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SOUTHERN DISTRICT OF CALIFORNIA

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BY:

1 DAVID VAN HAVERMAAT, Cal. Bar No. 175761
Vanhavermaatd@sec.gov
2 LUCEE S. KIRKA, Cal. Bar No. 121685
Kirkal@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
5 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
6 Los Angeles, California 90036
Telephone: (323) 965-3998
7 Facsimile: (323) 965-3908

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

Case No. **09 CV 2711 MMA JMA**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 NOVA GEN CORPORATION; MARGARET
15 GREY; and PAUL RANDALL FRALEY,

16 Defendants.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

17
18 Plaintiff Securities and Exchange Commission ("Commission") for its Complaint for
19 Violations of the Federal Securities Laws ("Complaint") against Nova Gen Corporation ("Nova
20 Gen"), Margaret Grey ("Margaret Grey"), and Paul Randall Fraley ("Fraley") alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1)
23 and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) &
24 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934
25 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have,
26 directly or indirectly, made use of the means or instrumentalities of interstate commerce, and/or
27 of the mails, in connection with the transactions, acts, practices, and courses of business alleged
28 in this Complaint.

CR

1 in effect with the Commission in connection with the offer or sale of Nova Gen securities.

2 **THE INDIVIDUAL DEFENDANTS**

3 7. **Margaret Grey**, age 38, is a resident of San Diego, California. Margaret Grey is
4 the current President, CEO and Secretary of Nova Gen. Prior to June 2009, she was Nova Gen's
5 Secretary.

6 8. **Paul Randall Fraley**, age 52, is a resident of Hewitt, West Virginia. Fraley
7 located investors for Nova Gen and was paid at least \$76,698 in commissions from January 2006
8 through October 2009. Fraley is not registered with the Commission.

9 **FACTUAL ALLEGATIONS**

10 **DEFENDANTS NOVA GEN AND FRALEY MAKE MISREPRESENTATIONS IN CONNECTION WITH**
11 **OFFERS AND SALES BY NOVA GEN FROM JANUARY 2006 THROUGH JANUARY 2009**

12 9. Between January 2006 and January 2009, Nova Gen, through Harry Grey, Fraley
13 and Fraley's sales agents, raised nearly \$2.29 million from at least 78 investors nationwide
14 through an unregistered offering of convertible preferred stock.

15 10. Harry Grey, Fraley and Fraley's sales force offered and sold Nova Gen stock
16 through referrals, paid "finders," and cold calls based on lead lists. Nova Gen paid Fraley a
17 commission for each investment in Nova Gen stock made by individuals solicited by Fraley or
18 his sales agents.

19 11. Margaret Grey arranged for Fraley to be paid commissions by Nova Gen for
20 investments made by investors referred by Fraley as well as for investors referred by Fraley's
21 sales agents. Between January 2006 and January 2009, Nova Gen paid Fraley \$74,430 in sales
22 commissions.

23 12. Nova Gen's securities offering was not registered with the Commission, as
24 required by Section 5 of the Securities Act.

25 13. Nova Gen solicited prospective investors with offering documents including a
26 multi-page business plan, an executive summary and a subscription agreement. These written
27 offering materials contain numerous misrepresentations.

28 14. Nova Gen, Harry Grey, and Fraley sent investors a March 14, 2006 Nova Gen

1 business plan that falsely projected a return on investment of 464% and gross income ranging
2 from \$477 billion in the first year of operations to \$17 trillion in the fifth year of operations.
3 Nova Gen, Harry Grey, and Fraley also sent investors an April 18, 2008 business plan that
4 contained projections of \$737 million of projected revenues in the first year of operations,
5 increasing to \$13.6 billion by the fifth year.

6 15. Nova Gen, Harry Grey and Fraley had no basis for making such wildly unrealistic
7 projections. The revenue projections were based upon extremely unlikely contingencies, such as
8 the construction of multiple power plants, for which Nova Gen lacks permits and funding. Nova
9 Gen failed to disclose to investors that it lacked the permits and the funding to build even one
10 plant and that the pro forma numbers for the first year of operations did not begin until after the
11 first plant was built, leaving the impression that the revenues for the first year were the revenues
12 that Nova Gen would earn in its first year of operations. Even if the funding were available,
13 Nova Gen's purported technology has not been proven, nor is there any assurance that it will
14 ever be successful.

15 16. One of versions of the March 2006 business plan also included a balance sheet
16 showing a brokerage account valued at \$27 million as an asset and total assets of \$49 million,
17 and an income statement showing net operating income of \$21 million for 2005/2006. In fact,
18 the financials were false, the company did not own any such brokerage account, and no revenues
19 have ever been generated by Nova Gen.

20 17. The March 2006 business plan also describes Nova Gen's technology as being
21 99.9% emissions free. Nova Gen currently has no proven technology.

22 18. Harry Grey made numerous oral misrepresentations to investors. Specifically, he
23 told investors that Nova Gen had a process to convert coal into bio-fuel without emissions, that
24 the technology was "ready to go", that Nova Gen had a plant up and running, that the dividends
25 to be paid on the preferred stock were "guaranteed", and that the company was about to go
26 public at \$9 a share. None of these statements were true. The technology is not yet ready, no
27 plant is operational, no dividends have been paid, and Nova Gen has never taken any of the steps
28 necessary to become a publicly-traded company, such as filing securities offering registration

1 documents with the Commission.

2 19. Fraley also made numerous oral misrepresentations to investors, stating that Nova
3 Gen's stock was about to become publicly traded and that Nova Gen paid a "guaranteed" 11%
4 dividend. As described above, neither of these statements were true.

5 20. Fraley also told at least one investor that she shouldn't worry about losing any of
6 her money because the investment was a "sure thing." Fraley made these statements despite his
7 knowledge that Nova Gen had no plant, had never had any revenues and lacked the funds to even
8 purchase property to start construction on a plant.

9 **DEFENDANTS NOVA GEN, MARGARET GREY AND FRALEY MAKE MISREPRESENTATIONS**
10 **IN CONNECTION WITH OFFERS AND SALES BY NOVA GEN FROM JUNE 2009**
11 **THROUGH OCTOBER 2009**

12 21. After Harry Grey's death, Margaret Grey continued the unregistered offer and
13 sale of Nova Gen's securities in her husband's place. Nova Gen, through Fraley and his sales
14 agents, continued to solicit investors through referrals and continued to disseminate Nova Gen's
15 false and misleading marketing materials, including the April 2008 business plan and an
16 executive summary. Additionally, Margaret Grey mailed a solicitation letter to selected
17 investors, which offered a part interest in the revenue stream to be generated by Nova Gen's
18 plant as an additional incentive to purchase the convertible preferred stock.

19 22. From June 2009 through October 2009, the defendants raised an additional
20 \$95,000 from at least 10 investors, of which at least \$22,452 has been paid directly to Margaret
21 Grey and \$1,930 to Fraley.

22 23. Since June 2009, Nova Gen has solicited prospective investors with offering
23 documents including the April 2008 business plan, an executive summary and a subscription
24 agreement. These offering materials contain numerous misrepresentations.

25 24. As discussed above, the April 2008 business plan contains exaggerated claims
26 concerning the projected revenues of the company. Nova Gen, Margaret Grey and Fraley
27 distributed this business plan to investors but had no basis for making these projections, which
28 assume that Nova Gen would operate certain power plants that it does not even have the permits or

1 the funding to build. The company has never had any revenues or operations. Margaret Grey
2 distributed this information to investors despite knowing that the revenue projections were based on
3 the company operating plants which she knew the company did not yet have the permits to build.

4 25. Margaret Grey and Fraley disseminated a two page "executive summary" to
5 investors that falsely claims that Nova Gen obtained a "very generous incentive package" from
6 Kentucky to build a plant in that state, and that revenue from its waste destruction unit business
7 approached \$100 million in 2007. Fraley knew that the arrangements with Kentucky were never
8 completed. Margaret Grey also knew that Nova Gen did not have any revenues or sales of waste
9 destruction units, much less \$100 million in sales of waste destruction units. Margaret Grey
10 admittedly did not even review the executive summary before sending it to investors.

11 **FIRST CLAIM**

12 **UNREGISTERED OFFER AND SALE OF UNREGISTERED SECURITIES IN**
13 **VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT**
14 **(AGAINST ALL DEFENDANTS)**

15 26. Paragraphs 1 through 25 are realleged and incorporated by reference as if set forth
16 herein.

17 27. Sections 5(a) and 5(c) of the Securities Act prohibit the sale of any security unless
18 a registration statement is in effect with regard to that security, absent an applicable exemption
19 from that requirement, 15 U.S.C. §§ 77e (a) and (c).

20 28. No registration statement has been filed with the Commission or is in effect with
21 regard to any public offer or sale of the Nova Gen securities at issue, and no exemption from
22 registration is applicable to the offers or sales of those securities.

23 29. By engaging in the conduct described above, the defendants, and each of them,
24 directly and indirectly, by making use of the means or instruments of transportation or
25 communication in interstate commerce or of the mails to offer or sell securities, through the use or
26 medium of a prospectus or otherwise, when no registration statement has been filed or was in effect
27 as to such securities, engaged in transactions, acts, practices, and courses of business that violated
28 Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e (a) and (c).

SECOND CLAIM

FRAUD IN THE OFFER OR SALE OF SECURITIES

VIOLATION OF SECTION 17(a) OF THE SECURITIES ACT

(AGAINST ALL DEFENDANTS)

30. Paragraphs 1 through 25 are realleged and incorporated by reference as if set forth fully herein.

31. The defendants, and each of them, by engaging in the conduct described above, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly:

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

32. By engaging in the conduct described above, the defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

THIRD CLAIM

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

(AGAINST ALL DEFENDANTS)

33. Paragraphs 1 through 25 are realleged and incorporated by reference as if set forth fully herein.

34. The defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national

1 securities exchange, with scienter:

- 2 a. employed devices, schemes, or artifices to defraud;
- 3 b. made untrue statements of a material fact or omitted to state a material fact
4 necessary in order to make the statements made, in the light of the
5 circumstances under which they were made, not misleading; or
- 6 c. engaged in acts, practices, or courses of business which operated or would
7 operate as a fraud or deceit upon other persons.

8 35. By engaging in the conduct described above, the defendants violated, and unless
9 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C.
10 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

11 **FOURTH CLAIM**

12 **FAILURE TO REGISTER AS A BROKER DEALER**

13 **VIOLATION OF SECTION 15(a) OF THE EXCHANGE ACT**

14 **(AGAINST FRALEY)**

15 36. Paragraphs 1 through 25 are realleged and incorporated by reference as if set forth
16 fully herein.

17 37. At the times alleged in the Complaint, defendant Fraley made use of the mails and
18 means and instrumentalities of interstate commerce to effect transactions in, induce and attempt
19 to induce the purchase and sale of the securities described herein, while not being registered with
20 the Commission as a broker or dealer, and when no exemption from registration was available.

21 38. By the conduct described above, defendant Fraley violated Section 15(a) of the
22 Exchange Act, 15 U.S.C. § 78o(a).

23 **FIFTH CLAIM**

24 **AIDING AND ABETTING FAILURE TO REGISTER AS A BROKER-DEALER**

25 **AIDING AND ABETTING VIOLATION OF SECTION 15(a) OF THE EXCHANGE ACT**

26 **(AGAINST MARGARET GREY)**

27 39. Paragraphs 1 through 25 are realleged and incorporated by reference as if set forth
28 fully herein.

1 V.

2 Order defendants Nova Gen, Margaret Grey and Fraley to disgorge all ill-gotten gains
3 from the conduct alleged herein, with prejudgment interest.

4 VI.

5 Order defendants Nova Gen, Margaret Grey and Fraley to pay civil money penalties
6 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
7 Exchange Act, 15 U.S.C. § 78u(d)(3).

8 VII.

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

13 VIII.

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

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16 Dated: December 3, 2009

Respectfully submitted,

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19 LUCÉE S. KIRKA
20 DAVID VAN HAVERMAAT
21 Attorneys for Plaintiff
22 Securities and Exchange Commission
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ORIGINAL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings 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 1974, 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
(c) Attorney's (Firm Name, Address, and Telephone Number)
David J. Van Havermaat/Lucee S. Kirka (323) 965-3998
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036

DEFENDANTS
NOVA GEN CORPORATION; MARGARET GREY; and PAUL RANDALL FRALEY
County of Residence of First Listed Defendant San Diego
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
Kent L. Sharp (858) 202-1321
La Jolla Law Group
4330 La Jolla Village Drive, Suite 220, San Diego, CA 92122

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 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 (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State [] 1
Citizen of Another State [] 2
Citizen or Subject of a Foreign Country [] 3
Incorporated or Principal Place of Business In This State [] 4
Incorporated and Principal Place of Business In Another State [] 5
Foreign Nation [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
[X] 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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 77e(a), 77e(c) & 77q(a); 15 U.S.C. § 78(b) & 17 C.F.R. § 240.10b-5; and 15 U.S.C. § 78o(a)
Brief description of cause:
The Complaint alleges violations of the federal securities laws.

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 12/03/2009
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Handwritten initials 'OK'