UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. NOVA GEN CORPORATION; MARGARET GREY; and PAUL RANDALL FRALEY, Defendants.	Case No. 3:09-cv-02711-MMA-WVG **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;** [DOC. NO. 26] **FINAL JUDGMENT AS TO DEFENDANT PAUL RANDALL FRALEY**

Plaintiff Securities and Exchange Commission filed the Complaint in this case on December 3, 2009, alleging four claims against Defendant Paul Randall Fraley: (1) unregistered offer and sale of securities, in violation of Sections 5(a) and 5(c) of the Securities Act; (2) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act; (3) fraud in connection with the purchase or sale of securities, in violation of Section 10(b) of the Exchange Act and SEC Rule 10b–5; (4) failure to register as a broker-dealer, in violation of Section 15(a) of the Exchange Act. The Commission now moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on all four claims. The motion is unopposed.

A district court may not grant a motion for summary judgment solely because the opposing party has failed to file an opposition. *See Henry v. Gill Industries, Inc.*, 983 F.2d 943, 950 (9th Cir. 1993) ("The party opposing the motion is under no obligation to offer affidavits or any other

materials in support of its opposition. Summary judgment may be resisted and must be denied on no other grounds than that the movant has failed to meet its burden of demonstrating the absence of triable issues."). The Court may, however, grant an unopposed motion for summary judgment if the papers submitted in support of the motion sufficiently establish the absence of any genuine issue of material fact. *Cristobal v. Siegel*, 26 F.3d 1488, 1494-95 & n.4 (9th Cir. 1994) (unopposed motion may be granted only after court determines that there are no material issues of fact).

Here, having considered the Commission's unopposed motion, the Memorandum of Points and Authorities in support thereof, the declarations and exhibits, the Separate Statement of Undisputed Material Facts, and all other evidence presented regarding the motion, the Court finds that the papers are sufficient to support the motion and do not on their face reveal a genuine issue of material fact.

It is unlawful to offer to sell, offer to buy, sell, or deliver a security, using any means or instrument of transportation in interstate commerce, unless a registration statement is in effect and filed. *See* 15 U.S.C. § 77e(a), (c). The record in this matter establishes that no genuine issue of material fact exists as to whether Defendant improperly made unregistered offers to sell and unregistered sales of securities between January 2006 and December 2009. The Commission is entitled to summary judgment on Count One of its Complaint.

Furthermore, no genuine issue of material fact exists as to whether Defendant violated the anti-fraud provisions of Section 10(b) of the Exchange Act and SEC Rule 10b–5. Defendant, acting with scienter, made material misrepresentations and omissions related to the securities he was offering to sell and selling. The Commission is entitled to summary judgment on Counts Two and Three of the Complaint.

Finally, as the record conclusively establishes that Defendant was offering to sell and selling securities, as defined by statute, it also establishes without genuine question that Defendant was not registered as a broker-dealer, nor was he associated with registered broker-dealers. Therefore, no genuine issue of material fact exists as to whether Defendant violated Section 15(a)(1) of the Exchange Act. The Commission is entitled to summary judgment on Count Four of the Complaint.

Accordingly, **IT IS HEREBY ORDERED** that the Commission's motion for summary judgment against Defendant Paul Randall Fraley is **GRANTED** and final judgment is entered against Defendant Paul Randall Fraley in accordance herewith.

I.

IT IS HEREBY FURTHER ORDERED that defendant Fraley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED that defendant Fraley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED that defendant Fraley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c), by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any 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 any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

IV.

IT IS HEREBY FURTHER ORDERED that defendant Fraley and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual

notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), by, directly or indirectly, in the absence of any applicable exemption, engaging in the business of a broker or a dealer by making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, induce and attempt to induce the purchase or sale of any security while not being registered with the Commission as a broker or dealer, and when no exemption from registration was available.

V.

IT IS HEREBY FURTHER ORDERED that defendant Fraley is liable, jointly and severally with defendant Nova Gen Corporation, for disgorgement of $2,403,188, representing funds raised from investors as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $133,131, for a total of $2,536,319. Defendant shall satisfy this obligation by paying the total amount of disgorgement and prejudgment interest owed, as set forth above, within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying Fraley as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VI.

IT IS FURTHER ORDERED that, 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), defendant Fraley shall pay a civil penalty in the amount of $153,058. Defendant shall make this payment within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money

order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying Fraley as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IT IS SO ORDERED.

DATED: September 2, 2011

Hon. Michael M. Anello
United States District Judge