

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**LEE S. ROSEN,**

**Defendant.**

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**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

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

**INTRODUCTION**

1. The Commission brings this action against Defendant Lee S. Rosen for fraudulently evading the reporting requirements and engaging in deceptive practices in violation of the antifraud provisions and beneficial ownership reporting provisions of the federal securities laws.

2. From no later than October 2006 until May 2010, Rosen, former chairman of publicly traded New Generation Biofuels Holdings, Inc. ("New Generation"), fraudulently evaded the reporting requirements concerning his beneficial ownership and pecuniary interest in New Generation shares held in five separate trusts.

3. Rosen directly or indirectly profited from the sale of New Generation shares, but failed to properly disclose the sales. Rosen received at least \$666,000 in direct payments from sales of New Generation stock held in three of the trusts and from a trustee's individual brokerage accounts.

4. Rosen also indirectly benefited from using New Generation shares held in two

trusts, valued at approximately \$4.4 million, as partial payment for the purchase of a yacht. Rosen failed to disclose these transactions and his true holdings in New Generation securities in various Commission filings.

5. Further, Rosen made false and misleading statements and omissions in Commission filings regarding his true beneficial ownership of New Generation shares. Rosen's fraudulent statements included disclaiming beneficial ownership in New Generation shares held in three trusts. Rosen also failed to disclose his beneficial ownership of New Generation shares in another trust. Rosen's omissions included failure to disclose his receipt of profits from the sale and disposition of New Generation shares held in the trusts and failure to disclose his true beneficial ownership.

6. Through this conduct, Rosen violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a); and Sections 10(b), 13(d), and 16(a) and Rules 10b-5, 13d-1, 13d-2, 16a-3, and 16a-8 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), 15 U.S.C. § 78m(d), 15 U.S.C. § 78p(a), 17 C.F.R. § 240.10b-5, 17 C.F.R. § 240.13d-1, 17 C.F.R. § 240.13d-2, 17 C.F.R. § 240.16a-3, and 17 C.F.R. § 240.16a-8. Unless enjoined, Rosen is reasonably likely to continue to violate the federal securities laws.

#### **DEFENDANT**

7. Rosen, 57, is a resident of Boca Raton, Florida. He was the founder and chairman of the board of New Generation from its inception in October 2006 through May 2010. At various times prior to June 2007 Rosen held Series 3, 7, 55, and 63 licenses, but he did not hold any securities licenses during the relevant time period.

**JURISDICTION AND VENUE**

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

9. The Court has personal jurisdiction over Rosen and venue is proper in the Southern District of Florida because Rosen's acts, transactions, practices, and courses of conduct giving rise to the violations alleged in this Complaint occurred in the Southern District of Florida. Further, the Lee Rosen 2006 Irrevocable Trust ("Rosen Irrevocable Trust"), Oasis Trust, Pacific Trust, River Trust, and Aspen Trust (collectively, the "Rosen Trusts"), were established and maintained in the State of Florida. In addition, all of the trustees during the relevant time period resided in the State of Florida, and Rosen resides in the Southern District of Florida.

10. The Defendant, directly and indirectly, 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 set forth in this Complaint.

**FACTUAL ALLEGATIONS**

**A. New Generation Shares Held in the Rosen Trusts**

11. The Rosen Trusts were established in March 2006 and were funded with New Generation shares. The table below details the Rosen Trusts' beneficiaries and Rosen and the Rosen Trusts' New Generation stock holdings as of October 2006.

<b>Rosen, and Rosen Trusts</b>	<b>Named Beneficiaries</b>	<b>New Generation Shares and Options Rosen Held</b>	<b>% of New Generation Shares</b>	<b>Beneficial Ownership Rosen Disclosed</b>
Rosen		1,500,000	8.77%	1,500,000 Stock Options
Rosen Irrevocable Trust	Rosen's wife (2/2008 to present) Rosen (3/2006 - 2/2008)	2,090,000	12.23%	2,090,000
Oasis Trust	Rosen	488,236	2.86%	0
Pacific Trust	Rosen's wife	678,750	3.97%	0
River Trust	Rosen	1,000,000	5.85%	0
Aspen Trust	Rosen's son	1,000,000	5.85%	0
<b>Total</b>		<b>6,756,986</b>	<b>39.53%</b>	<b>3,590,000</b>

**B. Rosen's Initial Disclosures in Public Commission Filings**

12. In October 2006, Rosen filed, as an individual, a Form 3 and a Schedule 13D with the Commission providing information about his beneficial ownership of New Generation shares. Rosen's filings stated he was an officer and director of New Generation and, based on his beneficial ownership of 2,090,000 New Generation shares, and options to purchase 1,500,000 New Generation shares, he surpassed the ownership reporting thresholds of Section 16(a) of the Exchange Act.

13. Rosen's individual Form 3 and Schedule 13D stated he directly held options to purchase 1,500,000 New Generation shares and indirectly owned 2,090,000 New Generation shares held in the Rosen Irrevocable Trust. In the same filings, Rosen also stated he indirectly owned another 2,678,750 New Generation shares held by other trusts. These 2,678,750 shares were held in the River Trust (1,000,000), Aspen Trust (1,000,000), and Pacific Trust (678,750).

14. However, Rosen also improperly disclaimed beneficial ownership of 2,678,750 New Generation shares held in the River Trust, Aspen Trust and Pacific Trust. Further, Rosen improperly failed to disclose his beneficial ownership of 488,236 New Generation shares the Oasis Trust held.

15. In addition, as New Generation's Chairman of the Board, Rosen signed Forms 10-KSB and 10-K filed with the Commission (on April 2, 2007 and March 31, 2008, respectively) which also stated Rosen disclaimed beneficial ownership of 2,678,750 New Generation shares held by trusts, including the River Trust and Aspen Trust. Rosen further failed to reflect subsequent changes in his beneficial ownership of New Generation shares in the March 31, 2008 Form 10-K he signed.

**C. The Rosen Trusts' Initial Disclosures in Public Commission Filings Were Material and Misleading**

16. In October 2006, Rosen also filed a Form 3 and a Schedule 13D as the Trustee of the Rosen Irrevocable Trust. These filings disclosed that he beneficially owned 2,090,000 New Generation shares held in the Rosen Irrevocable Trust.

17. However, in the same Rosen Irrevocable Trust filings, Rosen disclaimed beneficial ownership of the 2,678,750 New Generation shares the Rosen Trusts held, including the River Trust (1,000,000), the Aspen Trust (1,000,000), and Pacific Trust (678,750). Rosen also failed to disclose his beneficial ownership of 488,236 New Generation shares the Oasis Trust held.

18. At the same time, the River Trust and its trustee filed an inaccurate initial Schedule 13D. The River Trust Schedule 13D stated the River Trust and its trustee beneficially owned 1,000,000 New Generation shares, but improperly stated Rosen disclaimed beneficial ownership of the shares the River Trust held.

19. Similarly, the Aspen Trust and its trustee also filed an inaccurate Schedule 13D in October 2006. The Aspen Trust Schedule 13D stated the Aspen Trust and its trustee beneficially owned 1,000,000 New Generation shares, but improperly stated Rosen disclaimed beneficial ownership of the shares the Aspen Trust held.

**D. Rosen Profited from New Generation Stock Held in the Rosen Trusts and a Trustee's Brokerage Account**

20. Rosen operated a scheme to evade the beneficial ownership reporting requirements and engaged in deceptive practices when, after the Rosen Trusts were funded with New Generation shares, he disclaimed beneficial ownership in those shares, received profits from the sale and disposition of the shares in the trusts, and failed to disclose his true beneficial ownership.

21. From no later than June 2007 until May 2010, Rosen derived profits directly and indirectly from the sale of New Generation shares three of the Rosen Trusts held. The trustee of three of the Rosen Trusts sold and transferred, through multiple brokerage accounts, New Generation shares the three trusts held and then distributed proceeds from the sales to Rosen.

22. Rosen received at least \$211,000 from the Oasis Trust's sales of New Generation shares and at least \$259,000 from the Pacific Trust's sales of New Generation shares. The trustee also transferred New Generation shares from the Rosen Irrevocable Trust to his limited partnership, and then sold the shares and gave Rosen at least \$97,000 from the sales proceeds.

23. Further, Rosen received at least another \$99,000 from a trustee's sale of the trustee's New Generation stock. The trustee distributed proceeds to Rosen from the trustee's sales of New Generation shares held in his individual brokerage accounts.

**1. Rosen Failed to Disclose Proceeds He Received from the Sales of New Generation Stock Held by the Oasis Trust**

24. Rosen was the named beneficiary of the Oasis Trust. In October 2006, the Oasis Trust was funded with 488,236 New Generation shares. Rosen did not disclose in his initial Commission filings that he directly and/or indirectly beneficially owned New Generation shares the Oasis Trust held.

25. In October 2009, the Oasis Trust received 500,000 New Generation shares from the Rosen Irrevocable Trust. Later that month, the Oasis Trust trustee transferred 100,000 New Generation shares to a trustee's limited partnership and 81,619 New Generation shares to the trustee's individual brokerage account. Despite an obligation to do so, Rosen failed to report these transfers.

26. From October 2009 through June 2010, the trustee of the Oasis Trust sold 312,000 Oasis Trust New Generation shares for net proceeds of approximately \$259,000. The trustee distributed approximately \$211,000 of these proceeds to Rosen from the Oasis Trust brokerage account. Rosen did not report his pecuniary interest in the Oasis Trust's New Generation share transactions that resulted in these direct profits.

**2. Rosen Failed to Report Changes in Beneficial Ownership and to Disclose Profits He Received from Sales of New Generation Stock Held in the Rosen Irrevocable Trust and the Pacific Trust**

**a. Rosen Irrevocable Trust**

27. In Rosen's initial October 2006 Commission filings regarding his New Generation stock holdings, Rosen reported his beneficial ownership of 2,090,000 New Generation shares held in the Rosen Irrevocable Trust (of which Rosen was the trustee and the beneficiary). In February 2008, Rosen resigned as trustee and beneficiary, named a new trustee, and named his wife the new beneficiary.

28. From February through October 2009, the Rosen Irrevocable Trust trustee transferred 1,090,000 New Generation shares out of the Rosen Irrevocable Trust. The trustee transferred 400,000 shares to himself in February 2009, 190,000 shares to the trustee's limited partnership in February 2009, and 500,000 shares to the Oasis Trust in October 2009. Despite an obligation to do so, Rosen did not make any filings reporting these changes in ownership. Instead, in May 2009 and again in September 2009, Rosen filed two inaccurate Forms 4 that both stated Rosen indirectly held 2,090,000 New Generation shares in the Rosen Irrevocable Trust.

29. The Rosen Irrevocable Trust trustee sold some of the 190,000 shares he transferred from the Rosen Irrevocable Trust to his limited partnership and gave Rosen \$97,000 from the sales proceeds. Rosen did not report this transaction.

**b. Pacific Trust**

30. Rosen's wife was the named beneficiary of the Pacific Trust. In October 2006, the Pacific Trust was funded with 678,750 New Generation shares. However, Rosen disclaimed beneficial ownership of these 678,750 shares in his individual Form 3 and Schedule 13D filings, filed with the Commission the very same month.

31. From October 2008 through June 2009, the Pacific Trust trustee transferred to Rosen approximately \$259,000 in proceeds from the sale of New Generation shares the Pacific Trust held.

32. In January 2008, the Pacific Trust received 350,000 New Generation shares from the River Trust. In October 2008, the Pacific Trust received an additional 422,830 New Generation shares from the River Trust. Despite an obligation to do so, Rosen failed to report these transactions.



33. The Pacific Trust sold 480,630 New Generation shares between October 2008 and June 2009 for proceeds of approximately \$592,000. The Pacific Trust distributed approximately \$259,000 of the proceeds to Rosen and the remaining \$208,000 to the trustee in his individual capacity and to a limited partnership the trustee controlled. The trustee then distributed \$208,000 to Rosen, the Oasis Trust and the Rosen Irrevocable Trust. Rosen did not disclose he directly or indirectly received profits from the sale of these New Generation shares.

34. In addition, from October through December 2008, the Pacific Trust purchased 11,300 New Generation shares, and Rosen failed to report those purchases.

**3. Rosen Failed to Disclose Profits He Received From the Sale of New Generation Shares Held by a Trustee Individually**

35. From August through October 2008, the Rosen Irrevocable Trust trustee transferred 982,725 New Generation shares from his limited partnership brokerage account to his individual brokerage account. From September 2008 through October 2009, the trustee sold 663,393 New Generation shares for proceeds of approximately \$599,000, of which he gave Rosen \$99,000. Rosen failed to disclose the \$99,000 in profits he derived from the trustee's sales of New Generation shares.

**E. Rosen Had Investment Control in the River Trust and the Aspen Trust, But Failed to Disclose the Benefit He Received from the Trusts' Sales and Other Use of New Generation Stock**

36. Rosen exercised investment control over the River Trust and the Aspen Trust. Rosen was the beneficiary of the River Trust and Rosen's son was the beneficiary of the Aspen Trust.

37. In October 2006, the River Trust and the Aspen Trust were funded with 1,000,000 New Generation shares each, for a total of 2,000,000 shares. In his Commission filings, Rosen

disclaimed beneficial ownership of the 2,000,000 New Generation shares held in these two trusts.

38. In November 2006, one month after Rosen filed his statements disclaiming beneficial ownership of the River Trust and Aspen Trust New Generation shares, Rosen began acting as the agent for the trustees of the River Trust and Aspen Trust when he negotiated the purchase of a yacht.

39. Rosen located a yacht manufacturer, identified the terms of the transaction, and negotiated the transaction terms and construction contract. The terms of the transaction included as payment for the yacht a transfer of 700,000 New Generation shares from the Aspen Trust (then valued at \$3.7 million) and a transfer of \$700,000 from the River Trust (obtained through a margin loan using as collateral New Generation shares held in the River Trust).

40. The yacht manufacturer failed to timely deliver the yacht, and the Aspen Trust, the River Trust, their trustees, and Rosen filed a lawsuit in the United States District Court for the Southern District of Florida seeking return of the \$4.4 million paid. Rosen participated as a plaintiff in the litigation on his own behalf and as a named beneficiary for the use and benefit of the Aspen Trust and the River Trust.

## **CLAIMS FOR RELIEF**

### **COUNT I**

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

41. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint.

42. From approximately October 2006 through May 2010, Rosen 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 in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

43. By reason of the foregoing, Rosen directly and indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

## **COUNT II**

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

44. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint.

45. From approximately October 2006 through May 2010, Rosen 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: (a) 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; or (b) 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.

46. By reason of the foregoing, Rosen directly and indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

## **COUNT III**

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

47. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint.

48. From approximately October 2006 through May 2010, Rosen directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of the securities, as described in this complaint, knowingly, willfully or recklessly; 1) employed devices, schemes or artifices to defraud; 2) 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; or 3) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities and will operate as a fraud upon the purchasers of such securities.

49. By reason of the foregoing, Rosen directly or indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

#### **COUNT IV**

#### **VIOLATIONS OF SECTION 13(d) OF THE EXCHANGE ACT AND RULES 13d-1 AND 13d-2**

50. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint.

51. From approximately October 2006 through May 2010, Rosen as, directly or indirectly, the beneficial owner of more than five percent of the outstanding shares of a class of equity securities which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] was required to file a Schedule 13D within ten days of the date his ownership exceeded five percent, and to notify the issuer and the Commission of any material increases or decreases in the percentage of beneficial ownership by filing an amended Schedule 13D. The Schedule 13D filing requirement applies to an individual for the purposes of acquiring, holding, or disposing of securities of an issuer.

52. By reason of the foregoing, Rosen directly or indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Section 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rules 13d-1 and 13d-2 thereunder.

**COUNT V**

**VIOLATIONS OF SECTION 16(a) OF THE  
EXCHANGE ACT AND RULES 16a-3 AND 16a-8**

53. The Commission repeats and realleges Paragraphs 1 through 40 of this Complaint.

54. From approximately October 2006 through May 2010, Rosen as, directly or indirectly, the beneficial owner of more than ten percent of any class of equity securities (other than exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or as a director or an officer of an issuer of such security, was required to timely and accurately file Forms 3, 4, and 5 with the Commission disclosing information about his holdings and trading in the corresponding issuer's securities.

55. By reason of the foregoing, Rosen directly or indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 16a-3 and 16a-8 thereunder.

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests the Court:

**Declaratory Relief**

Declare, determine and find that the Defendant has committed the violations of the federal securities laws alleged in this Complaint.

**Permanent Injunction**

Issue a Permanent Injunction restraining and enjoining Rosen, his officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation

with them, and each of them, from violating Section 17(a) of the Securities Act, and Sections 10(b), 13(d), and 16(a) and Rules 10b-5, 13d-1, 13d-2, 16a-3, and 16a-8 of the Exchange Act.

**Disgorgement with Prejudgment Interest**

Issue an Order directing Rosen to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

**Civil Money Penalties**

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

**Officer and Director Bar**

Issue an Order directing that Rosen be permanently barred from acting as an officer or director of any public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act.

**Further Relief**


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

**Retention of Jurisdiction**

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

December 21, 2012

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