UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. REVOLUTIONS MEDICAL CORP. and RONDALD L. WHEET, Defendants.	Civil Action No. 1:12-cv-03298-TCB

DEFENDANTS' JOINT STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

Defendants Revolutions Medical Corp. ("RMC") and Rondald L. Wheet ("Wheet") file these Statements of Material Fact as to Which There is No Genuine Issue to be Tried in support of their Motion for Summary Judgment and in accordance with Northern District of Georgia Local Rule 56.1, B.

General

1. Wheet is the chief executive officer of RMC and Chairman of the Board of RMC. *Deposition of Rondald Wheet on April 22, 2014 in this case ("Wheet 4/22/14"), 11/25-12/11*.

2. O'Brien was the president of RMC from October 26, 2009 to September 20, 2011 when he resigned and a member of the board of directors from October, 2007 to September 20, 2011 when he resigned. *Deposition of Thomas O'Brien on May 22, 2014 in this case ("O'Brien"), 28/25-29/3, 35/23-36/5, 40/14-41/14, 44/24-46/11, 54/10-18; Deposition of Thomas O'Brien on November 11, 2011 in the SEC investigation "In the Matter of Revolutions Medical Corp."*, SEC File No. A-03288 *("SEC Inv.") ("O'Brien SEC"), 10/24-11/8, 14/21-16/3; Deposition of Rondald Wheet on April 23, 2014 in this case ("Wheet 4/23/14"), 98/21-24*.

3. O'Brien has more than 25 years of senior management experience in the medical device industry, with special expertise in domestic and international sales, and marketing and distribution of high technology medical systems and services with a number of major corporations. *O'Brien, 14/2-22/1; DX 17 at RMCP 1204*.

4. O'Brien was responsible for the administration, supervision, management and control of the business development of RMC, including the research, development, manufacture, marketing and sales of RMC's products. *O'Brien, 13/5-17; O'Brien SEC, 15/3-7; DX 17 at RMCP 1203*.

5. O'Brien had met Theriault in 1997 or 1998 and had worked with him for probably 15 years going back to 1999 or 2000. *O'Brien, 64/3-16; Deposition of Richard Theriault on August 24, 2011 in the SEC Inv. ("Theriault 8/24/11 SEC"), 35/7-18.*

6. O'Brien did not believe that Theriault had any prior experience with regard to the design, manufacture or distribution of medical syringes prior to working with RMC. *O'Brien, 65/14-66/5*.

7. One company owned by Theriault is called Medical Investment Group, Inc. ("MIG"). *Deposition of Richard Theriault on June 5, 2014 in this case ("Theriault"), 58/23-59/3; Theriault 8/24/11 SEC, 13/16-14/14; Wheet 4/22/14, 148/19-149/4.* Theriault's formal title is general partner and president, and he performs all duties associated with MIG. *Deposition of Richard Theriault on November 3, 2011 in SEC Inv. ("Theriault SEC"), 9/24-10/7; Deposition of Richard Theriault on March 11, 2013 in "In the Matter of Richard H. Theriault, et al.", U.S. Bankruptcy Court, E.D. Mass ("Theriault Bank."), 11/21-24, 14/22-15/25*. Theriault is the majority owner of MIG. *Theriault Bank., 15/17-25*.

8. Another company owned by Theriault is called Strategic Product Development, Inc. ("SPD"). *Theriault, 25/7-16, 212/6-8; Theriault 8/24/11 SEC, 15/2, 15/19-24, 33/11-20; O'Brien SEC, 23/10-15*. Theriault's formal title is president, and he performs the majority of the duties there. *Theriault 11/3/11 SEC, 10/8-13*.

RMC's syringe

9. The particular 3ml syringe at issue in this case is unique because it can be operated with one hand. *Deposition of Ernest Compton on May 25, 2011 in the SEC Inv. ("Compton SEC"), 37/15-21*. When the operator pushes the plunger down into the patient, it creates a vacuum, and once the medicine or vaccine is delivered all the way down to the end, the vacuum automatically draws the needle back up into the barrel so no one can be stuck, and it can never be used again. *App. #6 at 30; Compton SEC, 37/15-21*. Because of this, it reduces accidental needle stick injuries and the spread of contagious diseases. It can also be easily disposed of and saves space in the sharps containers. *App. #6 at 30.*

10. RMC holds a number of patents with respect to its auto-retractable safety syringe technology. *Wheet 4/22/14, 21/14-22/9; DX 174; App. #6 at 31; PX 32 at 71-72, 169, 166-167*.

11. The design of RMC's auto-retractable safety syringe is so unique that it has received design awards. *PX 32 at 65-66, 153-154*.

12. A video of the syringe can be found at RMC's website at www.RMCmedical.com.

13. The difference between a sample syringe and a syringe that is ready for human use is that the latter has been cleared by the FDA and sterilized. *O'Brien, 252/1-9*.

14. Syringes are manufactured using injection molds. Pilot or test molds are inexpensive. *Wheet 4/22/14, 30/13-21*. Final or volume production molds are expensive and made of high quality polished steel lined with chrome. *Wheet 4/22/14, 30/4-7; Wheet 4/23/14, 89/23-90/8*.

15. Molds are a proprietary injection machine. *Wheet 4/22/14, 266/23-267/3*.

16. Once the molded parts are made, they are then fed into assembly equipment. The assembly equipment is more generic and does not consist of proprietary information. *Wheet 4/22/14, 266/23-267/1*.

17. After the product from the pilot mold is functional, final or volume production molds are made and mass production begins. *Wheet 4/22/14, 29/18-30/3*.

18. The difference between a sample syringe and a syringe that is ready for human use is that the latter has been cleared by the Food and Drug Administration ("FDA") and sterilized. *O'Brien, 252/1-9.*

FDA clearance of the 3ml syringe

19. RMC's safety syringe was considered to be a medical device and, therefore, had to receive FDA clearance before they could be sold in the United States. A form 510(k) is the application to obtain FDA clearance to market a medical device in the United States. *Deposition of David Rothkopf on December 14, 2011 in the SEC Inv. ("Rothkopf SEC"), 15/15-24, 20/8-15*.

20. David Rothkopf ("Rothkopf") is the president of SON Medical, a medical device consulting company, and an expert in FDA regulatory processes. *Rothkopf SEC, 12/3-7; Theriault, 219/21-221/3*. He started working with RMC in 2007 on FDA regulatory issues. *Rothkopf SEC, 15/12-16; O'Brien SEC, 22/4-14*.

21. Rothkopf helped RMC obtain the 510(k) clearance for the blue syringe. *Rothkopf SEC, 15/15-20*.

22. Rothkopf did the physical product testing on the blue syringes, and they passed his physical product tests. *Rothkopf SEC, 69/24-71/20, 71/-6-10*.

23. On February 13, 2009, RMC received notification from the FDA that the 510(k) application for the 3ml RevVac Safety Syringe was approved. *App. #7; Wheet 4/22/14, 103/1-10, 223/2-15; PX 25; Rothkopf SEC, 18/24-19/2; Complaint, ¶15.*

24. The syringe that received FDA clearance is referred to as the "blue syringe" which was made in China by a company called Globe Med Tech. *Wheet 4/22/14, 21/15-23/2; O'Brien SEC, 53/10-15; DX 1.*

25. Once it received notification from the FDA on February 13, 2009 that its 510(k) application was approved, RMC could market and sell its syringe in the U.S. *Rothkopf SEC, 22/15-19, 49/20-50/2.*

26. Once a company is registered with the FDA, they are stating that they will have a quality system and that the FDA can come in and audit that system.

Rothkopf SEC, 25/4-7. A quality system has various elements, including complaint handling, management responsibilities, training documentations, internal audits, corrective actions, preventative actions, production control, documentation control, design control, distribution management, storage, traceability and identification and statistical techniques. *Rothkopf SEC, 21/7-9, 32/7-21*.

27. RMC was registered with the FDA, and its syringe was listed with the FDA. *Rothkopf SEC, 25/14-15*. That occurred before RMC submitted its 510(k) to the FDA in 2008. *Rothkopf SEC, 25/17-22*.

28. RMC contracted with Rothkopf to build a quality management system and received the quality system documentation between May 23, 2011 and May 26, 2011. *Rothkopf SEC, 26/6-9*.

29. It would only take 60-90 days to implement quality system documentation. *Rothkopf SEC, 26/8-9, 30/19-31/4*, which is about the same time it takes to order, manufacture and ship the syringes to Charleston. *Wheet 4/23/14, 52/8-10*.

30. RMC currently has a quality system in place. *Deposition of Stephen Wheet on May 2, 2014 in this case ("Stephen Wheet"), 72/16-19, 75/16-21*.

31. Quality systems did not have to be in place in order for RMC to sell its syringes so long as it had them operational before an FDA audit was conducted or before it shipped syringes to an end user. *Wheet 4/22/14, 33/17-21, 166/25-168/4, 169/15-18*.

Initial September 10, 2008 agreement between RMC and Theriault/SPD

32. On or about September 10, 2008, RMC entered into an agreement with SPD ("the SPD Agreement") under which SPD agreed to provide RMC with "VP Engineering and VP Manufacturing Management services". *DX 43; Theriault, 49/7-50/12*.

33. Under the SPD Agreement, SPD was to select, assess and manage all manufacturing relationships in connection with RMC's development and production of the 3ml syringe and identify for RMC at least two pre-qualified contract manufacturers who would be potential manufacturers of the 3ml syringes for RMC. *DX 43*.

34. Theriault through SPD was supposed to identify at least two pre-qualified contract manufacturers who would be potential manufacturers of the syringe *DX 43*.

35. In August, 2010, before entering into the manufacturing agreements discussed below, Theriault/SPD obtained an offer from a Chinese manufacturer to prepare the necessary molds and tooling for $80,300. *Theriault Bank., 44/15-45/17, 46/17-25*.

36. Under the SPD Agreement, RMC initially paid SPD $8,000 a month. *DX 43*. That amount was increased to $16,000 a month from September, 2010 through April, 2011. *DX 43; Theriault, 50/13-16.*

37. Nowhere in the SPD Agreement does it state that SPD would acquire a property interest in any syringe technology or other technology that it assisted in developing under the SPD Agreement. *DX 43; Theriault, 50/17-24*.

Redesign of the syringe

38. Theriault recommended that RMC rework the existing FDA-cleared blue syringe to reduce the number of parts which, in turn, would save money in production costs. *Theriault, 59/13-17; Wheet 4/22/14, 25/10-22; Wheet 4/23/14, 79/8-16; Deposition of Andrew Goddard on June 10, 2014 in this case ("Goddard"), 61/1-22*.

39. In 2008, Theriault contacted Andrew Goddard ("Goddard") at his company, Goddard Technologies, Inc. ("Goddard Technologies"), and asked him to reverse engineer certain syringes. *Goddard, 41/22-43/9*. At that time, Goddard understood the work was for Theriault personally. *Goddard, 44/11-42/5; DX 137*.

40. The design changes were started in June, 2009 and to be completed in December, 2009. *Wheet 4/22/14, 24/22-25/4; DX 139, 140*.

41. The design changes were done by Goddard Technologies with Theriault's help through SPD. *Wheet 4/22/14, 24/22-25/1; Goddard, 41/22-42/5*.

42. The changes involved a change in color scheme and a reduction in the number of parts from twelve pieces to eight. There were no changes to any patented parts of the syringe, the vacuum structure that made it so unique or its functionality. *Wheet 4/22/14, 25/10-22*.

43. The redesigned syringe did not need further FDA clearance. *Wheet 4/22/14, 31/11-33/2; 126/25-127/17, 169/4-14*.

44. As a result, Rothkopf decided he would prepare an internal "letter to file" documenting the changes in the event of an FDA audit. *Rothkopf SEC, 29/1-16, 54/20-23*.

45. Rothkopf based his decision on the fact that there was no real new technology and the performance was not being changed that great. *Rothkopf SEC, 54/24-55/19; O'Brien, 254/25-255/22*.

46. The newly designed syringe did not replace the blue syringe but was merely the next stage of development or evolution of the syringe from a manufacturing standpoint. *Wheet 4/22/14, 26/3-27/2; Wheet 4/23/14, 59/11-22, 78/18-79/7*.

47. RMC always was able to use and sell the blue syringe because it was suitable for human use and remained the basis for the FDA clearance and the

patents. *Wheet 4/22/14, 26/3-27/2, 131/24-132/1;Wheet 4/23/14, 59/11-22, 78/18-79/7; Rothkopf SEC, 41/1-11*.

48. Even after being manufactured and remaining packaged for three years, the blue syringes still worked when tested. *DX 127; Theriault, 152/24-153/8.*

49. On March 1, 2010, RMC entered into an agreement with Theriault/SPD to provide engineering services for creation of pilot molds for the production of samples for the design changes made by Goddard Technologies. *Wheet 4/23/14, 81/1-12*.

50. SPD then hired Precision Tool and Die to make the pilot or test molds for the redesigned syringe. Precision had agreements with SPD and Goddard but not RMC. *Deposition of Michael Driscoll on April 28, 2014 in this case ("Driscoll"), 72/12-17, 87/12-21, 142/16-18; Wheet 4/22/14, 27/3-18, 29/5-8.*

The Drawdown Equity Financing Agreement and Amended Drawdown Equity Financing Agreement with Auctus Private Equity Fund, LLC ("Auctus")

51. Auctus is a Boston investment fund that makes investments in individual companies, *Deposition of Alfred Sollami on June 2, 2014 in this case ("Sollami"), 6/17-7/4, 8/15-23*, and does equity credit lines for small companies that did not have access to larger pools of capital. *Deposition of Alfred Sollami on October 6, 2011 in the SEC Inv. ("Sollami SEC"), 15/20-16/4; Wheet 4/23/14, 63/21-23*.

52. On April 22, 2010, RMC entered into an equity credit line with RMC.

Sollami, 12/10-13; Wheet 4/22/14, 193/9-16. This was evidenced by a Drawdown Equity Financing Agreement ("the Drawdown Agreement") between Revolution and Auctus. *Sollami, 16/4-7; DX 76.*

53. Before it entered into the Drawdown Agreement, Auctus performed due diligence into RMC that included meeting with representatives from RMC. *Sollami, 12/14-14/21; Sollami SEC, 31/9-19.*

54. On June 22, 2010, RMC and Auctus entered into an Amended Drawdown Equity Financing Agreement (the Drawdown Agreement and the Amended Drawdown Agreement are jointly referred to as "the Drawdown Agreements"). *Sollami, 20/3-12; DX 78.*

55. The Drawdown Agreements were forms drafted by Auctus and used by it in other similar deals. *Sollami, 16/8-23, 21/5-7.*

56. Under the Drawdown Agreements, RMC could, for a three-year period beginning on the date on which the SEC first declared effective a registration statement registering the resale of shares by Auctus, sell shares of common stock to Auctus for up to a total of $10 million. *Sollami, 17/15-18/8, 21/11-21; Sollami SEC, 37/13-18; Wheet 4/23/14, 64/12-65/8; DX 76, 78.*

57. RMC submitted drawdown notices to Auctus that requested that Auctus pay it a certain amount of cash. *Sollami, 17/3-14, 22/9-14, 24/14-16, 28/1-4, 38/2-15; Sollami SEC, 28/13-21, 37/13-18; DX 79, 86, 87; DX 76 – Ex. A; DX 78 – Ex. A.*

58. When it received a drawdown notice, Auctus would review it and, subject to certain conditions, give RMC money up to the amount requested in the drawdown notice. *Sollami, 22/15-23/19, 29/1-30/1; DX 80, 86, 87*.

59. In return, Auctus would receive RMC stock that it could sell. *Sollami, 24/14-25/3, 42/4-45/18; Sollami SEC, 28/13-21*.

60. Under the Drawdown Agreements, the purchase price Auctus paid was equal to 97% of lowest closing bid price for RMC's stock during the 5 trading days following the date of the drawdown notice. *Sollami, 42/4-45/18; DX 76, 78*.

61. Auctus looked to make money by selling the RMC stock it received at a higher price than it paid RMC for that stock. *Sollami, 42/20-43/12*.

62. Auctus sold all RMC stock that it received. *Sollami, 24/22-25/3; Sollami SEC, 32/9-12; DX 81-84, 86*.

63. Auctus made a profit on the sale of the RMC stock. *Sollami, 42/20-43/12, 51/6-20; Sollami SEC, 29/19-22; DX 81-84*.

64. Of the $10 million that RMC could potentially have drawn, RMC only drew $1,111,228 because Wheet only wanted to draw what was needed to pay for the molds and honor the agreements with MIG. *Sollami, 38/2-15, 53/10-20; Wheet 4/23/14, 64/15-19; 79, 86*.

65. Wheet believed RMC drew enough to get it to sales. *Wheet 4/23/14, 66/16-22*.

66. RMC did not draw more because Wheet was careful to avoid diluting RMC's stock price. *Wheet 4/23/14, 65/15-66/5*.

67. Auctus had conversations with RMC to use more of the equity credit line and urged RMC to ask for more particularly during periods when the stock was very active. *Sollami, 23/3-24/13, 45/21-47/8; Sollami SEC, 40/12-41/21*.

68. By email dated September 13, 2010, Auctus encouraged RMC to put in a drawdown notice for at least $500,000 on Tuesday, September 14, 2010. *Sollami, 45/21-46/23; DX 88*.

69. According to Auctus, RMC submitted 19 drawdown notices to Auctus and received the following amounts pursuant to those drawdown notices:

Date	Amounted Requested by RMC	Amount Paid by Auctus to RMC
8/20/2010	$50,000	$9,036
8/30/2010	$100,000	$58,129
9/7/2010	$250,000	$250,000
9/17/2010	$1,000,000	$37,044
9/29/2010	$65,000	$64,710
10/6/2010	$65,000	$43,039
10/13/2010	$65,000	$65,000
10/25/2010	$75,000	$75,000
11/1/2010	$75,000	$75,000
11/8/2010	$75,000	$56,400
11/15/2010	$75,000	$52,249
11/29/2010	$75,000	$55,286
12/6/2010	$75,000	$41,166
12/13/2010	$75,000	$22,698
1/3/2011	$75,000	$41,053
1/10/2011	$75,000	$51,417
1/24/2011	$75,000	$63,448

2/4/2011	$50,000	$20,370
5/3/2011	$100,000	$30,183
TOTAL	$2,495,000	$1,111,228

Sollami, 38/2-15, 53/10-20; DX 79, 86.

70. The equity line was used between August, 2010 and May, 2011 when it was no longer used by RMC. *Sollami, 28/17-19; DX 86.*

71. The last drawdown notice was submitted by RMC on May 3, 2011. *Sollami, 28/17-19; DX 86.*

72. The last money paid by Auctus to RMC occurred in May, 2011. *DX 86.*

73. It did not matter to Auctus where the RMC stock price was. *Sollami SEC, 34/17-23.*

74. Auctus does not believe it was defrauded, cheated or taken advantage of in any way by RMC. *Sollami, 48/4-15.*

75. Auctus was aware of the press releases issued by RMC and reviewed most of them. *Sollami SEC, 23/10-15.*

September 17, 2010, Manufacture, Supply, Distribution and Licensing Agreement between RMC and MIG and January 6, 2011 Amended Agreement

76. On September 2, 2010, RMC entered into a Memorandum of Understanding with Theriault/MIG that provided the initial framework for an agreement under which MIG would manufacture RMC's syringes. *Theriault, 232/18-23; O'Brien, 185/7-10; DX 49.*

77. On September 17, 2010, RMC entered into a Manufacture, Supply, Distribution and Licensing Agreement ("the Manufacturing Agreement") with MIG to manufacture, supply, distribute and license RMC's syringe. *Theriault, 58/23-59/3; App. #27*.

78. On or about January 6, 2011, RMC entered into an Amended Manufacture, Supply, Distribution and Licensing Agreement (the "Amended Manufacturing Agreement") with MIG. *DX 111; Theriault, 58/-59; 115/12-116/7, 232/18-23*.

79. The Amended Manufacturing Agreement superseded the Manufacturing Agreement and provided for MIG to manufacture RMC's 3ml and 1ml syringes. *DX 111*.

80. Theriault represented numerous times to RMC during negotiations for both the Manufacturing Agreement and the Amended Manufacturing Agreement that the value of the proprietary tooling, including the final production molds, would be between $1.8 million and $2.4 million with $600,000 to be paid by RMC and the other $1.2 million or more to be paid by "investors" that Theriault had or would identify. *Theriault Bank., 47/8-13; O'Brien, 204/9-19, 300/10-18; Wheet 4/22/14, 273/15-274/3.*

81. In a July 7, 2010 email, Theriault told O'Brien:

> Hi Tommy,
>
> As you know my engineers returned from the China/Taiwan visit today. Good news – After spending most of the night (their day) on

the phone with the factory I got them down to $2.4M for molds and custom assembly equipment. That is what was needed to push my investors over the top on the investment. So we are probably good to go if we can agree to the following terms:

RevMed to contribute $600K towards molds and custom assembly equipment.
Newco would sell syringes back to RevMed for .22 to .24 (plus shipping) until 60M syringes are bought and paid by RevMed.
Newco would sell syringes back to RevMed for .16 (plus shipping) after 60M syringes are bought and paid by RevMed at .22 to .24.
Newco would have the exclusive right to mfg 3ml fixed syringes for RevMed until 90M syringes are sold or as long Newco provides the best price.
Newco would have the right of first refusal on other sizes and medical safety products provided they could meet the best offer.

RevMed guarantees minimum sales of fixed 3ml syringe of 30M/year for 5 years

RevMed would pay Newco 1% monthly on the outstanding balance of $1.8M (this balance would be reduced by .10 per syringe).
RevMed would pay SPD to manage the syringe mfg at the current rate of $8K/mo until 60M syringes are bought and paid by RevMed at .22 - .24 (plus shipping).
RevMed would pay SPD for an in-country resource at $5K/mo to monitor the factory until 60M syringes are bought and paid to RevMed at .22 - .24 (plus shipping).

Newco would sign a LOI with a $25K deposit by each party and a 10 day max close. RevMed to draw up an agreement based on the LOI.

RevMed would pay $600K according to the following schedule $25K with LOI; $275K upon agreement signing – balance of $300K within 30 days of signing.

Primary NewCo default. Unable to deliver syringes after 9 months from when $600K is in from RevMed. Completed molds and custom assembly equipment turned over to RevMed with payment to Newco of unpaid balance of $1.8M.

> Primary RevMed default. Non-payment of $600K within 120 days of signing or failure to pay agreed upon interest and support fees or failure to provide meet annual syringe guarantees. Newco would be able to produce product worldwide and pay RevMed a royalty of .03, have consent from RevMed to hire services of SPD, Rich T and Tom O'Brien by Newco without restriction, interference or compensation paid to RevMed.
>
> I am unable to put any money in the deal. What I want out of the deal is 1M options granted to SPD/Rich T with liquidity upon start of production along with a "bonus" from RevMed that covers the cost and taxes of the options.
>
> Let me know if Ron wishes to proceed on this. Time is of the essence since there is a short investment window. They are looking at several another [sic] deals but have promised me they will standstill for a few days to give RevMed the opportunity to get the LOI done.
>
> Best Regards,
>
> Rich

O'Brien, 166/9-170/21; DX 44 (emphasis added).

82. Theriault made this representation even though he knew by August, 2010 that the cost to prepare the necessary molds and tooling was $80,300. *Theriault Bank., 45/4-17, 46/17-48/9*.

83. Theriault told RMC this in order to make the deal more attractive to it. *Theriault Bank., 48/4-9*.

84. O'Brien and Wheet were told by Theriault that MIG was a legitimate company that had outside investors who were participating in funding the

manufacturing of the syringes. *Wheet 4/22/14, 273/15-274/3; O'Brien, 204/9-19, 300/10-14.*

85. Under the Amended Manufacturing Agreement, MIG was considered the manufacturer. *DX 111 - §III, A.*

86. The Amended Manufacturing Agreement required MIG to be production ready eight (8) months after the effective date of the Manufacturing Agreement which was September 17, 2010 and be able to meet minimum standing orders of 2.5 million 3ml syringes per month by that date. That meant that May 17, 2011 was the date by which MIG was required to be production ready. *DX 111 - §III, G, 1; §IV, A, 1.*

87. The Manufacturing Agreement required RMC to pay MIG $600,000 as pre-production funding to complete the final production molds and $5,000 per month for in country support and initial, temporary molds beginning October 1, 2010 and continuing until production, not to exceed 8 months. *DX 111 - §III, A, 4.*

88. The Amended Manufacturing Agreement had a formal definition of "proprietary tooling" that was the manufacturing components required to produce the syringe and which Theriault originally estimated would cost $2.4 million. Included in the definition of "proprietary tooling" were the final production molds. *DX 111 - §II, B, 21(o).*

89. The Amended Manufacturing Agreement required RMC to make all syringe

purchases from MIG pursuant to a written purchase order which was subject to acceptance by MIG. *DX 111 - §III, E; Theriault, 116/8-17*.

90. The Amended Manufacturing Agreement required RMC and MIG to negotiate the specific terms of each purchase order. *DX 111 - §III, E; Theriault, 116/18-24*.

91. If MIG did not have the capacity to commence regular production of the 3ml syringe, then the minimum standing order did not come into effect. *DX 111 - §III, G, 1; Theriault, 118/9-16*.

92. Once the terms of the purchase order were agreed upon, RMC was required to make payment to MIG upon receipt of a valid and undisputed invoice from MIG. *DX 111 - §III, J; Theriault, 117/15-18*.

93. Once a valid and undisputed invoice was issued, RMC was required to pay 50% under the Amended Manufacturing Agreement. *DX 111 - §III, J*.

94. The Manufacturing Agreement required MIG to deliver syringes within 45 days of accepting a purchase order from RMC. *DX 111 – §III, K, 9; §IV, A, 2; Theriault, 118/17-119/11*.

95. The Amended Manufacturing Agreement strictly prohibited MIG from assigning its rights and obligations under it to a third party. *DX 111 - §I, B, 9*.

96. If MIG wanted to sub-contract some portion of its responsibilities under the Manufacturing Agreement and the Amended Manufacturing Agreement to a third

party, it was required to inform RMC in writing and obtain RMC's written approval before doing so. *DX 111 - §II, C, 18; O'Brien, 197/22-198/13; DX 54.*

97. The Manufacturing Agreement and the Amended Manufacturing Agreement both strictly prohibited MIG from sub-licensing RMC's intellectual property to a third party. *DX 111 - §III, A, 2.*

98. Theriault negotiated with O'Brien to include a provision in the Amended Manufacturing Agreement that provided that if RMC defaulted under the terms of that agreement, MIG would own the intellectual property related to the syringe technology. *DX 111 - §III, A, 5.*

99. Theriault negotiated with O'Brien to include a provision in the Amended Manufacturing Agreement that provided that if RMC defaulted, MIG would own the worldwide distribution rights for the syringe. *DX 111 - §IV, B, 4.*

100. The Amended Manufacturing Agreement stated that if RMC revoked MIG's right to produce the syringe, RMC would be required to pay MIG $0.02 per syringe until 60 million units were sold for a total of $1.2 million. This represented the difference between what Theriault told RMC the cost of the proprietary tooling would be ($1.8 million) and the pre-production costs to be paid up-front by RMC ($600,000). *DX 111 - §IV, A, 2.*

Payments by RMC to Theriault and his companies

101. RMC paid $1,360,380 total to SPD for all the work it performed according to an accounting given by Theriault and his own records. *DX 162*.

102. RMC made all payments to MIG required under the manufacturing agreements and paid approximately $800,000 to MIG. *DX 112; Theriault, 121/11-122/7*.

103. Of the approximately $800,000 paid by RMC to MIG, only about $45,000-$50,000 was paid to third parties by MIG. *Theriault, 125/12-126/11*.

104. Theriault admitted that MIG had hundreds of thousands of dollars in its bank accounts that it did not disburse to subcontractors as it was supposed to do. *Theriault, 126/5-127/4*.

Theriault/MIG's secret agreements with third parties

105. On September 15, 2010, Theriault/MIG entered into an agreement with a company called Designturn, Inc. ("Designturn") under which Designturn would manufacture the 3ml syringes for RMC and be paid on a per production piece basis. *DX 115; Theriault, 123/9-13, 123/20-124/2, 128/13-129/24; Theriault 8/24/11 SEC, 17/9-18/4, 24/16-25/10*.

106. Designturn had not done a manufacturing contract for a medical device. *Theriault 8/24/11 SEC, 17/14-16.*

107. One of the principals with Designturn was Matt Kressy. *Theriault, 137/23-24*.

108. On September 15, 2010, Designturn entered into an agreement with a Chinese company called Allways Design & Engineering Co., Ltd. ("Allways") under which Allways would manufacture the 3ml syringes for RMC and be paid on a per production piece basis. *DX 113; Theriault, 123/14-16, 130/1-131/7; Theriault 8/24/11 SEC, 18/1-4*.

109. Allways was engaged by Designturn to be the "boots on the ground" for manufacturing in China. *Theriault, 132/16-19*. One of the principals with Allways was Jerry Liou ("Liou"). *Theriault, 132/12-15*. Joy Luo ("Luo") worked for Allways. *Theriault, 138/1-4*.

110. Liou did not know what he was doing with regard to manufacturing a syringe in China. *DX 116, 118; Theriault, 132/20-134/6, 138/7-139/3*.

111. Theriault never told RMC that Liou did not know what he was doing with regard to manufacturing a syringe in China. *DX 116; Theriault, 133/20-134/6, 138/12-139/3*.

112. On September 17, 2010, Allways entered into an agreement with a Chinese company called Wuxi Yushou Medical Applicances Co., Ltd. ("Yeso-med") under which Yeso-med would manufacture the 3ml syringes for RMC. *DX 114; Theriault, 123/17-19, 131/8-132/3*.

113. Because Yeso-med was going to have capital outlays for the molds, it was to be paid $80,000 or $90,000 towards those hard costs in addition to receiving a per production piece once manufacturing began. *DX 114; Theriault, 124/9-125/5*.

114. On January 19, 2011, MIG identified and RMC approved a Chinese company called Jiang su Shenli Medical Production Co., Ltd., located in Zhenglu, Wujin, Changzhou, Jiangsu, China as the manufacturer for the syringes. *O'Brien, 198/3-6; DX 54; App. #8*. That company, however, was not the actual manufacturer of the syringes because Yeso-med was.

Statements by Theriault/MIG as to production readiness in 2010 and 2011

115. It was Wheet's understanding as of November 2010, that:

(a) The test molds producing samples based on the redesign by Goddard Technologies had been shipped to China;

(b) Production molds were then being made by MIG in China;

(c) MIG was starting test molds and samples at the factory in China;

(d) Any problems encountered so far were minor or nuances which had to do with the resin or lubricant and the polishing of the molds and that these changes would be made at the factory in China rather than on the pilot molds themselves;

(e) Any problems with any samples of the syringes would be solved by having the samples run off the final production or volume manufacturing molds; and,

(f) RMC would have several thousand samples by February, 2011.

Wheet 4/22/14, 157/7-163/6; Wheet 4/23/14, 75/23, 77/3-78/1, 82/7-83/6.

116. In a February 9, 2011 email, Theriault told O'Brien and Wheet that he had just talked with the factory in China and that "[the factory] re-iterated that 500 samples will be sent to us at the end of February." *DX 56.*

117. On February 9, 2011, Wheet responded to Theriault and asked:

> Will these production samples be ready for prime time to send out to our distributors?

DX 56.

118. On February 9, 2011, Theriault immediately responded to Wheet:

> Yes

DX 56.

119. No one at RMC was in a better position than Theriault to determine whether or not the samples would be ready in February, 2011. *O'Brien, 203/8-17.*

120. In a February 17, 2011 email, Theriault told O'Brien:

> Hi Tommy,
>
> ***I spoke with MIG this evening. They told me that if there is not full payment on Tuesday then everything stops until payments are current or we reach an agreement that makes sense.***

> Remember MIG continues to burn cash to keep it all going.
> Ron needs to know that he can't continue the dance with the Jags guy past Friday.
>
> It seems to me that Ron should do the jml deal in any case right now. If the jags guy comes through he could payoff the jml deal with the proceeds from the jags funding or maybe have an option to not take down all the jml money. This either or situation does not make sense.
>
> ***I am going to ask MIG*** what they want in exchange for a February bankers holiday or the Feb payment. If Ron needs the time to get back on track that may make the most sense. If there is any chance at all that a wire will not be sent on Tuesday you need to let me know so we can all work on amended contract terms as well as get Ron thinking on this. An acceptable agreement will most likely need to include the ability of MIG to License to 3rd parties all syringe technology including prefills and the new design with some pct of the License fee paid to MIG. This right for MIG would be triggered in the event of a 15 day default in progress payments or a 15 day default making penalty payments (should they be necessary). Also given the poor performance in the stock a reduction in warrant pricing by 50pct and extension by 6mos of the exercise date would make sense.
>
> Regards,
>
> Rich

O'Brien, 203/21-204/2; DX 57 (emphasis added).

121. Samples were delivered in March, 2011. Some worked as desired, but not all did, so they did not pass Rothkopf's tests. *Wheet 4/23/14, 86/8-88/22; Rothkopf SEC, 35/11-12.*

122. RMC submitted a purchase order for 2.5 million syringes to MIG on April 1, 2011. *App. #9; PX 32 at 103-104.*

123. MIG sent additional samples to RMC in April, 2011. These looked beautiful but there was a problem with a hook that was not going underneath the barrel and not catching on the end to make the vacuum. The solution was to make the hook sturdier using a different material or through a material change. *Wheet 4/23/14, 91/23-92/23; Rothkopf SEC, 44/11-24.*

124. Samples sent in May, 2011 had problems with the hook which was now too rigid and required another material change. *Rothkopf SEC, 62/2-7; Wheet 4/23/14, 92/24-94/4*.

125. Throughout this period, Theriault knew he was not production-ready and would not be ready on May 17, 2011 as required by the Amended Manufacturing Agreement. *DX 111 - §III, G, 1; §IV, A, 1*.

126. On May 16, 2011, Theriault told Wheet and Olmo:

> We got 18 samples today. ***They all worked 100% perfect. The speed of retraction improved and is at least as fast as the blue syringes. They pop. I believe we have nailed it.***
>
> ***150 samples out of 950 were tested at the factory as well. 2 failed. When reassembled the two worked.***
>
> The nice thing is ***we used mostly production molds for the run***. In a couple of weeks the remaining molds will come online. At that point – other than the logistics, regulatory and support systems required on this end ***we are all set***.

DX 122 (emphasis added); Theriault, 145/17-147/12.

127. In an email six days prior to that on May 10, 2011, Liou had reported to Theriault and Kressy that 50, not 150 syringes, had been tested and that 2 of the 50 failed. *DX 123; Theriault, 147/15-148/9*.

128. Throughout 2011 into May, 2011, Theriault told RMC that the problems were minor or related to the lubricant or certain materials and would be fixed. *DX 119, 120, 121; Theriault, 140/3-145/6*.

129. On May 29, 2011, Theriault emailed Kressy and Liou but not RMC:

> Hi Matt and Jerry,
>
> ***The situation with RevMed is critical. Unless we can demonstrate our ability to perform by shipping them a substantial batch of 100pct working syringes this week we risk losing their business.***
>
> ***We were initially scheduled to have delivered these parts by the end of February. We are 3 months late.***
>
> I already have been forced to make serious financial concessions to them as the result of these delays. It has cost me very much.
>
> ***My contract with them allows them to step in and take over everything if we can't perform. We are close to this point. This means we all lose.***
>
> We are at a point that we must deliver without exception or excuse.
>
> Please let me know what the plan is.
>
> Rich

DX 125 (emphasis added); Theriault, 149/19-151/3.

130. On May 30, 2011, Theriault emailed Kressy and Liou but not RMC:

Hi guys,

. . .

If RevMed makes me reduce the price because of 3 month delays we all (including factory) will have to take a hit. I am fighting hard to prevent this but I have no more wiggle room.

Rich

DX 126 (emphasis added); Theriault, 153/6-152/4.

131. On June 8, 2011, Theriault emailed Kressy but not RMC:

Hi Matt,

We continue to have execution problems – some self inflicted and others unavoidable – that have put us beyond where I can wiggle.

In order to maintain any hope of pre-empting RevMed from flying over to China and nailing us big time I believe we need to offer them a temporary price reduction. You, Jerry, the factory and I all have to be willing to consider doing this. I am open to other suggestions but I am out of runway on this.

Please get back to me asap as I need some salve to put on RevMed's wound. It is burning.

Regards,

Rich

DX 128 (emphasis added); Theriault, 153/22-156/21.

132. Through at least June, 2011, Theriault still claimed that MIG was production ready and that RMC had an obligation to place a minimum order of 2.5 million

units each month or else it would be in default under the Amended Manufacturing Agreement. *O'Brien, 205/9-19; Theriault, 120/22-121/4.*

133. On June 30, 2011, Theriault emailed Olmo:

> Hi Vince,
>
> Based on our conference call with Ironridge last evening it appears that the pre-production payment as well as the order deposit will be further delayed beyond this week. ***I discussed this with the MIG investors late last night. They were very unhappy . . . . As you can imagine I – and by extension RMC – has a serious credibility problem with [the investors].***
>
> . . .
>
> Regards,
>
> Rich

DX 129 (emphasis added); Theriault, 157/2-158/1.

134. On July 9, 2011, Theriault emailed Liou but not RMC:

> Hi Jerry,
>
> ***This latest fiasco on the late delivery of the remaining samples is approaching a ridiculous level.***
>
> ***Based on past performance of promised vs actual deliveries I would expect delivery sometime in mid August.***
>
> I can't conduct business this way. It does not work.
>
> Please figure out what can be done.
>
> Also the samples I reviewed with Matt do not appear to have lubricant on the piston seal. They also retract visibly slower than previous

> samples. Can you please follow up with Matt on his questions concerning lubricant that he sent you.
>
> ***It appears that much more direct involvement is required by you in order to fix these avoidable problems and maintain a level of control necessary to reliably ship product.***
>
> Please advise.
>
> Rich

DX 132 (emphasis added); Theriault, 173/7-174/11.

135. On August 3, 2011, Olmo received an email message from Rothkopf stating that the most recent syringes from MIG in China failed the tests he conducted on them. *Wheet 4/22/14, 166/7-21; Wheet 4/23/14, 85/6-17*.

136. As of August 5, 2011, Luo sent an email to Theriault telling him that sample syringes were still not passing the various ISO tests. *DX 133; Theriault, 174/16-175/11*.

137. Theriault assured RMC in August, 2011 that new samples would pass tests conducted by Rothkopf. *Wheet 4/23/14, 50/1-10, 85/7-17*.

138. Theriault did not want Wheet flying to China and visiting the Yeso-med factory. *Theriault, 155/6-12, 156/17-21*.

139. Theriault told Goddard in an August 17, 2011 email that he was "in production on the 3ml syringe" and that he "may have an investor interested in funding the development of the new IP". *DX 159; Goddard, 174/24-176/15.*

140. On August 25, 2011, Luo sent an email to Theriault and Kressy informing them that six ISO tests would be done on August 27. *DX 134; Theriault, 175/16-176/4*.

141. On August 29, 2011, Luo sent emails to Theriault and Kressy informing them they still had problems with the syringes, particularly the seal for the syringe. *DX 131, 135; Theriault, 178/2-10*.

142. Without the seal problem being resolved, the syringe would not be ready for mass manufacturing. *Theriault, 162/20-163/7, 178/7-10*.

143. This was not that serious of a problem to Theriault. *Theriault, 171/5-12*.

144. Five days before that, on August 24, 2011, Theriault testified under oath to the SEC that there were no reasons from a manufacturing standpoint that RMC could not be selling syringes:

> [S]o there's [] no reason, from a manufacturing point of view – ***from a manufacturing point of view, from a manufacturing quality point of view, from a manufacturing regulatory point of view, that they couldn't be selling product now. Really, there's no reason***.

Theriault 8/24/11 SEC, 60/18/22 (emphasis added).

145. Theriault testified under oath to the SEC on August 24, 2011 that:

> On the product side – I mean, we've already run, like remember I said to you we put the ISO tests already in the factory, ***we've already run them against the ISO tests so we know they all pass, so that's done***.

Theriault 8/24/11 SEC, 97/11-14 (emphasis added).

146. Theriault testified under oath to the SEC on August 24, 2011 that:

> What I do – and technically, you know, technically, without getting into the minutia, you know, ***we've really – we've really nailed the product solid. I mean, I know all the manufacturing issues, we've really nailed them. There's been three or four manufacturing issues, we nailed them . . . .***

Theriault 8/24/11 SEC, 100/1-6 (emphasis added).

147. Still not know the extent of Theriault's fraud, by letter dated September 2, 2011, RMC terminated all agreements with MIG and SPD because of MIG's failure to timely perform and its inability to deliver syringes that passed ISO testing. *Wheet 4/22/14, 163/11-13, 165/18-21; Wheet 4/23/14, 50/25-51/18, 74/1-6; Theriault Bank., 65/10-13; App. #32*.

148. Theriault consistently told RMC during 2011 that:

(a) MIG had bought the final production molds with the money RMC had paid it and the money his "investors" were contributing;

(b) MIG was production ready with respect to the syringes which were being produced from final production molds;

(c) MIG would be able to produce syringes that would pass any tests from Rothkopf;

(d) MIG would be able to meet its obligations under the Amended Manufacturing Agreement; and,

(e) The "investors" in MIG were demanding performance from RMC.

Wheet 4/23/14, 49/1-51/21

RMC discovers Theriault's fraud

149. Olmo and Wheet traveled to China on September 4, 2011 to visit the Yeso-med factory. *Wheet 4/23/14, 50/25-51/21*.

150. They met with the principals from Yeso-med and learned for the first time (1) that RMC had been defrauded by Theriault, (2) that Theriault and MIG were nowhere near being production ready, (3) that MIG did not have any final production molds completed because Yeso-med had only been paid a total of $40,000 for temporary molds, (4) that the problems with the redesigned syringe were far more serious and widespread than RMC had been told, and, (5) that Theriault had spent only about $45,000-$50,000 of the $800,000 paid to him on the development of the syringe and its manufacture and had literally stolen the rest of the money. *Wheet 4/23/14, 88/18-22.*

151. On September 8, 2011, Feng Zhiling sent RMC a letter on Yeso-med stationary that stated in part:

> (5) ***As of this date, we are unable to consistently produce the product, using the production molds, to meet the ISO and FDA standards required to sell the product for human use.***
>
> We are confident we understand the steps required to achieve the objective of being production-ready and ***believe we will be able to consistently produce the product in sufficient volume to meet our production requirements and of sufficient quality to satisfy government regulations. We expect to meet these goals in October, 2011.*** *DX 136 (emphasis added).*

152. Thereafter, RMC entered into a direct agreement with Yeso-med to manufacture the syringes which had to be reverse engineered from the blue syringe. *Wheet 4/23/14, 51/14-52/6; PX 32 at 61-62, 77-78*

153. RMC gave Yeso-med some of the blue syringes they had brought to China, and Yeso-med reverse engineered that syringe. *Wheet 4/23/14, 51/19-52/6.*

154. RMC learned for the first time that Theriault did not have final production molds completed and ready for production and literally stole the money it had paid him and his companies on the visit to China in September, 2011. *Wheet 4/23/14, 50/25-51/18, 74/1-6.*

155. RMC learned for the first time that MIG had not solved the sample problems on the visit to China in September, 2011. *Wheet 4/22/14, 163/11-13*.

156. No one at RMC believed that Theriault would take the $770,000 RMC paid him and his companies for the final production molds and put that money in his pocket and never make those molds. *Wheet 4/23/14, 81/20-82/1, 84/12-22*.

Theriault's misrepresentation in 2011 as to the value of the proprietary tooling

157. In preparation for RMC's quarterly filing with the SEC for the second quarter of 2011, RMC wanted to include the proprietary tooling as an asset on its balance sheet. To do so, RMC requested documentation from Theriault/MIG to support the belief that the proprietary tooling, including the production molds, was

worth $1.8 million. *Wheet 4/23/14, 83/23-84/11*.

158. Theriault provided a letter on MIG stationary dated June 4, 2011 in which he represented that:

(a) The molds and associated equipment were not encumbered by any third-party other than the ownership position that MIG had pursuant to the Amended Manufacturing Agreement;

(b) The molds were made of stainless steel and were fitted with chrome linings; and,

(c) The value of the proprietary tooling, including the final production molds, was $1.8 million.

Wheet 4/23/14, 84/3-11; App. #33.

159. RMC took a conservative approach and declared the value of the proprietary molds and associated equipment assets as $600,000, the amount already paid by RMC to MIG towards the total cost of the proprietary tooling. *Wheet 4/23/14, 84/3-11*.

RMC produces syringes from Yeso-med that pass an FDA audit

160. By April, 2012, Yeso-med was producing syringes ready for human use based on the original blue design approved by the FDA. *Wheet 4/23/14, 52/1-10; 54/25-55/6, 56/14-57/5; Stephen Wheet, 92/13-21*.

161. The syringe produced by Yeso-med is a cross between the original blue syringe and the syringe that was to be manufactured by MIG. *Wheet 4/23/14, 52/20-53/14.*

162. RMC placed its first order in June, 2012, and two containers of syringes were shipped from China to RMC in Charleston in August, 2012. *Wheet 4/23/14, 52/8-10.*

163. Those syringes were tested and passed ISO standards. *Wheet 4/23/14, 54/25-55/6, 56/14-57/5.*

164. The letter to file for those syringes was completed by May or June, 2012. *Wheet 4/23/14, 56/9-57/11.*

165. Since then, syringes have been sold to distributors or customers both in the United States and internationally. *Wheet 4/23/14, 52/11-19; Stephen Wheet, 63/18-65/13.*

American Arbitration Association Arbitration

166. In response to RMC terminating the Amended Manufacturing Agreement, on September, 20, 2011, Theriault/MIG filed arbitration case no. 31 122 Y 00253 11 with the American Arbitration Association ("the AAA Arbitration") against RMC in South Carolina pursuant to section 1(B)(10)(b)(ii) of the Amended Manufacturing Agreement. *App. #1.*

167. MIG sought damages $7,543,000 from RMC and a declaration that MIG owned all of RMC's intellectual property rights with respect to the syringes. *App. #1*.

168. In response, RMC filed a counterclaim to recover the monies it had paid to MIG for which no work was performed. *App. #3*.

169. Beginning on the second day of a scheduled three-day deposition, when asked about documents evidencing his fraud, Theriault repeatedly refused to answer the questions and invoked the Fifth Amendment privilege against self-incrimination more than 100 times. *Deposition of Richard Theriault on April 16 and April 17, 2012 in the AAA Arbitration ("Theriault AAA"), Beginning at 394/19 and continuing through 444/2*.

170. After a hearing that same day with the AAA panel chairperson, *Theriault AAA, 397/7-403/13,* an order was entered under which Theriault/MIG dismissed their claims with prejudice. *App. #4*. Theriault then refused to appear for the last day of his deposition.

171. After a final hearing in Charleston at which Wheet and Theriault testified, the AAA panel issued its award in January, 2013 and ruled:

(a) That Theriault "was and is the alter ego of [MIG]";

(b) That Theriault/MIG breached the Amended Manufacturing Agreement because MIG was never production ready;

(c) That Theriault engaged in fraud in the inducement with respect to the statements he made to RMC to induce it to enter into the manufacturing agreements and the other agreements with SPD and MIG;

(d) That Theriault had to pay back all money he received from RMC which totaled $770,000, plus interest, which consisted of $600,000 and another $160,000 in pre-production payments MIG received and $10,000 paid by RMC for trial molds;

(e) That Theriault had to pay attorney's fees in the amount of $62,656.55 and costs due the AAA; and,

(f) That Theriault/MIG had "no rights of ownership or control, nor any other rights, to any intellectual property, trade secrets, proprietary information, trademarks or 3ml and 1ml syringes or any other product, production equipment or designs related to the issues arbitrated. *App. #5*.

172. RMC and Wheet filed a complaint to confirm the AAA Arbitration award in the United States District Court for South Carolina, and judgment was entered on behalf of RMC on December 4, 2013. *App. #10 - Docket sheet, Civil Action Number 2:13-cv-00116-RMG*.

Press releases

173. Each press release had a section called the "Investor Resource Center" that contained click throughs to RMC's website, a demonstration video for the syringe and other information for investors and also contained a broad safe harbor disclaimer for forward-looking statements. *See, e.g., PX at 155-156 (The July 8, 2011 press release did not contain the last sentence)*.

174. RMC issued 22 press releases in 2009, 20 in 2010, and 33 in 2011. *PX 32*.

175. Before August 2010, the last press release issued in 2010 was in May, 2010 because RMC had filed an S-1 registration statement on May 24, 2010 and was in a quiet period. *App. #6 at cover sheet; Deposition of Scott Key on September 7, 2011 in the SEC Inv. ("Key SEC"), 80/2-9; PX 32 at 164-165; See* http://www.sec.gov/answers/quiet.htm.

176. App. #25 is a true and accurate statement showing the opening price, high price, low price, closing price, adjusted closing price and volume for each trading day during the years 2008 through 2012 for RMC's stock.

177. At the time the August 24, 2010 press release was released, Theriault did not have information that the syringes that were the subject of the pilot run were not going to succeed or would perform poorly. *Theriault 8/24/11 SEC, 130/7-131/7*.

DHAPP

178. DHAPP was overseen by the Department of the Navy ("the Navy"). *Compton SEC, 27/19-23*.

179. DHAPP was a program designed to help stop the spread of HIV/AIDS among the 80 militaries that participated in it. *Compton SEC, 27/19-21*.

180. In an email dated July 27, 2010, Cynthia Simon-Arndt ("Simon-Arndt"), who worked on DHAPP with the Navy, told Compton:

> Sorry for not getting back to you before the weekend. ***The CB has approved your proposal for a base year amount of $200,000***. . . .

App. #13 (emphasis added).

181. In an email dated July 28, 2010, Simon-Arndt told Compton:

> Hi Trip,
>
> . . . ***You will get an official notification via email from either Latrice Rubenstein or James Maduke. I expect it to go out Friday if James sends it, but not until Tuesday if Latrice sends it since she is offsite. If you don't have anything by Wednesday afternoon call me and I'll call their office and check in with them again. This is unofficial, but the base year will be $175K, with DHAPP funding staff directly to do the evaluation. . . .*** You will likely be asked to submit an option year SOW for expansion to a second year, but we can talk more about that when the letter comes. Usually, the first year is smaller budget for new grants and the option year budget increases. . . .
> Best,
> C

App. #13 (emphasis added).

182. RMC was notified on August 3, 2010 by Latrice Rubenstein ("Rubenstein") that the Navy review panel had conditionally approved RMC's proposal. *App. #14; Wheet 4/23/14, 150/21-151/5; Compton SEC, 23/18-25, 27/7-12*.

183. Rubenstein also told RMC in the August 3, 2014 email that Dr. Stephanie Brodine ("Brodine"), a renowned epidemiologist, was being assigned to work with them, that RMC needed to submit a State of Work for $175,000, that it would involve the countries of India, Vietnam, Uganda and Botswana and that the total number of syringes needed would be approximately 600,000. *App. #14; Compton SEC, 26/11-16, 28/11-15*.

184. RMC was to deliver the syringes in April, 2012. *Wheet 4/23/14, 157/16-17*.

185. RMC was to receive $175,000 in the first year followed by 2 option years in which it was to receive $250,000 and $325,000. *Wheet 4/23/14, 156/7-9, 175/16-22; Compton SEC, 28/11-15, 103/15-18*.

186. If it was successful, it might be expanded to other countries in DHAPP. *Compton SEC, 28/23-25*.

187. In order to apply for DHAPP, sample syringes were sufficient. *O'Brien SEC, 56/8-14, 62/21-24*.

188. In an email dated September 9, 2010, Rubenstein told Compton that "the award will come electronically and I'm looking at an award date on or before 30 September 2010." *App. #15*.

189. In an email later on September 9, 2010, Rubenstein told Compton:

> I now have everything I need from you and what you provided was what I was looking for. The next e-mail from me will be the award as soon as I received then funding from DHAPP. Thanks for your help.

App. #31; Wheet 4/23/14, 154/1-9.

190. "[I]t was a done deal except [the Navy] had not transferred the money to [RMC]." *Compton SEC, 90/25-91/2.*

191. Prior to issuing the September 10, 2010, press release, there was a conference call between Brodine, Arndt-Simon, Compton and Wheet during which Brodine congratulated RMC on being awarded the "contract". *Wheet 4/23/14, 151/6-10, 159/10-160/21.*

192. As soon as the September 10, 2010 press release was announced, RMC was attacked electronically by short sellers. *Compton SEC, 24/16-25/5, 29/1-7, 78/21-79/11, 95/21-96-1, 98/1-5.*

193. On September 28, 2010, Wheet emailed Rubenstein and asked:

> I am hoping you can tell me where RMC Medical is with our award. I have not heard from you since [the September 9 email] and the September 30 date is approaching. Please feel free to call me at 843-971-4848.

App. #15.

194. Rubenstein responded later on September 28, 2010 to Wheet and stated:

> I believe that the last I spoke to your office I was awaiting funds from the DHAP program an [sic] had anticipating receiving funds prior to fiscal year end. Unfortunately, there are no FY10 funds remaining.

> You would have to contact the DHAP program office to see when they will receive funding for this project.

App. #15.

195. Pimpo stated that the Navy formally informed RMC on October 13, 2010 that its grant would not be funded. *App. #16 at RTE0000557*.

196. Within 24 hours, Compton was in contact with the Navy. *Compton SEC, 25/6-9*.

197. RMC learned that as soon as the September 10, 2010 press release was issued, the Navy received over repeated telephone calls from people claiming, among other things, that RMC was not a real company, that it had no patents, and that it operated out of a trailer down by the river in Charleston. *Key SEC, 68/24-69/10, 71/14-18; Compton SEC, 24/23-25/5, 27/1-6, 30/19-23, 31/12-32/7, 80/5-12, 95/21-96/1; Wheet 4/23/14, 140/1-23*.

198. These telephone calls damaged RMC in the eyes of the Navy and caused RMC to be defunded. *Key SEC, 74/15-17; Compton SEC, 95/21-96/1*.

199. Philip Maurice Hicks ("Hicks"), using the online name, "tazmanian353", and Timothy Sykes ("Sykes") frequently posted negative and derogatory comments about RMC on internet message boards such as Raging Bull and Yahoo! Finance. *Key SEC, 69/1-6, 76/25-77/16, 78/2-24, 80/12-20; Compton SEC, 79/24-80/11; App. #29 for examples*.

200. Sykes states that his primary business is shorting small cap stocks. *Key SEC, 78/19-21*.

201. Hicks, using his online name, "tazmanian353", had published on internet message boards who to call at the Navy and their telephone numbers and encouraged short sellers to contact the Navy to denigrate RMC to drive down RMC's stock price. *Key SEC, 69/4-6; Compton SEC, 27/2-6*.

202. Hicks also sent letters to companies with whom RMC did business, agencies with whom it might work and others. *Key SEC, 70/24-71/1, 73/19-23; Compton SEC, 75/5-10*.

203. Hicks also sent a letter to the Charleston Post & Courier which then published an article on September 15, 2010 about Hicks and Sykes shorting RMC's stock. *O'Brien SEC, 42/22-43/21; Key SEC, 71/14-19; App. #22*.

204. During August and September, 2010, RMC shareholders contacted Scott Key ("Key"), who performed investors relations work for RMC, regarding posts that occurred on various message boards. *Key SEC, 78/25-79/12*.

205. After receiving the September 28, 2010 notice that there were no funds, RMC contacted the office of Senator Jim DeMint (S.C.) which, in turn, contacted the Navy. *Wheet 4/23/14, 194/23-195/3; O'Brien SEC, 41/18-42/18, 71; Key SEC, 74/19-23; Compton SEC, 32/14-21; App. #16-18*.

206. Captain David Pimpo ("Pimpo") responded to Sen. DeMint's letter on November 16, 2010. *App. #16.*

207. Pimpo stated that the Navy did not know that RMC's syringes were going to be manufactured in China. *App. #16; O'Brien SEC, 41/25-42/3, 70/23-71/5*.

208. There was no provision in the DHAPP application stating that syringes could not be made in China. *O'Brien SEC, 71/1-2*.

209. The money for DHAPP was supposed to be in the budget for the fiscal year ending September 30, 2010, but no vote was taken on that budget until some time in 2011. *Key SEC, 74/10-15; Compton SEC, 25/6-16.*

210. RMC was given some hope that funding would still be forthcoming, but it never was. *Compton SEC, 25/11-13*.

211. Pimpo told RMC he would be glad to see it reapply in the next fiscal year for DHAPP. *App. #16; Compton SEC, 34/18-24.*

212. RMC was told the money was spent somewhere else. *App. #15 at RTE0000557; Compton SEC, 25/3-9, 99/25-100/4; O'Brien SEC, 42/5-6, 71/4-5*.

213. The most significant aspect of the Navy contract was not the revenue it would provide to RMC. It was the fact that RMC's syringe had been selected over any other possible syringes and that this presented an opportunity for lots of sales if this went well for RMC. *Wheet 4/23/14, 166/11-18, 175/3-15*.

214. Compton, who was personally involved in DHAPP discussions, believed it was not misleading to say RMC was to receive a contract rather than a reward or a grant "because at that point we already knew we had it in the bag". *Compton SEC, 98/9-18.*

Shorting of RMC's stock

215. During the time that the press releases in question were issued in 2010, there was significant shorting taking place in RMC's stock. *PX 58; App. #20.*

216. Hicks states on his website, www.hammondhicks.com, that he is a retired certified public accountant. *App. #21.* In fact, his license is listed as "forfeited" by the North Carolina State Board of CPA Examiners. If he had retired, his license would be listed as "retired", "retired status" or "inactive" per the Glossary at the website of the North Carolina State Board of CPA Examiners. *App. #21.*

217. Hicks states on his website that he is "a correspondent for the SEC and the National Office of the IRS fighting White Collar crimes." *App. #21.*

218. Because of these actions, RMC and Wheet sued Hicks in September, 2010, in the Court of Common Pleas in the County of Charleston, South Carolina, 2010-CP-10-7658, for libel and defamation as a result of engaging in an internet cyber smear campaign to destroy RMC and Wheet. *App. #23; PX 32 at 136-137.*

219. RMC obtained a judgment against Hicks for $5.1 million, and Wheet obtained a judgment against Hicks for $15.01 million on June 25, 2013. *App. #24; PX 32 at 79-80, 1-2*.

Buyins.net and the report on the shorting in RMC's stock

220. In March 18, 2011, RMC retained Buyins.net to monitor trading in RMC's stock and determine the extent of shorting in it. *Wheet 4/22/14, 233/19-234/3; Wheet 4/23/14, 138/17-139/20; Declaration of Thomas Ronk ("Ronk Dec."), ¶8*.

221. Buyins issued a report on March 21, 2011. *Ronk Dec.*, *¶9, Exhibit A; PX 32 at 107-113*.

222. The Buyins report found that starting in August, 2010, short sellers began actively shorting RMC's stock, and the shorting peaked during the months of August, September and October, 2010 and then continued into the first quarter of 2011. *Ronk Dec.*, *¶10.*

223. The Buyins report found that short sellers consistently shorted RMC's stock on a daily basis and that the daily trading volume attributable to short selling was 36.5% over the period from August 3, 2009 through March 18, 2011. *Ronk Dec.*, *¶12*.

224. Attached as Exhibit B to Ronk's Declaration is the supporting data which shows the substantial amount of shorting that occurred in RMC's stock, particularly during the months of August and September, 2010.

225. On February 12, 2012, RMC forwarded the Buyins report to the SEC. *Wheet 4/23/14, 139/14-15*.

Drawdown notices

226. A drawdown notice was sent by RMC to Auctus on August 24, 2010. *DX 86*.

227. Just prior to the drawdown notice sent on August 24, RMC issued press releases on:

(a) August 16 announcing that RMC had begun clinical applications and the validation process of its MRI software tools which was another product it was developing, *PX 32 at 162-163*;

(b) August 18 announcing that RMC had detailed studies to expand the value of its proprietary MRI imaging tools, *PX 32 at 160-161*; and,

(c) August 20 announcing additional details regarding clinical studies related to the MRI technology and the presentation of a related paper by one of the doctors working with RMC on that, *PX 32 at 157-158*.

228. During this five day trading period after the August 24 drawdown notice,

another press release containing positive news was issued by RMC on August 30 describing an award for medical design excellence that should properly have been attributed to RMC. *PX 32 at 153-154.*

229. Based on the formula in the Drawdown Agreements with Auctus, RMC received 97% of $.29 or $.2813 per share for the August 24 drawdown notice. *App. #25.*

230. The first drawdown notice after the September 1 press release was sent by RMC to Auctus six days later on September 7. *DX 86.*

231. In addition to the September 1 press release and the press releases issued on August 16, 18, 20, 24, and 30, additional press releases were issued by RMC in the immediate period before the September 7 drawdown notice was sent:

(a) September 2 which announced an interview Wheet was scheduled to do, *PX 32 at 149-150*;

(b) September 3 which announced that RMC had signed a letter of intent with MIG to manufacture the 3ml syringe and that final terms were expected to be completed by September 17, *PX 32 at 147-148*; and,

(c) September 7 which announced that RMC had secured a five year contract for MIG to produce its 3ml syringe, *PX 32 at 145-146.*

232. During this five day trading period after the drawdown notice was sent on September 7, additional press releases were issued by RMC on:

(a) September 9 which announced that Wheet's interview with the Wall Street Reporter was available, *PX 32 at 143-144*; and,

(b) September 10 which is discussed above, *PX 32 at 140-142*.

233. Based on the formula in the Drawdown Agreements with Auctus, RMC received 97% x $.86 or $.8342 per share for the September 7 drawdown notice. *App. #25*.

234. The first drawdown notice after the September 10 press release was sent by RMC to Auctus seven days later on September 17. *DX 86*.

235. During this five day trading period, two more press releases were issued by Revolution on:

(a) September 20 announcing that it had filed a libel suit against Hicks for engaging in an internet cyber smear campaign to destroy RMC. *PX 32 at 136-137;* and,

(b) September 22 which is discussed below.

236. Based on the formula in the Drawdown Agreements with Auctus, RMC received 97% x $.57 or $.5529 per share for the September 17 drawdown notice. *App. #25*.

237. The first drawdown notice after the September 17 press release was sent by RMC to Auctus on that same day. *DX 86*.

238. During this five day trading period, two more press releases were issued by Revolution on:

(a) September 20 announcing that it had filed a libel suit against Hicks for engaging in an internet cyber smear campaign to destroy RMC. *PX 32 at 136-137;* and,

(b) September 22 which is discussed below.

239. Based on the formula in the Drawdown Agreements with Auctus, RMC received 97% x $.57 or $.5529 per share for the September 17. *App. #25.*

240. The first drawdown notice after the September 22 press release was sent by RMC to Auctus six days later on September 28. *DX 86.*

241. Based on the formula in the Drawdown Agreements with Auctus, RMC received 97% x $.58 or $.5626 per share. *App. #25.*

242. RMC did not submit any drawdown notice after the July 8, 2011 press release was issued. However, if it had, based on the formula in the Drawdown Agreements with Auctus, RMC would have received less than the closing price on July 8, 2011. *App. #25.*

243. Theriault testified to the SEC that he never saw a correlation between the issuance of any press release and RMC's stock price going up. *Theriault 8/24/11 SEC, 118/25-119/4.*

Theriault's testimony to the SEC

244. Theriault testified before the SEC on August 24, 2011 and on November 3, 2011 and testified:

(a) MIG was "ready to produce [syringes] a couple of months ago, three months ago, so June [2011]", "they could be selling the product two months ago, a month ago"; *Theriault 8/24/11 SEC, 31/1-3*;

(b) As of August 24, 2011, he had not been able to run tests on any manufactured samples of the syringe because RMC had not placed an order yet; *Theriault 8/24/11 SEC, 44/11-15*;

(c) "So there's no reason, from a manufacturing point of view – from a manufacturing point of view, from a manufacturing quality point of view, from a manufacturing regulatory point of view, that they couldn't be selling product now. Really, there's no reason"; *Theriault 8/24/11 SEC, 60/18-22*;

(d) "Right" in response to the question: "And you testified earlier that you – meaning MIG – had declared to RMC Medical that you all were – that the factory was production ready"; *Theriault 8/24/11 SEC, 63/12-15*;

(e) "We've already run [the syringes] against the ISO tests so we know they all pass"; *Theriault 8/24/11 SEC, 97/11-14*;

(f) MIG "could be delivering them, you know – I mean, continuously starting in like, you know, two to four weeks"; *Theriault 8/24/11 SEC, 97/21-24*;

(g) "So [RMC] should be able to get continuous delivery really starting probably in two to four weeks, and then I think it should be pretty continuous after that";*Theriault 8/24/11 SEC, 98/10-13*;

(h) When asked about the risk of quality control, he said "Extremely low for the following reasons. One is, we have the goal [gold] standard ISO test there already – and the [syringes are] coming out clean as a whistle"; *Theriault 8/24/11 SEC, 99/10-15*;

(i) "Technically, without getting into the minutia, you know, we've really – we've really nailed the product solid. I mean, I know all the manufacturing issues, we've really nailed them. There's been three or four manufacturing issues, we nailed them . . . ."; *Theriault 8/24/11 SEC, 100/1-6*;

(j) "But as far as quality coming out of the factory, I don't see – I see it's a very low risk [associated with quality control]; *Theriault 8/24/11 SEC, 100/22-23*;

(k) "Samples were approved as of – I think as of early June [2011], okay, . . . I believe early June"; *Theriault 11/3/11 SEC, 22/15-16, 34/2-13*; and,

(l) "[T]he knowledge that I have is that [Yeso-med and RMC] have not consummated any kind of final agreement" and that Yeso-med was "awaiting the outcome of [Theriault's] litigation against RMC to make a determination about what their action was going to be"; *Theriault 11/3/11 SEC, 20/23-21/4, 29/14-30/6*.

245. Theriault admitted he lied about having "investors" because he never had *any "investors"*. *Theriault AAA, 391/13-394/16; Theriault, 96/5-7, 157/14-158/1, 177/11-16; Theriault Bank., 47/8-17, 48/10-14; O'Brien, 168/8-22, 203/21-204/2, 300/6-18; DX 44, 45, 57, 129, 130, 184*.

Theriault's dislike of Wheet

246. Theriault has admitted that he does not like Wheet. *Theriault, 97/10-14*.

247. Goddard remembers Theriault telling him in about October, 2011, that Theriault "was going to stick it to Mr. Wheet through that SEC investigation" and that Theriault had no love lost for Wheet". *Goddard, 182/12-183/3*.

248. With respect to Theriault's attitude towards Wheet and RMC, Goddard testified:

> Q: And is it fair to say that based upon what Mr. Theriault was telling you, it was clear that ***he had some pretty deep-seated hatred for Mr. Wheet and RMC?***
>
> A: ***I think yes, I received that idea***. . . .

Goddard, 276/6-13 (emphasis added).

249. With respect to Theriault, Goddard testified:

> Q: Yes. He's a weasel, right?
>
> A: ***Right. I think it's clear***.

Goddard, 289/11-13 (emphasis added).

250. Goddard believes now that Theriault was not being truthful with him in his interactions with him and that Theriault "certainly [was] not telling the truth" to Goddard. *Goddard, 176/16-24.*

Distributors for the syringe

251. By the time the September 17, 2010 press release was issued, O'Brien had already identified more than 200 distributors worldwide and had a lot of friends from his relationships in the world. *O'Brien SEC, 76/15-19.* RMC was waiting to send them packages with sample syringes. *O'Brien SEC, 76/17-19.*

252. O'Brien compiled a list of distributors worldwide. *O'Brien, 281/11-21*.

253. O'Brien also had his own network of primarily international distributors that he worked with for 15-20 years who were interested in the syringe. *O'Brien SEC, 122/22-25*.

254. O'Brien had the distributor list from one of RMC's competitors and the distributor list from Becton Dickinson, both of which were public information. *O'Brien SEC, 123/1-7*.

255. O'Brien sent letters and packages to these potential distributors. *O'Brien SEC, 123/4-7.*

256. O'Brien received a lot of responses and interest ("they really loved it"). *O'Brien SEC, 123/10-11*.

257. Most of the responses inquired as to when RMC could come see them and set up for an order. *O'Brien SEC, 123/14-16*.

258. RMC sent out a couple of hundred packages to potential distributors with the company brochure and syringe samples in March and April, 2011. *O'Brien SEC, 122/2-10*.

259. In November, 2010, RMC had a booth at the Medica show in Dusseldorf, Germany, which is the world's largest medical show. *PX 32 at 128-129, 132-133, 133-135*.

260. Wheet, Theriault, O'Brien and Key met with potential distributors at the Medica show, used the blue syringe to demonstrate functionality and sued the Precision syringe to show colors. *Wheet 4/23/14, 76/14-21, 78/10-15; O'Brien SEC, 104/19-105/2; Key SEC, 39/6-16, 65/17-66/25*.

261. Prior to going to Medica, RMC sent out a letter to certain potential distributors to determine what kinds of orders those distributors would give RMC if RMC had the syringe available for sale at that time. *O'Brien SEC, 102/19-103/7*.

262. After the Medica show, several of them went to London and met with additional potential distributors there. *Theriault 8/24/11 SEC, 125/18-24; PX 32 at 130-131*.

263. RMC received one response from Israel for probably 10 million syringes and from Israel and also received responses from other distributors. *O'Brien SEC, 103/2-4*.

264. O'Brien had no prior relationship with any of these distributors who responded. *O'Brien SEC, 103/8-12*.

265. RMC received pre-production commitment letters in November, 2010, from a number of potential distributors as part of its ongoing distribution and marketing efforts. *Wheet 4/22/14, 170/25; O'Brien, 80/1-82/1; DX 19*.

266. In addition to the pre-production commitment letters, RMC had communications with other potential distributors throughout the world, including distributors working in Israel, South Africa, Panama, Costa Rica, Nicaragua, Chile, Kuwait, Russia and the Middle East. *O'Brien, 81/5-82/1; DX 19*.

267. The signing of the pre-production commitment letters indicated the intent of signers to participate in the distribution of the syringes once they became available for the market. *O'Brien, 81/5-82/1*.

268. RMC had drafted a Nonexclusive Domestic Distribution Agreement. *DX 19*.

269. Syringes have been sold to distributors or customers both in the United States and internationally. *Wheet 4/23/14, 52/11-19; Stephen Wheet, 63/18-65/13*.

270. RMC currently has distributorship relationships. *Wheet 4/23/14, 52/12-16; Stephen Wheet, 73/10-75/5*.

271. Wheet did no sell any of his stock during the August and September, 2010 period. *Wheet 4/23/14, 45/23-46/1.*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. REVOLUTIONS MEDICAL CORP. and RONDALD L. WHEET, Defendants.	Civil Action No. 1:12-cv-03298-TCB

CERTIFICATE OF COMPLIANCE OF N.D. GA.L.R. 5.1

Pursuant to Local Rule 7.1, D, I certify that this brief in support complies with the font and point selections set forth in Local Rule 5.1. This motion has been prepared using Times New Roman font (14 point).

This 15th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014, I served a copy of the foregoing by filing it with the Court's CM/ECF system, which provided copies electronically to all counsel of record.

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