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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 HELANE L. MORRISON (Cal. Bar No. 127752)
SUSAN F. LAMARCA (Cal. Bar No. 215231)
2 (lamarcas@sec.gov)
MARK P. FICKES (Cal. Bar No. 178570)
3 (fickesm@sec.gov)
ERIN E. SCHNEIDER (Cal. Bar No. 216114)
4 (schneidere@sec.gov)

5 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2600
San Francisco, California 94104
7 Telephone: (415) 705-2500
Facsimile: (415) 705-2501

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

JCS

13 **1 C 05 5171**

14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 vs.
17 JEFFREY B. SCHMIDT; GARY L. GENETTE; and
NORMAN R. VALINE,
18 Defendants.

Case No. _____
COMPLAINT

20 Plaintiff Securities and Exchange Commission ("Commission") alleges:

21 **SUMMARY OF THE ACTION**

22 1. Skin Nuvo International, LLC ("Nuvo" or the "Company") a skin care and laser hair
23 removal company that operates in shopping malls, and its principals defrauded investors out of
24 millions of dollars by falsely touting the Company as a successful operation, when in reality investor
25 funds were used to prop up a failing business rapidly heading for bankruptcy. Between 2002 and
26 2004, Nuvo raised over \$11 million from 65 investors throughout California, Nevada, and the Pacific
27 Northwest by providing fraudulent financial information to investors and promising tremendous
28

1 profits. By March 2005, Nuvo collapsed, filing for bankruptcy and leaving most investors with
2 worthless securities.

3 2. Nuvo's Chief Executive Officer and co-owner Jeffrey B. Schmidt, along with Chief
4 Operating Officer Norman R. Valine and Nuvo co-owner Gary L. Gelnette, courted investors by
5 touting Nuvo's instant cash flow and incredible profit margins. Rather than using investor funds to
6 finance new stores, as promised, Schmidt used the money to pay the debts, construction costs and
7 payroll for the older stores. In order to hide Nuvo's rapidly deteriorating financial condition, Schmidt
8 prepared false income statements that made the Nuvo stores look more profitable than they actually
9 were. Despite Nuvo's dire financial situation, Schmidt managed to pay himself more than \$680,000
10 and Gelnette approximately \$260,000.

11 3. In addition, Schmidt used new investor funds to make payments to prior investors,
12 creating an illusion of profitability in order to keep investor money flowing into the Company.

13 4. The Commission seeks injunctions, disgorgement of ill-gotten gains and civil money
14 penalties against all defendants.

15 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

16 5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a)
17 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] and
18 Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C.
19 §§ 78u(d), 78u(e) and 78aa].

20 6. Defendants, directly or indirectly, have made use of the means and instrumentalities of
21 interstate commerce or of the mails in connection with the acts, transactions, practices and courses of
22 business alleged in this Complaint.

23 7. Venue in this District is proper pursuant to Section 22(a) of the Securities Act
24 [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because acts and
25 transactions constituting violations alleged in this Complaint, including the offer and sale of
26 securities, occurred within the Northern District of California.

1 8. Assignment to the San Francisco Division of this Court is proper because a substantial
2 part of the events or omissions that give rise to claims alleged in this Complaint occurred in San
3 Francisco, Marin and Contra Costa counties.

4 **DEFENDANTS**

5 9. Defendant Jeffrey B. Schmidt ("Schmidt") resides in Henderson, Nevada. Schmidt is
6 a 33% owner and the managing member of Nuvo. Before Nuvo filed for bankruptcy on March 7,
7 2005, Schmidt ran Nuvo's financial and business operations.

8 10. Defendant Gary L. Gelnette ("Gelnette") resides in Concord, California. Gelnette is a
9 33% owner of Nuvo and was responsible for managing the construction of each Nuvo store. Gelnette
10 also assisted in the sale of Nuvo securities.

11 11. Defendant Norman R. Valine ("Valine") resides in Las Vegas, Nevada. He served as
12 Nuvo's Chief Financial Officer ("CFO") for two weeks in June 2003 and then became the
13 Company's Chief Operating Officer ("COO") until October 2004. Valine also sold Nuvo securities.

14 **OTHER RELEVANT ENTITIES**

15 12. Nuvo is a Nevada limited liability company with its principal place of business in
16 Henderson, Nevada. Nuvo sold skin care and hair removal products and services at Nuvo retail
17 stores. During the relevant period, Nuvo operated stores at shopping malls in San Francisco, San
18 Jose, Richmond, Concord, Corte Madera, Walnut Creek, and Los Angeles, California, as well as
19 (among others), Portland, Spokane and Las Vegas. Nuvo financed the development of each retail
20 location by forming a limited liability company ("LLC") and selling interests in the LLC to investors.
21 Nuvo owned a majority and controlling interest in every Nuvo store in which an investor invested
22 funds.

23 **FACTUAL ALLEGATIONS**

24 **A. Defendants Sold Unregistered Securities.**

25 13. Schmidt founded the Company in 2002, along with Gelnette and another individual
26 co-owner.

27 14. Between 2002 and 2004, Nuvo raised more than \$11 million by selling interests in
28 approximately 36 Nuvo stores to approximately 65 investors. Nuvo financed the construction costs

1 for its retail stores by forming a separate LLC for each retail location and offering investors the
2 opportunity to purchase up to 49% of an LLC. In exchange for each investment, Schmidt promised
3 each investor a *pro rata* share of his or her location's profits.

4 15. Nuvo owned 51% of every store and thus exclusively controlled the management and
5 operations of each store. Investors played no role in the operation or management of their store, other
6 than by contributing funds. Indeed, Schmidt deliberately sought out passive investors and
7 discouraged them from having any involvement with the stores. Thus, the return on any investment
8 was dependent solely on Nuvo's efforts.

9 16. Schmidt was the main salesperson of the LLC interests. His compensation was based,
10 in part, on his sales of investments in the Nuvo LLCs.

11 17. Valine participated in sales to approximately half of Nuvo's investors. Also, as
12 described in more detail below, Valine was responsible for selling interests in four stores in 2004,
13 earning approximately \$138,000 in commissions for these four transactions.

14 18. Gelnette also participated in offering and selling investments, including to his former
15 wife and members of his former church.

16 19. Nuvo solicited investments from the general public by publicizing investment
17 opportunities in the LLCs. From mid-2003 until June 2005, Nuvo maintained an Internet website
18 which generally solicited investors, promising "[i]ncredible profit margins and instant cash flow."
19 Schmidt also advertised Nuvo investments in newspapers from November 2002 through August
20 2003. In addition, Schmidt held a public seminar that resulted in investments.

21 20. Schmidt, Valine and Gelnette sold investments in the Nuvo LLCs regardless of the
22 investor's net worth or income. Many investors did not have sufficient assets to take on the risk of
23 investing in Nuvo LLCs. Indeed, several Nuvo investors liquidated their retirement funds and took
24 second mortgages on their homes in order to invest.

25 21. No registration statement was filed with the Commission in connection with the offer
26 and sale of Nuvo securities.

27 22. Schmidt and Valine did not register as brokers with the Commission.
28

1 **B. Nuvo and Schmidt Raised Funds Through Fraudulent Misrepresentations and**
2 **Omissions.**

3 23. Schmidt claimed to investors that they were joining a successful industry by
4 purchasing an interest in a Nuvo store that would generate incredible profit margins. In reality, Nuvo
5 had serious cash flow problems and used the influx of new investor money to stay afloat. Schmidt
6 made numerous material misrepresentations and omitted material information in order to hide Nuvo's
7 rapidly declining financial situation and lure new investors.

8 **Material Misrepresentations and Omissions About the Use of Investor Funds**

9 24. Schmidt told investors that they were investing in a particular Nuvo store. In reality,
10 they were investing in the larger Nuvo entity by virtue of the fact that Schmidt ran the Nuvo stores as
11 if they were parts of a single entity, commingling funds and expenses.

12 25. Schmidt provided investors with an operating agreement that required Nuvo to
13 establish a capital account to track each investor's contributions to, and distributions from, his or her
14 particular store. Nuvo also distributed a private placement memorandum to some investors which
15 stated that Nuvo would use investment funds to commence operations for the store in which the
16 individual invested. Schmidt assured certain investors that their money would be used to fund
17 construction, training and opening expenses only for the Nuvo store in which they had invested.

18 26. Rather than treating each Nuvo store as a separate entity, Schmidt operated the
19 approximately 36 Nuvo stores as a single entity. Schmidt commingled investment funds and the
20 daily deposits for each store in one bank account, and Nuvo had no accounting system in place to
21 track the source of the funds.

22 27. Schmidt used the commingled funds to pay bills and make distributions on an arbitrary
23 and ad hoc basis. For example, Schmidt frequently used an investment in one Nuvo store to pay
24 construction costs, expenses or payroll for a different Nuvo store. Schmidt also used funds from
25 certain investors to make distributions to himself and Gelnette without disclosing that use to the
26 investor who paid the funds. By September 2004, Nuvo had raised approximately \$4 million from
27 investors whose stores were never built.

1 28. Schmidt also used recent investor money to pay existing investors so-called "profit
2 distributions." In effect, Schmidt operated Nuvo as a Ponzi scheme where he used money solicited
3 from new investors to pay off earlier investors and maintain an illusion of a profitable venture.

4 29. Schmidt had control over Nuvo's operations and knew, or was reckless in not
5 knowing, that the representations and omissions concerning the use of investor funds were materially
6 false and misleading.

7 **Materially False and Misleading Statements About Nuvo's Financial Condition**

8 30. Schmidt claimed to prospective investors that their stores would be instantly
9 profitable, that they should expect to make a 30 to 40% profit every month, and that they would make
10 their investment back in as little as 12 to 14 months. In addition, Nuvo's website falsely promised
11 investors "[i]ncredible profit margins and instant cash flow."

12 31. Schmidt reported profitability to investors not based on actual profits, but instead
13 based on his determination of how much profit each investor should receive. Thus, where an income
14 statement prepared by Nuvo's bookkeeper did not match Schmidt's predetermined profit calculation,
15 Schmidt simply changed the statement to make it appear that the store was profitable. Schmidt then
16 provided these false income statements to current as well as prospective investors. Schmidt was thus
17 able to hide Nuvo's dismal financial condition and make it appear as though Nuvo's stores were
18 profitable.

19 32. At the same time that Schmidt touted false and unrealistic expectations about Nuvo, he
20 failed to disclose Nuvo's declining financial situation. For instance, Schmidt knew that by December
21 2003, Nuvo had received a delinquency notice for failing to pay rent. Likewise, by December 2003,
22 Schmidt knew that Nuvo did not have sufficient funds in its bank account to fulfill its payroll
23 obligations. By April 2004, Schmidt was writing checks totaling hundreds of thousands of dollars
24 more than Nuvo had in its checking account. Schmidt did not disclose any of this negative
25 information to investors.

26 33. Moreover, the operating agreement Schmidt provided to investors required Nuvo to
27 keep the books and records for each Nuvo store in accordance with generally accepted accounting
28 principles ("GAAP"). At the time Schmidt provided investors with the operating agreement, he

1 knew, or was reckless in not knowing, that Nuvo's records were not kept in accordance with GAAP.
2 Instead, Nuvo used a rudimentary accounting system that recorded all cash receipts as revenue. For
3 instance, Nuvo recorded as revenue money received for pre-paid services that had not been rendered,
4 which was not consistent with GAAP.

5 34. Despite Nuvo's dire financial situation, however, Schmidt managed to pay himself
6 more than \$680,000 and Gelnette approximately \$260,000.

7 35. Schmidt's representations and omissions concerning Nuvo's financial condition were
8 materially false and misleading, and at the time Schmidt made these representations and omissions,
9 he knew, or was reckless in not knowing, they were materially false and misleading.

10 **B. Valine and Gelnette Sold Nuvo LLC Investments Without Disclosing Material Negative**
11 **Information About Schmidt and Nuvo to Investors.**

12 36. By late July 2004, Valine and Gelnette were aware of significant financial and
13 operational problems at Nuvo. Yet they continued to sell investments in Nuvo stores without
14 informing investors of material negative facts, and assured investors that they would make significant
15 returns on their investments.

16 37. By the end of June, 2004, Valine and Gelnette learned that Nuvo was short \$1 million
17 and needed additional funds. Valine and Gelnette began to investigate whether Schmidt had been
18 embezzling money. Through this investigation, Valine learned that Schmidt falsified income
19 statements and made improper profit distributions. Valine informed Gelnette of his findings.

20 38. Notwithstanding the concerns about Nuvo's finances and Schmidt's conduct, Gelnette
21 (with Schmidt) met with a prospective investor in July and persuaded him to invest \$1.35 million.
22 Gelnette, a former pastor, told the investor, a former parishioner, that he would succeed financially
23 and that Nuvo would be a "blessing" in his life. Gelnette, however, never disclosed Nuvo's \$1
24 million cash shortage or the other concerns raised by Valine.

25 39. Similarly, in August and September 2004, Valine sold over \$650,000 in Nuvo
26 securities to four investors, earning commissions on those sales totaling \$138,000. Despite having
27 information to the contrary, Valine told an investor that Nuvo was "rock solid," that 40% profit
28 margin distributions were likely and that the money invested would be earned back in 18 to 24

1 months. In addition, Valine provided materially false and misleading income statements to
2 prospective investors knowing that they were, at a minimum, unreliable.

3 40. Gelnette's and Valine's representations and omissions were materially false and
4 misleading, and at the time they made these representations and omissions they knew or were
5 reckless in not knowing that they were materially false and misleading.

6 **FIRST CLAIM FOR RELIEF**

7 **Violations of Section 17(a) of the Securities Act Against All Defendants**

8 41. The Commission realleges and incorporates paragraphs 1 through 40 by reference.

9 42. Defendants Schmidt, Gelnette and Valine have, by engaging in the conduct set forth
10 above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of
11 transportation or communication in interstate commerce, or of the mails: (a) with scienter, employed
12 devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue
13 statements of material fact or by omitting to state material facts necessary in order to make the
14 statements made, in the light of the circumstances under which they were made, not misleading; or
15 (c) engaged in transactions, practices or courses of business which operated or would operate as a
16 fraud or deceit upon the purchasers of such securities.

17 43. By reason of the foregoing, defendants violated, and unless enjoined, will continue to
18 violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

19 **SECOND CLAIM FOR RELIEF**

20 **Violations of Section 10(b) of the Exchange Act**
21 **and Rule 10b-5 Thereunder Against All Defendants**

22 44. The Commission realleges and incorporates Paragraphs 1 through 43 by reference.

23 45. Defendants Schmidt, Gelnette and Valine have, by engaging in the conduct set forth
24 above, directly or indirectly, in connection with the purchase or sale of securities, by use of means or
25 instrumentalities of interstate commerce, or of the mails, or of a facility of a national security
26 exchange, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made untrue
27 statements of material fact or omitted to state material facts necessary in order to make the statements
28 made, in light of the circumstances under which they were made, not misleading; or (c) engaged in

1 acts, practices or courses of business which operated or would operate as a fraud or deceit upon other
2 persons.

3 46. By reason of the foregoing, defendants violated, and unless enjoined, will continue to
4 violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §
5 240.10b-5].

6 **THIRD CLAIM FOR RELIEF**

7 **Violations of Section 5(a) and 5(c) of the Securities Act Against All Defendants**

8 47. The Commission realleges and incorporates Paragraphs 1 through 46 by reference.

9 48. Defendants Schmidt, Gelnette and Valine, by engaging in the conduct set forth above,
10 directly or indirectly, made use of the means or instruments of transportation or communication in
11 interstate commerce or of the mails, to offer and to sell securities through the use of or medium of a
12 private placement memorandum, operating agreement or otherwise when no registration statement
13 had been filed or was in effect as to such securities and no exemption from registration was available.

14 49. By reason of the foregoing, defendants violated, and unless enjoined, will continue to
15 violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

16 **FOURTH CLAIM FOR RELIEF**

17 **Violations of Section 15(a) of the Exchange Act** 18 **Against Schmidt and Valine**

19 50. The Commission realleges and incorporates paragraphs 1 through 49 by reference.

20 51. Defendants Schmidt and Valine, directly or indirectly, through use of the means or
21 instruments of transportation or communication in interstate commerce or the mails, acted as a broker
22 and/or effected transactions in, and induced or attempted to induce the purchase or sale of, securities
23 (other than an exempted security or commercial paper, bankers' acceptances or commercial bills)
24 without being registered with the Commission in accordance with Section 15(b) of the Exchange Act
25 [15 U.S.C. § 78o(b)].

26 52. By reason of the foregoing, defendants Schmidt and Valine violated, and unless
27 enjoined, will continue to violate Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].
28

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin each of the defendants from future conduct that violates the provisions of the federal securities laws alleged against them in this complaint.

II.

Order all defendants to disgorge their ill-gotten gains in an amount according to proof, plus prejudgment interest thereon.

III.

Order all defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

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

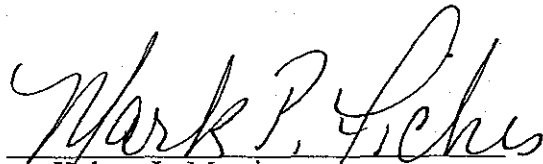
VII.

Grant such other and further relief as this Court may deem appropriate.

Dated: December 14, 2005

Respectfully submitted:

By:



Helene L. Morrison
Susan F. LaMarca
Mark P. Fickes
Erin E. Schneider

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION