTRUCTIONS BEFORE FILLING OUT!
INCLUDING BOTH SIDES OF THE COVER PAGE, RESPONSES TO ITEMS 1-7
(INCLUDING EXHIBITS) OF THE SCHEDULE, AND THE SIGNATURE ATTESTATION.**

STATEMENT ON SCHEDULE 13D/A

Item 1. Security and Issuer

The title of the class of equity securities to which this Amendment to Schedule 13D (the Schedule 13D/A) relates is Common Stock, \$0.10 par value (the Common Stock), of Capital Pacific Holdings, Inc., a Delaware corporation (the Company or CPH). The address of the Company's principal executive offices is 4100 MacArthur Boulevard, Suite 200, Newport Beach, California 92660.

Item 2. Identify and Background

Item 2 of the Schedule 13D/A is amended and updated as follows:

(a) This 13D/A is filed by Dale Dowers (the Reporting Person). The Reporting Person and Hadi Makarechian, CPH2 LLC, a Delaware limited liability company (CPH2), CPH3, LLC, a Delaware limited liability company (CPH3), and Barbara A. Makarechian (collectively, the Makarechian Parties), originally filed a Schedule 13D (the Original Schedule 13D) on January 10, 1995 which was amended by Amendment No. 1 filed on September 30, 1997 and Amendment No. 2 on October 10, 1997. The Reporting person is no longer a member of that reporting group.

(b) The Reporting Person's business address is 4560 South Decatur, Suite 200, Las Vegas, Nevada 89103.

(c) The reporting person is a member of Investment Equity Builders, LLC, a commercial real estate developer with offices at 4560 South Decatur, Suite 200, Las Vegas, Nevada 89103.

(d) - (e) During the five year period prior to the filing of the Original Schedule 13D and during the last five years, the Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), nor has he been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) The Reporting Person is a citizen of the United States.

Item 3. Source and Amount of Funds or Other Consideration

Item 3 of the Schedule 13D is amended and updated as follows:

As stated in Item 4 below, the Reporting Person is reporting a sale of securities, and therefore no financing is required for such transaction.

Item 4. Purpose of Transactions

Item 4 of the Schedule 13D is amended and updated as follows:

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On December 5, 2002, CPH2, Makallon, LLC (Makallon) and California Housing Finance, L.P. (the Partnership) entered into a Purchase and Sale Agreement (the CPH2 Sale Agreement) pursuant to which, subject to the terms and conditions thereof, including but not limited to the conditions to closing contained therein, the Partnership and Makallon have agreed to purchase from CPH2 a total of 1,674,737 shares of common stock of CPH (Shares). If this transaction is consummated, the Partnership will acquire 902,425 Shares and Makallon will acquire 772,312 Shares and CPH2 s holdings in the Company will decline by 1,674,737 Shares.

In addition, on December 5, 2002, CPH2 and the Reporting Person entered into a Purchase and Sale Agreement (the Dowers Sale Agreement), pursuant to which and subject to the terms and conditions thereof, including but not limited to the conditions to closing contained therein, in exchange for selling all of his interest in CPH2 to CPH2 and releasing all of his claims against the other Stipulation Parties (as defined below), the Reporting Person will receive from CPH2 approximately \$11.3 Million (the Dowers Settlement Consideration) consisting of \$9.3 Million plus \$2 Million (the Escrow Amount) placed into an escrow account pending the closing under the CPH2 Sale Agreement (less any amounts spent by CPH in printing and delivering notice of the settlement of the Action (as defined below) to its shareholders and plus any earnings on such Escrow Amount). A portion of the Dowers Settlement Consideration includes contingency-based fees owed to the Reporting Person s counsel. In addition, CPH2 has agreed to pay \$200,000 directly to the Reporting Person s counsel (the Counsel Payment). The Counsel Payment and the Dowers Settlement Consideration will be paid entirely from the proceeds of the closing under the CPH2 Sale Agreement.

The CPH2 Sale Agreement and the Dowers Sale Agreement were entered into pursuant to that certain Stipulation of Settlement dated as of December 5, 2002 (the Stipulation) among the Partnership and certain persons and entities related thereto, CPH, Hadi Makarechian and certain of the Company s other directors, Capital Pacific Holdings, LLC, CPH2, CPH3, Makallon, Paul Makarechian, Makar Properties, LLC and the Reporting Person (the Stipulation Parties). The Stipulation was entered into by the Stipulation Parties to settle fully all of the claims and counter-claims brought in the case *Dale Dowers v. Hadi Makarechian, et al.* (Orange County Superior Court Case No. 01 CC 06121)(the Action), and was submitted to the Court for its consideration on December 5, 2002. The proposed settlement set forth in the Stipulation includes, among other things, releases granted by the plaintiff and the defendants in the Action and by CPH2, CPH3, CPH and Capital Pacific Holdings, LLC; CPH s agreement to institute new corporate governance provisions; and certain other contemplated transactions, including the CPH2 Sale Agreement, the Dowers Sale Agreement further described as follows:

First, if the Court enters an order preliminarily approving the settlement set forth in the Stipulation and providing for notice of the settlement to the Company s shareholders, the Partnership will deposit the Escrow Amount.

Second, if the transactions under the CPH2 Sale Agreement are consummated, CPH2 will sell and the Partnership will acquire 902,425 Shares of Voting Common Stock and Makallon will acquire 772,312 Shares of Voting Common Stock. Payment for these Shares will be divided into three parts: (1) the Partnership will pay the

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Counsel Payment directly to the Reporting Person's counsel on behalf of CPH2; (2) the Partnership will pay \$3,994,217 and the net Balance of the Escrow Amount directly to the Reporting Person on behalf of CPH2; and (3) Makallon will pay \$5,305,783 directly to the Reporting Person on behalf of CPH2. These payments will satisfy all of CPH2's payment obligations under the Stipulation and the Dowers Sale Agreement.

The closings under each of the Dowers Sale Agreement and the CPH2 Sale Agreement, and any other provisions included in the Stipulation, are contingent upon the Court's entry of a judgment and order for dismissal with respect to the Action, the time for an appeal of such judgment having run and such judgment becoming final, the satisfaction of the closing conditions under each of the Dowers Sale Agreement and the CPH2 Sale Agreement, and certain other matters set forth in the Stipulation.

This summary of the Stipulation, the Dowers Sale Agreement and the CPH2 Sale Agreement is qualified in its entirety by the terms and conditions of each such agreement. The Dowers Sale Agreement is filed as an Exhibit 4 to this Schedule 13D/A. The CPH2 Sale Agreement is filed as Exhibit Q to the Schedule 13D filed by the Partnership on or about December 5, 2002 and incorporated by reference herein. The summary of the Stipulation is qualified in its entirety by the terms and conditions of the Stipulation, which Stipulation may be found with the Orange County Superior Court, Complex Litigation Center, Records Department, 751 West Santa Ana Boulevard, Building 36, Santa Ana, CA 92701, Telephone Number: (714) 568-4832. For a description of the Action prepared by the Company, see the Company's 10-Q for the quarter ended August 31, 2002 filed with the SEC on October 15, 2002.

Item 5. Interest in Securities of the Issuer

Item 5 of the Schedule 13D is amended and restated as follows:

CPH2 has reported it is the beneficial owner of 4,113,657 shares of Common Stock representing approximately 30.1% of the 13,679,362 shares of Voting Common Stock issued and outstanding as of November 25, 2002. The Reporting Person is currently a member of CPH2. In the event the transactions contemplated by the Dowers Sale Agreement are consummated, the Reporting Person will cease to be a member of CPH2, and his indirect beneficial ownership of the Company's stock owned by CPH2 will terminate at that time. Accordingly, upon completion of the transactions contemplated by the Dowers Sale Agreement, the Reporting Person will not beneficially own any shares of the Company's stock.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Other than the Dowers Sale Agreement (which is attached hereto as Exhibit 4) and the Stipulation, there are no contracts, arrangements, understandings or relationships (legal or otherwise) between the Reporting Person and any other person with respect to any securities of the Company, including but not limited to transfer or voting of any securities of the Company, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, divisions of profits or loss, or the

giving or withholding of proxies.

Item 7. Material to be Filed as Exhibits

Exhibits Previously filed are not included herewith.
1-3:

Exhibit 4: Dowers Sale Agreement

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated as of the 11th day of December, 2002.

DALE DOWERS