UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GOLDSTRAND INVESTMENTS, INC., and SETH FIREMAN, Plaintiffs, - vs. – JESUP & LAMONT SECURITIES CORP., STEVEN J. DEGROAT and WILLIAM MORENO, Defendants.	CIVIL ACTION NO. **1:04-cv-1764 (WHP)** **COMPLAINT AND JURY DEMAND**

Plaintiffs, Goldstrand Investments, Inc. and Seth Fireman, by and through their undersigned attorneys, for their complaint against defendants Jesup & Lamont Securities Corp., Steven J. DeGroat and William Moreno allege as follows:

THE PARTIES

1. Plaintiff Goldstrand Investments, Inc. ("Goldstrand"), is a New York corporation with a principal place of business at 1202 Lexington Avenue, New York, New York.

2. Plaintiff Seth Fireman is the principal of Goldstrand and resides in Clifton, New Jersey.

3. Defendant Jesup & Lamont Securities Corp. ("Jesup") is a New York Corporation with a principal place of business at 650 Fifth Avenue, New York, New York.

4. Defendant Steven J. DeGroat is the Chairman of Jesup & Lamont and, upon information and belief, resides at 23 6th Street, Hillburn, New York.

5. Defendant William Moreno is the President of Jesup & Lamont and, upon information and belief, resides within the State of New York.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action under Section 22 of the Securities Act, 15 U.S.C. § 77v. The claims asserted herein arise under Sections 11 and 12 of the Securities Act, 15 U.S.C. §§ 77k, and 771.

7. Venue is proper in this District pursuant to Section 22 of the Securities Act and 28 U.S.C. §§ 1391(b)

and 1391(c). The violations of law complained of herein caused damage to defendant in this District, where one of its principle places of business is located and to which defendants directed innumerable false and misleading communications.

8. In connection with the conduct complained of herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and interstate telephone communications, and the facilities of a national securities exchange.

FACTS

9. Upon information and belief, some time before October 29, 2002, a company called NexGen Vision, Inc. ("NexGen") engaged Jesup to act as the company's exclusive financial advisor.

10. The shares of NexGen vision were, at all times relevant to this Complaint, publicly traded on the NASDAQ Over-the-Counter Bulletin Board (OTC:BB).

11. On October 29, 2003, defendants Jesup and defendant DeGroat and one other unknown person, who on information and belief was affiliated with Jesup, filed a UCC lien on NexGen's inventory.

12. Their own interests and fees secured by the UCC, Jesup and DeGroat then undertook to raise capital for

NexGen from other people, including plaintiffs, by the sale of securities, specifically, shares of NexGen stock.

13. On or about December 12, 2002, plaintiff Goldstrand purchased 125,000 shares and 62,500 warrants to purchase shares (the "First Purchase") of NexGen common stock as part of a private placement.

14. These shares were restricted shares, which could not be traded freely.

15. Plaintiff agreed to the First Purchase because DeGroat told Goldstrand's principal, Seth Fireman, that the shares would promptly be registered, and that Goldstrand would be able to trade these shares on the market within months of their purchase by Goldstrand.

16. Because of his longstanding business relationship with defendant DeGroat, chairman of Jesup, Mr. Fireman trusted him and believed the promises he made.

17. Mr. Fireman relied on these representations and would not have purchased these shares if they had not been made to him.

18. On December 17, 2002, Jesup and NexGen announced in a press release on Business Wire that "Jesup & Lamont had completed a round of funding, raising more than $2 million in an oversubscribed Private Placement."

19. On January 8, 2003, Goldstrand received a letter from NexGen's chief executive officer, announcing the company's intention to file its annual report with the Securities and Exchange Commission by January 13, 2003, and promising to file a Registration Statement with the SEC "shortly after" that date, so that Goldstrand could publicly sell its shares. A copy of the January 8, 2003 letter is attached hereto as Exhibit A.

20. To induce plaintiff to agree to enter into this transaction, defendant DeGroat promised to exchange the 125,000 shares from the First Purchase with 125,000 shares of free-trading stock if NexGen did not file its registration statement within 60 days.

21. In early January, 2003, defendant Steven J. DeGroat asked plaintiffs to purchase 150,000 additional shares of NexGen common stock from his account.

22. On January 9, 2003, plaintiff Seth Fireman and defendant Jesup entered into an agreement to that effect (the "January 9 Agreement"). A copy of the January 9 Agreement is attached hereto as Exhibit B.

23. Under the January 9 Agreement, Mr. Fireman agreed that he would purchase 150,000 shares of common stock from defendant Jesup, and, if NexGen failed to file a registration statement within 60 days of January 15, 2003,

defendant Jesup would exchange the 125,000 shares from the First Purchase for 125,000 free-trading shares.

24. The shares referred to in the January 9 Agreement as "Mr. Fireman's 125,000 shares of the common stock" actually refer to the Goldstrand shares in the First Purchase, and all references to Mr. Fireman in the January 9 Agreement refer actually to Goldstrand.

25. The January 9 Agreement consists of one typewritten sentence on Jesup letterhead, signed by defendant DeGroat. Upon information and belief the agreement was drafted by DeGroat personally, and he was not particular in distinguishing between the plaintiffs.

26. More significantly, while the January 9 Agreement referred to shares being sold by defendant Jesup, the shares offered by DeGroat were, at the time, in DeGroat's personal account.

27. Thus by selling these shares, DeGroat reduced his personal exposure to NexGen's share price – at the expense of his client Goldstrand – but he did not in any way enhance NexGen's capitalization.

28. In addition to acting under duress because DeGroat and Jesup would not provide Goldstrand with the free-trading shares it was promised, Goldstrand relied on the promises by Jesup and NexGen that the registration

statement would be filed promptly, and on DeGroat's continuing assurances that the investment was a sound one, in making its decision to go through with the purchase.

29. Eight days later, on January 17, 2003, the same day as it released its joint press release with defendant Jesup promoting its success at raising cash via private placements, NexGen filed a Form 10KSB/A with the Securities and Exchange Commission. The report disclosed a net loss for fiscal 2002 of $3,867,022, or $(.78) per share.

30. The report also stated, "The independent auditors report on our September 30, 2002 financial statements included in this Form 10-KSB states that our difficulty in generating sufficient cash flow to meet our obligations and sustain operations raise substantial doubts about the our ability to continue as a going concern."

31. In addition, the report stated, "We will need to raise additional capital in the near future to sustain our operations. . . . We are currently seeking to raise up to $9,000,000 in a private placement from institutional investors, although we have not finalized offering terms and there can be no assurances that we will be successful. If we are unable to obtain additional financing, we will not be able to implement our new business model, fully

launch our lens casting system and provide research services to Corning."

32. In other words, NexGen was in profound need of cash. Jesup could not be sure it would be able to raise that cash, and that consequently the company could go under and his own investment be rendered worthless. Defendant DeGroat, Jesup's chairman, knew this when he pressured Goldstrand to help him reduce his personal investment exposure on NexGen even as he refused to cooperate in securing the promised registration that would enable Goldstrand to sell its own shares as he had done.

33. On January 23, 2003, defendant DeGroat wrote to plaintiff, informed him that NexGen's annual report including the above information had been filed "on schedule," and repeated his representation that the Registration Statement would be filed "soon." A copy of the January 23, 2003 letter is attached hereto as Exhibit C.

34. After several weeks passed without further word from either NexGen or Jesup regarding registration of the shares, however, Goldstrand began to grow concerned that NexGen had not filed its Registration Statement with the SEC yet.

35. On February 13, 2003, NexGen filed a Form 10QSB with the Securities and Exchange Commission, stating that its loss per share had narrowed from the $(.78) previously reported to $(.08) for the previous three months. The price of NexGen, however, continued to decline.

36. Yet Goldstrand could not cut its losses and trade its shares, because despite the agreement by Jesup that they would be registered "soon" after January 23rd, Goldstrand's shares still had not been registered.

37. Around this time, Goldstrand contacted defendant DeGroat and informed him that Goldstrand wanted its restricted shares exchanged for free-trading shares on March 15, 2003, per the January 9 Agreement.

38. Rather than performing its obligations under the January 9 Agreement, however, defendant Moreno wrote to plaintiff on February 19, 2003, with a very different proposal: Jesup would indeed exchange the First Purchase shares and the warrants for free-trading shares – but only if Goldstrand purchased an additional 200,000 free-trading shares (the "February 19 Proposal"). A copy of the February 19 Proposal is attached hereto as Exhibit D.

39. Goldstrand refused to agree to the February 19 Proposal, viewing at as a form of extortion.

40. Goldstrand realized that Jesup was refusing to meet its contractual obligations unless Goldstrand paid additional consideration – the purchase of additional stock it which Goldstrand had no investment interest. Goldstrand understood as well that the greater market had no interest in these shares either, considering the unethical lengths to which Jesup was prepared to go in order to coerce Goldstrand to buy them. Nonetheless, based on his trust of DeGroat, Mr. Fireman did not take any action to enforce his contractual rights to free-trading shares of NexGen.

41. On March 4, 2003, defendant Moreno made another proposal on Jesup's behalf: Jesup would exchange the First Purchase shares and warrants for free-trading shares, as it was required to do under the agreement between the parties, but only if Goldstrand purchased an additional 114,285 free-trading shares.

42. This was essentially the same extortive demand made under the February 19 Proposal, and further demonstrated Jesup's desperation to find investors in NexGen. Under this new "offer" the number of shares that Jesup demanded that Goldstrand purchase had decreased from 200,000 to 114,285. But Goldstrand needed to sell shares, especially considering that their price continued to plummet, and hence needed free-trading shares rather than

restricted shares. Under the circumstances, Goldstrand had little choice but to agree to this new arrangement.

43. Plaintiff agreed to the March 4, 2003 proposal and transmitted its acceptance within a day or two of that date (the "March 4 Agreement"). A copy of the March 4 Agreement is attached hereto as Exhibit E.

44. Despite Goldstrand's acquiescence to Jesup's demand for more cash to funnel to NexGen, Goldstrand did not receive in a timely fashion the promised 125,000 shares promised in the March 4 Agreement. On May 13, 2003, it received what it believed were, as promised, its free-trading shares.

45. On May 20, 2003, NexGen filed another Form 10QSB with the Securities and Exchange Commission, stating that its loss per share for the previous three months was holding steady at $(.08). Its price continued to fall.

46. On June 9, 2003, Goldstrand transferred its shares from its account at Jesup to an account at Pond Equities, its new broker.

47. A short time thereafter, Goldstrand attempted to cut its continuing losses and sell its NexGen shares.

48. Goldstrand then discovered that the 125,000 shares Goldstrand had received on May 13, 2003 were not the free-trading shares it had been promised in the March 4

Agreement, but rather yet more restricted shares, and was thus unable to sell them.

49. Only several months later, after Goldstrand engaged an attorney in New Jersey to write a letter on its behalf demanding the free-trading shares it was owed, did Goldstrand receive shares it could sell.

50. By then it was too late. By the time Goldstrand received the freely traded shares it had been owed since March, the value of those 125,000 shares had dropped precipitously in value from the $2.45 per share they were selling at on March 9, 2003, when Jesup was contractually obligated to deliver the free-trading shares for which Goldstrand had contracted.

51. As a result of the delay, Goldstrand suffered a loss of $285,000 in market value of its largely involuntary NexGen investment.

52. In addition, Goldstrand was forced to enter into agreements to purchase, and then to purchase, an additional 264,285 shares in order to obtain the 125,000 free-trading shares for which it had contracted.

53. Between the time these shares were purchased and the time plaintiff received all his shares, their value dropped drastically. Goldstrand lost approximately $700,000 on these shares.

54. By October, the true story of NexGen began to emerge through its Securities and Exchange Commission filings.

55. On October 14, 2003, NexGen filed a Form 8-K with the Securities and Exchange Commission, stating the following, including the portions (highlighting added here) implicating Jesup's direct involvement:

> o After the former Chief Financial Officer resigned as a result of the inability to obtain any information concerning the financial condition of the Company from Lafferty and his wife, as well as not being paid, Lafferty appointed himself Chief Financial Officer without authorization since he did not obtain the consent of Alberto R. Burckhardt, the other director;
>
> o It appears that the Company lacks any meaningful internal financial controls and has not had them in spite of certifications contained in filings with the Securities and Exchange Commission that certified such controls existed.
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> o The Form 10-QSB lumps together various notes payable to an individual as described in Note G. The Company is uncertain as to whether this includes a $250,000 note payable to Pittard, who paid off the Company's $250,000 line of credit in exchange for a note of $250,000 from the Company. The Company has also been paying interest on that liability. Mr. Pittard took over the bank line of $250,000 which the Company guaranteed. There is no disclosure in the Form 10-QSB concerning the issuance of this note or the guarantee;
>
> o The Burckhardts have learned that at some point in September 2003 Lafferty, as President of the Company's subsidiary, Cobra Vision, Inc., entered into an oral agreement to sell the assets consisting of primarily inventory, shipped the inventory to the buyer and received a down payment and a written agreement which evidently has not yet been executed by Lafferty. Because the transaction required the consent of Cobra Vision's stockholder, the Company, Alberto R.

Burckhardt, as the other member of the Board of Directors, should have been consulted and should have given his approval. He had no knowledge of this transaction until very recently;

o **The Form 10-QSB also refers to a $500,000 loan due in October 2003 from an investment banking firm. The written resolution approved by the Board of Directors authorizes the Company to issue a note. It is silent concerning any authority to secure payment of that note. The investment banking firm, Jesup & Lamont Securities Corporation ("Jesup"), has advised Alberto Burckhardt that the loan in fact was collateralized by a Security Agreement and Form UCC-1 executed by Lafferty obviously without corporate authority. There is no disclosure in the Form 10-QSB concerning the security or the usurping of corporate authority.**

o The Burckhardts have learned that the $500,000 loan from Jesup was intended to be used to make payments to Technology Resource International Corporation ("TRI") in order to become current under a research and development agreement. The Company in fact paid $415,000 of the $500,000 due, and, on information and belief, shortly thereafter TRI terminated both the research and development and, more importantly, a lens casting technology licensing agreement. The Burckhardts have launched an investigation into the circumstances surrounding the use of the proceeds of the loan from Jesup, and the subsequent termination of the technology license agreement by TRI.

o In 2003, the Burckhardts each requested on numerous occasions that Lafferty authorize the filing of a registration statement which the Company's counsel had drafted to comply with various agreements the Company entered into with investors. Each request was refused, and finally, Lafferty refused to communicate with the Burckhardts regarding the filing of the registration statement. Moreover, Lafferty refused to supply a copy to the Burckhardts, even though Alberto Burckhardt was vice president and a director of the Company and Hermann Burckhardt was a director until April 2003.

o A senior officer of CobraVision, Inc. has advised the Burckhardts that as early as November 2002, a major corporation had notified the Company that the process involved in the application of the

> photochromic lens technology used in the lens casting system to be introduced by the Company was infringing on one or more of this corporation's patents. This has never been disclosed and the matter has not been resolved. According to this person, without this technology the lens casting system is not commercial viable. Additionally, he has asserted to the Burckhardts that although Lafferty and the Company projected the lens casting system as being ready to launch at trade shows as early as March 2003, it is a research and development project that may be as much as nine months to a year away from being commercially viable. The Company intends to further investigate this information.
>
> o The Burckhardts have been informed by this same senior officer of CobraVision, Inc. that Lafferty has purchased a condominium in New York. As a result, the Burckhardts have launched an investigation to determine whether such a purchase was made, and if so, whether Company funds were used to make the purchase.

56. Amazingly, the damaging filings from NexGen regarding the fraudulent going-on at the company did not end with the October 4, 2003 8-K. On November 14, 2003, NexGen filed another 8-K, stating as follows:

> NexGen Vision, Inc. (the "Company") has received notification from the Internal Revenue Service ("IRS") that the Company owes $90,000 in Form 941 taxes for the quarter ended June 30, 2003. The Company believes that it also owes a similar amount for the quarter ended September 30, 2003, and one-third of that amount for the month of October 2003, for an estimated total of approximately $200,000, although it could be more. The Company has been unable to determine the exact amount at this time since Mr. Gary Lafferty, the former Chief Executive Officer of the Company, and his wife, continue to refuse to hand over the Company's books and records, financial and otherwise, which we believe they keep at their personal residence.
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> We believe the taxes, although withheld by the Laffertys, were never forwarded to the IRS, but used instead to fund additional operations of the Company.

The former Chief Financial Officer, Mr. Jack Wissner, has told the Company that he was unaware of what the Laffertys did regarding these taxes until recently, and that this issue, along with others already stated in a previous Form 8-K filed by the Company, precipitated the tendering of his resignation from the Company. Mr. Alberto Burckhardt, the Company's other director, had no information either on this matter until approximately two weeks ago. Additionally, the IRS may place a lien on the Company's assets in order to secure payment of these amounts, and subject the Company to civil fines, penalties and a possible criminal investigation. No proper disclosure was made about these matters on the latest Form 10-QSB filed by the Company when Mr. Lafferty was Chief Executive Officer and Chief Financial Officer of the Company.

Mr. Gary Lafferty has now been terminated from employment with the Company, effective immediately, for his refusal to cooperate with the Company's investigation. The current management of the Company will forward all pertinent information to the Securities and Exchange Commission for its review.

In the Company's prior Form 8-K filed on October 14, 2003, with a date of report of October 9, 2003, the Company stated that "A senior officer of CobraVision, Inc. has advised the Burckhardts that as early as November 2002, a major corporation had notified the Company that the process involved in the application of the photochromic lens technology used in the lens casting system to be introduced by the Company was infringing on one or more of this corporation's patents. This has never been disclosed and the matter has not been resolved. According to this person, without this technology the lens casting system is not commercially viable. Additionally, he has asserted to the Burckhardts that although Mr. Lafferty and the Company projected the lens casting system as being ready to launch at trade shows as early as March 2003, it is a research and development project that may be as much as nine months to a year away from being commercially viable. The Company intends to further investigate this information." This information remains the same; however, the term "photochromic lens technology" should have been "in-mold coating technology".

> Recently, the Company has retained the law firm of Adorno and Yoss, P.A., Miami, Florida, to represent it in connection with a possible reorganization of the Company.

57. As if the foregoing were not a sufficiently outrageous turn of events to be recounted in Securities and Exchange Filings, on January 2, 2004, the NexGen filed another 8-K, setting for the following directly implicating Jesup:

> On or about September 30th, 2002 the Company received a loan from Jesup and Lamont in the amount of $100,000.The loan was at the request of Mr. Gary Lafferty, Chairman and CEO of the Company at the time, to Mr. Steven J. DeGroat, Chairman and CEO of Jesup and Lamont. This loan was meant to cover Company salaries and other expenses due and for which the Company had no available cash.
>
> Steven J. DeGroat received a post-dated check in the same amount from the Company through Mr. Gary Lafferty. The check was cashed by Jesup and Lamont against the proceeds of a Private Placement Memorandum that broke escrow shortly thereafter and for which Jesup and Lamont acted as Placement Agent.
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> Mr. Hermann and Alberto Burckhardt learned about this transaction several months later and have requested an explanation from Mr. Gary Lafferty and Mr. Steven J. DeGroat on numerous occasions to no avail. The Company's Chief Financial Officer, Mr. Jack Wissner, was asked the same question at the time but informed the Burckhardt[s] that the issue was being handled by Mr. Lafferty.
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> The Company's counsel at the time was not made aware of this arrangement between Mr. Lafferty and Mr. DeGroat either. In his opinion, however, had he been made aware of the transaction at the time, he would have counseled the Company, Gary Lafferty, Steven J. DeGroat and Jesup and Lamont to amend the Private Placement Memorandum and include this information

> which would have been relevant at the time to Investors evaluating the relative merits of the transaction.

58. The coupe-de-grace from the NexGen private placement filings with the Securities and Exchange Commission consists the following unsurprising conclusions:

> Investors who purchased units in the Private Placement mentioned above may have the right to rescind their investment and are cautioned to discuss such matters with their own legal counsel.
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> * * *
>
> The Company is considering the filing of a Bankruptcy petition next week.

59. Because so many of the allegations in these filings implicate the direct involvement of Jesup and DeGroat, as well as the desperate cash situation of NexGen, the company that paid Jesup substantial fees to help it raise cash, defendants all knew or should have known about the extraordinary state of affairs documented by NexGen itself in its Securities and Exchange Commission filings.

COUNT I – VIOLATIONS OF SECTION 11 OF THE SECURITIES ACT

60. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

61. The 2003 Annual Report of NexGen and the subsequent 8-K's filed by NexGen prior to the October

14,2004 filing, and those represenations and disclosures conveyed by defendants to plaintiffs, were materially false and misleading, contained untrue statements of material facts, omitted to state material facts necessary to make the representations, under the circumstances in which they were made, not misleading, or failed to disclose adequately material facts as alleged above.

62. None of the defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements made by them regarding the suitability of NexGen as an investment vehicle, nor the disclosures made by NexGen in its pre-October 14, 2003 filings with the Securities and Exchange Commission, were true, were without omission of any material facts, or were not misleading.

63. Defendant Jesup was an underwriter, as that term is used in Section 11(a)(5) of the Securities Act, with respect to the private placements through with plaintiffs purchased their shares of NexGen.

64. Jesup was required to investigate with due diligence the representations contained in NexGen's pre-October 14, 2003 filings with the Securities and Exchange Commission to confirm that they did not contain materially misleading statements or omit to state material facts.

65. Jesup did not make a reasonable investigation or possess reasonable grounds for the belief that the statements described herein were true, were without omission of any material facts, or were not misleading.

66. At the time it acquired NexGen's common stock, plaintiffs did not know, nor by the exercise of reasonable care could they have known, of the material misstatements and omissions alleged herein.

67. By reason of the foregoing, each of the defendants violated Section 11 of the Securities Act and is liable to plaintiffs, who have been damaged by reason of such violation.

COUNT II - VIOLATIONS OF SECTION 12 OF THE SECURITIES ACT

68. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

69. Plaintiffs acquired NexGen shares pursuant to oral and other representations made by defendants. Defendants solicited such purchases for their personal financial gain through the preparation and dissemination of such representations.

70. These representations contained untrue statements of material facts, and concealed and failed to disclose material facts, as detailed above.

71. Among the misrepresentations conveyed by defendants to plaintiffs were false statements regarding the registration status of the shares of NexGen purchased by Goldstrand.

72. Defendants owed plaintiffs the duty to make a reasonable and diligent investigation of the representations made by them to ensure that such statements were true and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading.

73. Jesup, as underwriter of the private placement, was required to investigate the representations with due diligence to confirm that it did not contain materially misleading statements or omit to state material facts.

74. Defendants knew or should have known of the misstatements and omissions contained in the representations set forth above.

75. At the time it purchased its NexGen common stock issued pursuant to these representations, Goldstrand did not know, nor in the exercise of reasonable diligence could it have known, of the material misstatements and omissions alleged herein.

76. By reason of the conduct alleged herein, defendants violated Sections 12(a)(1) and 12(a)(2) of the Securities Act.

77. As a direct and proximate result of such violations, plaintiffs sustained substantial damages in connection with their purchases of NexGen common stock.

78. Accordingly, plaintiffs were harmed, and seek damages or rescission to the extent permitted by law.

COUNT III – VIOLATIONS OF SECTION 10(b)(5) OF THE SECURITIES ACT

79. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

80. During the time period relevant to this Complaint, defendants, individually and in concert, engaged and participated in a continuous course of conduct and conspiracy to conceal adverse material information as specified herein.

81. Defendants purposely or recklessly employed devices, schemes and artifices to defraud and purposely or recklessly engaged in acts, practices, and a course of conduct as alleged herein in an effort to maintain artificially high market prices for the common stock of NexGen in order to protect their own investments, assure

themselves of commissions for raising investment capital through private placements, and selling stock on Jesup's or DeGroat's own accounts. This included the formulation, utterance or participation in the making of material facts and the omission to state material facts necessary in order to utter the statements made, in the light of the circumstances in which they were made, not misleading.

82. Defendants' acts and practices operated as a fraud and deceit upon plaintiffs by creating expectation of undue optimism which were unrealistically unfavorable in light of their knowledge or reckless disregard of the truth concerning the actual state of affairs involving the management of NexGen, its capitalization situation, and their own interests in connection with the plaintiffs' purchase of NexGen shares.

83. The statements set forth above were false and misleading when made by the defendants, who were under a duty to make truthful and complete disclosures, and who instead of doing so misrepresented or concealed material facts.

84. Defendants made the statements identified above which were materially false and misleading in violation of

Section 10(b) of the Exchange Act and rule 10b-5 thereunder.

85. The defendants made these misstatements and omissions with knowledge of the truth or with reckless disregard for the truth.

86. Plaintiffs relied on the statements set forth above in making the investment decision to purchase shares of NexGen.

COUNT IV – FRAUD

87. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

88. From the time when Goldstrand first bought NexGen stock in December 2002, defendants repeatedly advised, encouraged, and induced plaintiff to buy NexGen stock.

89. Plaintiff relied on defendants' statements in making these investments.

90. Plaintiff's reliance was reasonable.

91. At the time defendants were pushing NexGen stock on plaintiff, defendants were acting as NexGen's investment bankers.

92. Defendants knew, or should have known, that NexGen's management was in turmoil and that its financial outlook was negative.

93. Defendants failed to advise plaintiff of these relevant facts about the company.

94. Plaintiff would not have purchased these additional shares if not for the advice, encouragement and inducement of defendants.

95. As a direct and proximate result of such violations, plaintiffs sustained substantial damages in connection with their purchases of NexGen common stock.

COUNT IV – BREACH OF CONTRACT

96. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

97. Plaintiff and defendants entered into an contract on January 9, 2003.

98. Plaintiff executed his promises under that contract by purchasing an additional 150,000 shares of stock.

99. Defendants failed to perform their required duties under that contract by not tendering the free-trading shares for many months after agreeing to do so.

100. Defendants' actions constituted a breach of the January 9 Agreement.

101. As a direct and proximate result of such violations, plaintiffs sustained substantial damages in connection with their purchases of NexGen common stock.

COUNT V – BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

102. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

103. There was inherent in the contracts between plaintiffs and Jesup set forth above a duty of good faith and fair dealing pursuant to the common law.

104. Plaintiff breached this duty of good faith and fair dealing by, *inter alia*, demanding that plaintiffs purchase additional stock in order to secure defendants' performance of their contractual obligations to provide plaintiffs with free-trading shares; failing to advise plaintiffs of defendants' deteriorating management, capitalization and business situation while advising them to purchase additional shares; failing to disclose their own interests in the ongoing transactions; and misrepresenting restricted shares as free-trading shares and delaying materially before finally complying with

plaintiffs' demand to be provided with the free-trading shares to which it was entitled by contract.

105. By reason of these breaches, plaintiffs have been damaged.

COUNT VI – BREACH OF FIDUCIARY DUTY

106. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

107. Defendants owed plaintiffs a fiduciary duty.

108. Defendants breached their fiduciary duties to plaintiffs, as set forth above.

109. By reason of these breaches, plaintiffs have been damaged.

COUNT VII – PUNITIVE DAMAGES

110. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

111. Defendants' conduct, as described and complained of herein, was actuated by actual malice and accompanied by a wanton and willful disregard of plaintiffs' rights.

112. Defendants breached their fiduciary duties to plaintiffs, as set forth above.

113. By reason of these breaches, plaintiffs have been damaged.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

A. A judgment declaring the conduct of defendants to be in violation of the law as set forth herein;

B. A judgment awarding plaintiffs compensation for the damages they have sustained as a result of defendants' unlawful conduct;

C. A judgment awarding plaintiffs reasonable attorneys' fees, experts' fees, interest and costs of suit;

D. Such other and further relief as this Court may deem just.

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Dated: February 28, 2004

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

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Dated: February 28, 2004