

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-against-

NOVACON ENERGY SYSTEMS, INC.,
STEPHEN H. BAER, and VIVIAN MOOK BAER,

Defendants.

**[PROPOSED]
CONSENT ORDER
AND
JUDGMENT**

Index No. 451526/2011

Upon the agreement entered into by Eric T. Schneiderman, Attorney General of the State of New York ("Attorney General"), attorney for the Plaintiff STATE OF NEW YORK on the one hand and STEPHEN H. BAER and VIVIAN MOOK BAER individually, and by NOVACON ENERGY SYSTEMS, INC. ("NOVACON") by its CEO, Defendant STEPHEN H. BAER (collectively "Defendants"), on the other hand, and upon all other papers, pleadings and motions herein, and by the joint motion of the parties to this case, it is hereby:

1. ORDERED, ADJUDGED AND DECREED that Defendants, or any other person acting under Defendants' control, including their families, agents, trustees, servants, employees, successors, heirs and assigns, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business, are bound by the terms of this Consent Order and Judgment; and it is further

PERMANENT INJUNCTIVE RELIEF

2. ORDERED, ADJUDGED AND DECREED that, except as set forth herein, Defendants are permanently enjoined from directly or indirectly engaging or attempting to engage in any manner in the issuance, exchange, sale, offer to sell, purchase, offer to purchase, promotion, negotiation, advertisement, provision of investment advice, investment management or distribution of any stocks, bonds, notes, evidences of interest or indebtedness, foreign currency orders, calls or options or any other securities or commodities within or from the State of New York; and it is further

3. ORDERED, ADJUDGED AND DECREED that, except as set forth herein, Defendants are permanently enjoined from attempting to engage in any manner in the securities or commodities business within or from the State of New York as a broker, dealer, issuer, investment advisor, investment manager, or as an officer, director, principal, controlling person, agent, affiliated person, consultant or salesperson of a broker, dealer, issuer, investment advisor or investment manager; and it is further

4. ORDERED, ADJUDGED AND DECREED that, except as otherwise set forth herein, Defendants are permanently enjoined from directly or indirectly engaging or attempting to engage in any manner in writing, publishing, preparing, selling or distributing any letter or other literature advising, suggesting, or in other manner communicating advice within or from the State of New York with respect to the purchase or sale of securities or commodities; and from forecasting, advising, or in any other manner suggesting either orally or in writing any method or methods to be used in connection with the purchase or sale of securities or commodities within or from the State of New York; and it is further

5. ORDERED, ADJUDGED AND DECREED that Defendants, their agents or assignees and all other persons acting to assist them, be and are enjoined and restrained from forming or causing to form, or working for or in aid or assistance of, any entity for the purpose of soliciting, or causing or causing investors or customers to invest in securities within and from the State of New York; and it is further

6. ORDERED, ADJUDGED AND DECREED that, notwithstanding the foregoing injunctive provisions, Defendants may transfer a controlling interest in Novacon (i.e., not less than 51% of the voting shares issued by Novacon) to an individual that is, or to an entity owned or formed by individuals or entities that are, (a) a broker or dealer required to register and duly registered with the SEC under the provisions of §§ 3(a)(4)(A) or 3(a)(5)(A) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*; or (b) a private or venture capital fund required to register and duly registered with the Securities and Exchange Commission under the Investment Adviser Act of 1940, 15 U.S.C. § 80b-1 *et seq.*, or with the Attorney General under the provisions of New York General Business Law §359-eee; or (c) a dealer or broker required to register and duly registered with the Attorney General under the provisions of New York General Business Law § 359-e; and it is further

7. ORDERED, ADJUDGED AND DECREED that, notwithstanding the foregoing injunctive provisions, Novacon may secure one or more loans from any institution duly chartered and regulated under the National Bank Act, 12 U.S.C. § 1 *et seq.*, or under the New York State Banking Law, N.Y. Banking Law § 1 *et seq.*, or duly organized and regulated under the Federal Credit Union Act, 12 U.S.C. § 1751 *et seq.*, or duly organized and regulated under any other national or state banking or thrift institution law, or from a private or venture capital fund

required to register and duly registered with the Securities and Exchange Commission under the Investment Adviser Act of 1940, 15 U.S.C. § 80b-1 *et seq.*; and it is further

8. ORDERED, ADJUDGED AND DECREED that, notwithstanding the foregoing injunctive provisions, Novacon will not be prohibited by this agreement from securing one or more loans from any entity or individual solely for the purpose of conducting the business of the company, provided that:

- a. such entity or individual is an accredited investor within the meaning of 17 C.F.R. § 230.501(a);
- b. the terms of the loan shall include a principal amount, interest rate, maturity date and security consisting of reasonable collateral and the personal guarantees of both Stephen Baer and Vivian Mook Baer, jointly and severally; all of which terms shall be reduced to a writing executed both by lender and Novacon and its officers;
- c. any prospective lender shall receive, prior to agreeing to making such loan, the disclosures stated at Exhibit C to this agreement;
- d. any such loan is subject to written approval of the Attorney General pursuant to paragraph 9 of this Consent Order and Judgment, but notwithstanding this subdivision such approval shall not be withheld if the terms of this paragraph are met; and it is further

9. ORDERED, ADJUDGED AND DECREED that, during a period of eight years from the date of this Consent Order and Judgment, Defendants may not engage in the transactions contemplated under the foregoing paragraphs 6, 7, and 8 unless and until Defendants have

obtained the Attorney General's written approval of Defendants' disclosures relating to such transactions, and of the terms and parties to such transactions; and it is further

10. ORDERED, ADJUDGED AND DECREED that Defendants shall cooperate fully in providing the Attorney General with all such information reasonably necessary to grant the approval contemplated in the foregoing paragraph 9, and such approval shall not be unreasonably withheld; and it is further

11. ORDERED, ADJUDGED AND DECREED that nothing contained herein is intended to prevent nor does it prevent the defendants from operating Novacon in a lawful manner, which defendants are allowed to do notwithstanding any other provision of this or any other order of this Court: and it is further

NOTICE TO INVESTORS

12. ORDERED, ADJUDGED AND DECREED that within ten days after service of this Consent Order and Judgment with notice of entry thereof, Defendants, through their attorneys of record, shall send, by registered U.S. mail, a written Notice to each and every investor in Novacon (in whatever form such investment was made) who invested funds in Novacon, in the form set out at Exhibit A to this Consent Order and Judgment ("Notice"), which Notice shall be accompanied by a copy of this Consent Order and Judgment; and it is further

13. ORDERED, ADJUDGED AND DECREED that the Attorney General shall calculate each Novacon investor's *pro rata* portion of the Novacon funds ordered frozen by Justice Heitler on December 27, 2007 in *In the Matter of an Inquiry into Novacon Energy Sys., Inc. et al.*, Index No. 407258/2007 (the "frozen funds"), based upon the ratio of the individual's investment to the total investment of all investors, taking into account available information

including that which is provided by investors in connection with their responses to the Notice ;
and it is further

14. ORDERED, ADJUDGED AND DECREED that, 75 days after sending the Notice, Defendants shall provide to the Attorney General a list of all investors in Novacon who have responded to the Notice indicating that they wish to receive a repayment of their investment in Novacon, based upon a *pro rata* portion of the frozen funds, together with a copy of the response submitted by each such investor, including any supporting materials provided; and it is further

15. ORDERED, ADJUDGED AND DECREED that, 75 days after sending the Notice, Defendants shall provide to the Attorney General a list of all investors in Novacon who have responded to the Notice indicating that they wish to remain invested in Novacon, together with a copy of the response submitted by each such investor, including any supporting materials provided; and it is further

16. ORDERED, ADJUDGED AND DECREED that, 75 days after sending the Notice, Defendants shall provide to the Attorney General a list of all investors in Novacon who have not responded to the Notice, together with a copy of the Notice sent to each such investor; and it is further

17. ORDERED, ADJUDGED AND DECREED that the Order Pursuant to General Business Law § 354 issued by Justice Heitler on December 27, 2007 in *In the Matter of an Inquiry into Novacon Energy Sys., Inc. et al.*, Index No. 407258/2007 is hereby modified insofar as Citibank, N.A. shall, upon the Attorney General's written instruction, issue bank checks to Novacon investors who elect to receive a repayment of their *pro rata* portion of the previously frozen funds, to be drawn on the funds contained in those accounts listed in Exhibit B hereto, and

the Attorney General shall use its best efforts to direct that Citibank, N.A. issues such bank checks expeditiously; and it is further

18. ORDERED, ADJUDGED AND DECREED that, promptly upon receiving notice that any investor has presented such bank check as described herein at paragraph 17 for payment or deposit, Novacon shall cancel, retire, and annul all stock issued and outstanding to such investor and shall promptly thereafter provide to the Attorney General evidence acceptable to the Attorney General of the retirement of such stock; and it is further

19. ORDERED, ADJUDGED AND DECREED that the Order Pursuant to General Business Law § 354 issued by Justice Heitler on December 27, 2007 in *In the Matter of an Inquiry into Novacon Energy Sys., Inc. et al.*, Index No. 407258/2007 is hereby modified insofar as Citibank, N.A. shall, upon the Attorney General's written instruction, provide to Defendants access to the aggregate amount of those funds in the previously frozen accounts equal to the total value of the *pro rata* portions of the previously frozen funds attributable to such investors who elect to remain invested in Novacon, and the Attorney General shall use its best efforts to direct that Citibank, N.A. provides such access expeditiously; and it is further

20. ORDERED, ADJUDGED AND DECREED that the Order Pursuant to General Business Law § 354 issued by Justice Heitler on December 27, 2007 in *In the Matter of an Inquiry into Novacon Energy Sys., Inc. et al.*, Index No. 407258/2007 is hereby modified insofar as Citibank, N.A. shall, upon the Attorney General's written instruction, remit to the Attorney General the aggregate amount of the *pro rata* portions of the previously frozen funds attributable to Novacon investors who do not respond to the Notice, which the Attorney General shall remit to, or for the benefit of, such investors at the Attorney General's sole discretion; and it is further

21. ORDERED, ADJUDGED AND DECREED that, 75 days after sending the Notice, Novacon shall cancel, retire, and annul all stock issued and outstanding to such investors who do not respond to the Notice and shall promptly thereafter provide to the Attorney General evidence acceptable to the Attorney General of the retirement of such stock.

COOPERATION AND COMPLIANCE WITH CONSENT ORDER

22. ORDERED, ADJUDGED AND DECREED that Defendants shall, promptly upon request by the Attorney General, provide all documentation and information, and do all other such acts, necessary for the Attorney to verify compliance with this Consent Order and Judgment; and it is further

23. ORDERED, ADJUDGED AND DECREED that all notices, reports, requests, and other communications to any party pursuant to this Consent Order and Judgment shall be in writing and shall be directed as follows:

If to Defendants, to:

John J. E. Markham, II
Markham & Read
One Commercial Wharf West
Boston, MA 02110

If to the Attorney General, to:

Katherine C. Milgram, Esq.
Deputy Chief, Investor Protection Bureau
Office of the New York State Attorney General
120 Broadway, 23rd Floor
New York, NY 10271

24. ORDERED, ADJUDGED AND DECREED that failure to comply fully and promptly with any provision of this Consent Order and Judgment shall be considered a violation of this Consent Order and Judgment. Upon such a violation, the Attorney General may take any

and all steps available to enforce this Consent Order, including seeking the issuance of an order holding Defendants in contempt of court; and it is further

25. ORDERED, ADJUDGED AND DECREED that in any application by the Attorney General pursuant to the paragraph immediately foregoing, the Attorney General may request an allowance for costs under CPLR § 8303(a)(6); and it is further

CONTINUING JURISDICTION

26. ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for the purpose of enforcing the terms of this Consent Order and Judgment, or granting such further relief as the Court deems just and proper and to permit plaintiff to make further applications for such other and further relief as it appears to plaintiff may be proper and necessary for the enforcement of the Consent Order and Judgment; and it is further

27. ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action to entertain applications to the Court made jointly by the parties for the purpose of modifying or effecting this Consent Order and Judgment.

Dated: September 12, 2014
New York, New York

ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York

By: 
Katherine C. Milgram
Deputy Chief, Investor Protection Bureau
Steven J. Glassman
Senior Enforcement Counsel
120 Broadway, 23rd Floor
New York, NY 10271
212.416.8222

Counsel for Plaintiff the State of New York

Dated: September 12, 2014
Boston, Massachusetts

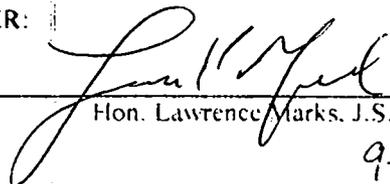
NOVACON ENERGY SYSTEMS, INC.,
STEPHEN H. BAER, AND VIVIAN MOOK BAER

By: 

John J.E. Markham, II
Bridget A. Zerner
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One Commercial Wharf West
Boston, MA 02110
617.523.6329

*Counsel for Defendants Novacon Energy
Systems, Inc., Stephen H. Baer, and
Vivian Mook Baer*

ENTER: |



Hon. Lawrence Marks, J.S.C.
9-15-14

HON. LAWRENCE K. MARKS