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

RESPONSE OF DEFENDANTS REVOLUTIONS MEDICAL CORP. AND RONDALD L. WHEET TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS AND DEFENDANTS' ADDITIONAL UNDISPUTED FACTS

Defendants Revolutions Medical Corp. ("RMC") and Rondald L. Wheet ("Wheet") submit this response to the Statement of Undisputed Material Facts [Doc. 45-2] ("the SEC's Statement") submitted by Plaintiff Securities Exchange Commission ("SEC") in support of its Motion for Partial Summary Judgment ("the SEC's Motion") [Doc. 45].

THE SEC HAS NOT COMPLIED WITH THIS COURT'S INSTRUCTIONS TO PARTIES AND COUNSEL WITH RESPECT TO CITATIONS TO THE RECORD EVIDENCE

This Court's Instructions to Parties and Counsel require that:

> All citations to the record evidence should be contained in each party's brief, not just in the party's statement of undisputed (or disputed) facts. Thus, the party should include in the brief, immediately following the deposition reference, a citation indicating the page and line numbers of the transcript where the referenced testimony can be found.

Doc. 2, p. 16.

The SEC has not followed this instruction in either its brief or its Statement. RMC and Wheet, therefore, object to the SEC's Statement of Undisputed Material Facts.

RESPONSES TO THE SPECIFIC STATEMENTS

1. Since in or about 1997, RMCP has been focused on the design, development and commercialization of a retractable safety syringe. (See Declaration of Nana Jorjoladze, SEC paralegal ("Jorjoladze Dec."), Ex. 10, p. 4; id., Ex. 11, p. 4. Between 2009 and 2010, RMCP frequently described its retractable safety syringe as its "flagship product." (Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-000189, 000191, 000195).

Response by Defendants. This paragraph is not disputed.

2. In December 2002, the Commission filed a civil injunctive action against RMCP's predecessor, Maxxon, Inc. ("Maxxon") and the company's former CEO, Gifford Mabie ("Mabie"), alleging that Maxxon and Mabie made false and misleading statements concerning RMCP's safety syringe, including fraudulent statements in press releases. See SEC v. Maxxon, Inc., No. 02-CV-975-H(J), 2005 WL 6090229 (N.D. Okla. Mar. 11, 2005). [footnote omitted]. In that action, the Commission alleged that Maxxon and Mabie made misrepresentations that, among other things, the safety syringe was undergoing clinical trials, that the Swedish government was interested in building a plant to manufacture the syringe, and that "major companies" were interested in acquiring Maxxon. (Id.) After a two week trial, on November 18, 2004, a jury found Maxxon and Mabie had violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933 ("Securities Act"). (Id.) On March 14, 2005, the court issued a final judgment enjoining Maxxon and Mabie from future violations of the federal securities laws, imposing a five-year officer and director bar against Mabie, a permanent penny stock bar, and ordering Mabie to pay more than $1 million in disgorgement, prejudgment interest and penalties. (Id.)

Response by Defendants. Defendants object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

3. RMCP has been and is a Nevada corporation with its principal place of business in Charleston, South Carolina. (See Defendants' Amended Joint Answer filed January 21, 2013 ("Answer"), ¶ 11).

Response by Defendants. This paragraph is not disputed.

4. On or about May 6, 2008, RMCP received approval to have its common stock traded on what was then termed the Over the Counter ("OTC") Bulletin Board, sometimes known as pink sheets. (See Jorjoladze Dec. Ex. 12, p. SEC-RevMed-000228).

Response by Defendants. This paragraph is not disputed, but Defendants object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

5. Since in or about March or April 2011, the company's common stock has been quoted on the "OTCQB" platform of OTC Markets Group, Inc. (formerly known as Pink OTC Markets Inc.") and throughout its history it has traded as a penny stock. (OTCBB System Changes – 2/22/2011, http://www.otcbb.com/asp/dailylist_detail.asp?d=02/22/2011&mkt_ctg=OTCBB (last visited Aug. 15, 2014); Jorjoladze Dec., Ex. 14).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited support and because it is not relevant to any issue in this case or the SEC's Motion.

6. In January 2007, Maxxon changed its name to Revolutions Medical, Inc. (Answer at ¶¶ 11, 14).

Response by Defendants. This paragraph is not disputed.

7. For all relevant time periods herein, Wheet has been a resident of Mount Pleasant, South Carolina. (Id. at ¶ 12).

Response by Defendants. This paragraph is not disputed.

8. Prior to joining RMCP in 2005, from 1988 through in or about at least 2001, Wheet worked as a registered representative with various broker-dealers and/or investment adviser firms in the securities industry. (See Jorjoladze Dec.. Ex. 15). During this time, Wheet obtained five securities licenses through passing five securities examinations, including the Series 4 Exam (Registered Options Principal Exam), Series 24 (General Securities Principal Exam), Series 7 (General Securities Representative Exam), Series 63 (Uniform Securities Agent State Law Exam), and the Series 65 (Uniform Investment Adviser Law Exam) (Id.).

Response by Defendants. This paragraph is not disputed.

9. From in or about 2001 through 2005, Wheet worked as an outside consultant advising micro and small cap companies on "capital raising, strategic partnerships, stock awareness, hiring top management and going to the public market." (See Declaration of Latrice Rubenstein ("Rubenstein Dec.") Ex. B, p. SEC-RMC-RPD-E-1-0222566).

Response by Defendants. Although no part of Rubenstein's declaration is cited in the brief submitted in support of the SEC's Motion, RMC and Wheet have objected and moved to strike certain paragraphs of Rubenstein's declaration ("Objection to Rubenstein's declaration"). Specifically with respect to this paragraph, it is not disputed.

10. As a result of his professional background, Wheet has over 15 years of experience and expertise in the securities area and in raising capital for small companies. (Id.)

Response by Defendants. Defendants object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

11. Based on his extensive experience in the securities industry, Wheet was familiar with the mechanics of the "short-selling" of a stock (i.e., borrowing, typically from a broker-dealer, and selling a stock in the expectation that the stock price will decline, following which the short-seller "closes" or "covers" the short sale by buying back the same number of shares and returning them to the lender), "naked shorting" (i.e., short-selling a security without first borrowing the security and/or ensuring the security can be borrowed) and the phenomenon of a "short squeeze" (i.e., where the stock begins to increase and the short-sellers are required to "cover" their short position by buying the stock previously shorted, thereby possibly further increasing the stock price). (See April 22, 2014 deposition testimony of RMCP and Rondald Wheet attached as Exhibit 1 to Jorjoladze Dec. ("Wheet Dep. I"), pp. 72-74; April 23, 2014 deposition testimony of RMCP and Wheet attached as Exhibit 2 to Jorjoladze Dec. ("Wheet Dep. II"), pp. 141-42).

Response by Defendants. This paragraph is disputed because the cited testimony supports only some but not all of the assertions.

12. From in or about March 2005 through the present, Wheet has served as Chairman and CEO of RMCP. (Answer at ¶¶ 12, 14).

Response by Defendants. This paragraph is not disputed.

13. Between March 2005 and April 22, 2014 (the date of his deposition), Wheet's only employment has been with RMCP, to which he has devoted approximately 50-60 hours per week. (See Jorjoladze Dec. Ex. 1, (Wheet Dep. I, pp. 1-12)).

Response by Defendants. This paragraph is not disputed.

14. Between March 2005 and April 22, 2014, Wheet's only source of compensation has been from RMCP, consisting of salary of approximately $200,000 and substantial awards of RMCP stock. (See Jorjoladze Dec. Ex. 2 (Wheet Dep. II, pp. 43-44); id., Ex. 11, pp. 34-35).

Response by Defendants. This paragraph is not disputed.

15. From January 1, 2009 through December 31, 2010, Wheet, as Chairman and CEO had complete control over RMCP and "made all the final decisions" at the company. (See May 22, 2014 deposition testimony of Thomas O'Brien attached as Exhibit 8 to Jorjoladze Dec. ("O'Brien Dep."), pp. 257-58). [Footnote – Tom O'Brien served as President of RMCP beginning in or about October 26, 2009 through in or about September 2011 (See Jorjoladze Dec. Ex. 10, p. 6; id., Ex. 8, (O'Brien Dep., p. 53-54))]. In addition to his role as Chairman and CEO, Wheet also "control[led] a majority of the Company's common stock and [could]

unilaterally make business decisions on [RMCP's] behalf." (See Jorjoladze Dec. Ex. 10, p. 14; id., Ex. 11, p. 24).

Response by Defendants. This paragraph is not disputed.

16. From January 1, 2009 and December 31, 2010, Revolutions Medical had no sales of any syringes and no revenue. (See Jorjoladze Dec. Ex. 1 (Wheet Dep. I, pp. 240-41); August 17, 2011 investigative testimony of Wheet attached as Exhibit 3 to the Jorjoladze Dec. ("Wheet Inv. Test. I"), pp. 56-57)).

Response by Defendants. This paragraph is not disputed.

17. During that time period, RMCP's sole source of funds to pay salaries, expenses and other overhead was through fund raising efforts to sell RMCP stock; as set forth in RMCP's Forms 10-K for 2009 and 2010, "our efforts to date have been funded almost entirely through sales of our common stock." (See Jorjoladze Dec. Ex. 10, p. 4; id., Ex. 11, p. 5). And, as Wheet admitted, RMCP press releases were a way to reach people who might invest in RMCP. (Id., Ex. 2 (Wheet Dep. II, p. 68)).

Response by Defendants. The first sentence is inherently contradictory because it first states that RMCP's "sole source" but then states that "efforts to date have

been funded almost entirely." Therefore, the first sentence is disputed. The second sentence is not disputed.

18. Wheet took the lead and participated in the drafting of RMCP's press releases. (See e.g., September 9, 2011 investigative testimony of Sarah Kavalla attached as Exhibit 4 to the Jorjoladze Dec. ("Kavalla Inv. Tr."), pp. 14-15; id., Ex. 20). [Footnote – Sarah Kavalla served as the Office Manager and assistant to Wheet from approximately September 2008 to September 9, 2011. (See Jorjoladze Dec. Ex. 4 (Kavalla Inv. Test., pp. 11-13)). Throughout his tenure as Chairman and CEO, Wheet also reviewed and approved all the press releases issued by RMCP prior to their issuance. (See Jorjoladze Dec. Ex. 1 (Wheet Dep. I, pp. 84-85); see, e.g., , Exs. 29, 30, 31). Following their approval by Wheet, RMCP would then forward the final version to an investor relations firm, such as Equisolve, who in turn would send out the press release to the public and financial markets via the newswire. (Id., Ex. 4 (Kavalla Inv. Tr., p. 15); September 7, 2011 investigative testimony of Bryon Scott Key attached as Exhibit 5 to Jorjoladze Dec. ("Key Inv. Test."); p. 37; id., Ex. 31).

Response by Defendants. The first sentence is disputed because the assertion is not supported by the cited Kavalla testimony. The second sentence is disputed because the assertion is not supported by the cited Wheet Dep. I testimony. The third

sentence is disputed as to the initial premise "following their approval by Wheet", but the remainder of that sentence is not disputed.

19. In February 2009, RMCP received FDA clearance to market a 12-piece retractable safety syringe. (See Jorjoladze Dec., Ex. 12, p. SEC-RevMed-000211 – 12; Answer, ¶ 15).

Response by Defendants. This paragraph is not disputed.

20. Prior to the commercial sale and distribution of this (or any other) syringe cleared by the FDA for sale, RMCP was obligated to develop a safe and effective syringe that would comply with applicable "Quality System" regulation and standards promulgated and overseen by the FDA. (Answer, ¶ 16).

Response by Defendants. This paragraph is undisputed.

21. In or about June 2009, RMCP, through its contractor, Strategic Product Development, Inc. ("SPD"), retained Goddard Technologies, Inc. ("Goddard") to help reduce the syringe from 12 pieces to 8 pieces, and to create design drawings for the new 8-piece syringe. (Jorjoladze Dec., Ex. 16; id., Ex. 1 (Wheet Dep. I, pp. 21-22; 25-27)).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony and because RMC did not reach out to Precision.

22. As a FDA regulatory matter, however, before it could manufacture or sell the new 8-piece syringe to a customer, RMCP would have to prepare and finalize an FDA "letter to file" that would detail the various changes made to the syringe from its original 12-piece design. (See Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 168-69); id., Ex. 2 (Wheet Dep. II, pp. 59, 163-64)). And, in order to complete the letter to file, RMCP needed to create a properly working 8-piece syringe that met industry standards. (Id., Ex. 1 (Wheet Dep. I, pp. 144-45, 164-65); id., Ex. 2 (Wheet Dep. II, pp. 163-64)).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony and is inaccurate. See Defendants' Joint Statement of Material Facts [Doc. 43-2, 44-2] ("Defendant's Joint SMF"), ¶¶31, 43-45.

23. On September 9, 2009, RMCP issued a press release announcing a "significant redesign of its flagship RevVac syringe, reducing the product's part count by nearly 30% [with the new 8-piece design] and clearing the remaining economic hurdles to mass production and commercial launch." (Id., Ex. 12, pp.

SEC-RevMed-000195-96). Notably, neither at that time nor any other time during 2009 or 2010 did Wheet or RMCP ever issue a press release or otherwise advise the investing public that RMCP would need to complete a new FDA "letter to file" that would update the changes made to the syringe. (See generally id., Ex. 10; id., Ex. 11). Rather, the September 9 press release only stated that "The RevVac syringe is already FDA cleared." (Id., Ex. 12, pp. SEC-RevMed-000195-96).

Response by Defendants. The first sentence is undisputed. The second sentence is disputed. See Defendants' Joint SMF", ¶¶31, 43-45. The third sentence is undisputed.

24. From September 2009 through mid-2011, all of RMCP's development and commercialization efforts focused on the 8-piece syringe, rather than the earlier 12-piece syringe. (Id., Ex.1 (Wheet Dep. I, pp. 26-28)). As RMCP and Wheet testified, RMCP "did nothing with [the] 12-piece syringe" throughout that time period. (Id.)

Response by Defendants. This paragraph is not disputed.

25. In or about December 2009, RMCP — through its contractor SPD and/or through Goddard — reached out to Precision Tool and Die ("Precision"), a small, custom syringe manufacturer in New Hampshire — to assist RMCP in a "Pilot

Run" process for the 8-piece syringe. (Jorjoladze Dec., Ex. 17; April 28, 2014 deposition testimony of Michael Driscoll of Precision Tool and Die attached to Jorjoladze Dec. as Exhibit 6 ("Driscoll Dep."), pp. 37, 61; Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 27-31); id., Ex.2 (Wheet Dep. II, pp. 80-81)).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony and because RMC did not reach out to Precision.

26. As known by RMCP and Wheet at the time, Precision was not equipped to be a mass manufacturer, nor was it ever RMCP's intention for them to serve in that role. Jorjoladze Dec., Ex. 1 (Wheet Dep. I, p. 130-31)). Rather, Precision was to undertake a "Pilot Run" process wherein, relying on Goddard's new design for the 8-piece syringe, it would seek to create test or pilot molds (for each individual part of the syringe and with limited lifespan of a few thousand stamps) (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 27-31, 128-31); id., Ex. 3 (Wheet Inv. Test. I, pp. 98-102)). Those test/pilot molds would then be used to create pilot or market sample syringes that could then be shown to potential distributors and investors. (Jorjoladze Dec., Ex.3 (Wheet Inv. Test. I, pp. 101-102); id., Ex. 1 (Wheet Dep. I, pp. 27-31); id., Ex. 6 (Driscoll Dep., pp. 89-90)).

Response by Defendants. The first sentence is not disputed. The second sentence is undisputed except to the extent it makes reference to "with limited lifespan of a

few thousand stamps" because that is not supported by the Wheet Dep. I testimony. The third sentence is disputed because it is not supported by the Wheet Dep. I testimony.

27. As the process was summarized by RMCP in its Form 10-K for fiscal year 2009, filed with the Commission on March 31, 2010:

> "During 2009, [RMCP], through its consultant, [SPD], redesigned the RevVac safety syringe to reduce its parts and make it less expensive and easier to mass manufacture. The Company completed the redesign in the fall of 2009 and in December 2009, started the pilot run step of the mass manufacturing process. **This pilot run will produce market ready samples that the Company can take to distributors, manufacturers and possible strategic partners."**

(Jorjoladze Dec., Ex. 10, p. 4)(emphasis added).

Response by Defendants. This paragraph is not disputed.

28. Following the successful completion of the Pilot Run process, RMCP planned to send the working pilot molds and sample syringes to a mass manufacturing entity who would then use them to create volume production molds (multiple-part and highly expensive permanent molds) for the ultimate mass or volume manufacturing of the syringe. (Jorjoladze Dec., Ex.1 (Wheet Dep. I, pp. 27-31, 128-31, 160-61); id., Ex. 3 (Wheet Inv. Test. I, pp. 98-102)).

Response by Defendants. This paragraph is not disputed.

29. On August 24, 2010, RMCP issued a press release in which it represented, among other things, that:

a. RMCP had been "working closely with a U.S. manufacturer to complete market samples";

b. There had been a "successful completion of its Pilot Run for our new manufacturing design changes to our RevVac Safety Syringe";

c. The "market samples" were now "complet[e]" or were "to be completed" very shortly; and

d. "With the completion of the market samples, Revolutions Medical can now finalize negotiations with manufacturers, distributors and begin announcing preliminary sales orders over the coming weeks."

(Jorjoladze Dec., Ex.12, pp. SEC-RevMed-000155-156).

Response by Defendants. This paragraph is disputed because the language of the actual press release itself differs from what is stated in this paragraph.

30. RMCP and Wheet admitted, however, during their deposition that they were fully aware that the Pilot Run had been "unsuccessful" and that RMCP had "never had a pilot run that produced syringes that worked." (See Jorjoladze Dec., Ex. 2 (Wheet Dep. II, pp. 55-56, 61)).

Response by Defendants. This paragraph is disputed because it misstates the testimony of Wheet and others, including Michael Driscoll. Wheet testified only that "some" samples did not work properly while others worked "beautifully". See,

e.g., Wheet Dep. I, pp. 138-139. Driscoll testified that as the aluminum prototype molds were finished, Precision began manufacturing samples. Driscoll, 31/14-23, 89/23-90/5. When Precision assembled the first samples, they noticed some of the components were not sliding together correctly and fitting the way they thought they should. Driscoll, 46/18-23. Those syringes were working but were not perfect yet. Driscoll, 32/8-9. Precision made some adjustments to the parts so that they performed better. Driscoll, 46/24-47/2. The tooling was then finished, and the syringes were functional. Driscoll, 34/17-20. Normally in a new project, there are bugs to be worked out, and projects may require adjustments and refining to make things work. Driscoll, 76/12-24, 138/13-23.

31. RMCP and Wheet also admitted during deposition that they were aware as of the time of that press release, that:

a. The Pilot Run with Precision had not even been completed, much less successfully completed (id., Dec., Ex. 2 (Wheet Dep. II, pp. 61-63, 82); see also, June 24, 2010 deposition testimony of Andrew Goddard attached to Jorjoladze Dec. as Exhibit 7 ("Goddard Dep."), p. 70) (testifying that the pilot run was never completed);

b. Several of the "market sample" syringes produced by the Pilot Run had failed to retract — a failure that Wheet described as "extremely important" — or perform in accordance with industry standards, and such syringes were, in fact, "never good enough," (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 27-28, 33-34,127-28); id., Ex. 2 (Wheet Dep. II, pp. 61-63));

c. The Pilot Run market sample syringes had not resulted in a workable sample syringe that could pass industry standards or be used for testing

and the creation of a letter to file (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp.27-28, 127-128, 138-39, 144, 154-55, 164); id., Ex. 2 (Wheet Dep. II, pp. 60-63));

d. The "market sample" syringe were simply a pre-production test batch of not-for-human use syringes (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 128-29));

e. The Pilot Run process had not led to the development and finalization of satisfactory test/pilot molds — RMCP and Wheet had serious questions whether those molds were good molds — and none of the test molds had been sent to a volume manufacturer to begin creation of mass production molds (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 128-131. 144));

f. The "manufacturer" referenced in the press release was not, nor ever intended to be, a mass manufacturer (id., Ex. 1 (Wheet Dep. I, p. 130-31));

g. As of this date, RMCP did not have its letter to file completed, or even supplied the syringes to their regulatory consultant for his testing and preparation of that document (id., Ex. 1 (Wheet Dep. I, pp. 138, 144, 164-65); id., Ex. 2 (Wheet Dep. II, pp. 74-75));

h. RMCP would need to "have final product … before we can sign a distribution agreement[]" [sic] (Jorjoladze Dec., Ex. 3 (Wheet Inv. Test. I, pp. 143-44)); and

i. RMCP did not have any product "ready for sale yet" and the company still needed to "get all its ducks in a row from a regulatory standpoint, logistics standpoint, shipping standpoint." (id., Ex. 3 (Wheet Inv. Test. I, p. 144)). [Footnote - As RMCP and Wheet admitted during deposition testimony, as of August 24, 2010, RMCP did not have any warehouse for storing any syringes, no logistics or shipping company retained to ship the syringes, no packaging company to package the syringes, no order fulfillment policies or procedures, no customer service or complaint processing system, no order entry systems, no shipping policies or procedures, no way to assign or track batch numbers. (Id., Ex. 1 (Wheet Dep. I, pp. 131-32)).]

Response by Defendants.

a. This subparagraph is disputed because the assertion is not supported by the cited testimony. See also Defendants' response to ¶30.

b. This subparagraph is disputed because the assertions with respect to industry standards and "never good enough" are not supported by the cited Wheet Dep. II testimony.

c. This subparagraph is not disputed but see also Defendants' response to ¶30.

d. This subparagraph is not disputed.

e. This subparagraph is not disputed.

f. This subparagraph is not disputed.

g. This subparagraph is not disputed.

h. This subparagraph is not disputed.

i. This subparagraph is disputed because the assertion is not supported by the cited testimony. The footnote is not disputed.

32. Wheet admitted that he was fully and independently aware of the problems with the syringe as of August 24, 2010 as, among other things, he had attended investor meetings during August and September 2010 marketing the "market

sample syringes," but during those meetings, the syringes had failed to work properly. (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 138-39)).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony. Wheet testified only that "some" samples did not work properly while others worked "beautifully". See, e.g., Wheet Dep. I, pp. 138-139.

33. Wheet is not only quoted in the August 24 press release, but also admitted to at least partially drafting it, and reviewing and approving the press release before it was issued. (Id., Ex. 1 (Wheet Dep. I, pp. 124-25); id., Ex. 4 (Kavalla Inv. Test., pp. 14-15)). Given that he was also quoted in the press release, Wheet was likely "intricately involved in its drafting." (Id., Ex. 1 (Wheet Dep. I, pp. 114-115)).

Response by Defendants. The first sentence is not disputed to the extent it refers to Wheet reviewing and approving the press release. It is disputed to the extent it states that Wheet at least partially drafted it because his actual testimony is that he "thinks it was a combination of probably Tom O'Brien, myself and Richard Theriault." Wheet Dep. I, p. 124. The second sentence is disputed because the assertion is not supported by the cited testimony which refers to a March 25, 2009 press release and not the August 24, 2010 press release.

34. At no time did RMCP notify the markets of the problems and failures with the Pilot Run process, including: (a) that the Pilot Run process had never been completed at all, much less "successfully completed", the "extremely important" failure of the sample syringes to retract, the syringes' inadequacy precluding their submission for testing and creation of a letter to file, and the "serious questions" they had with respect to the pilot molds. (Jorjoladze Dec., Ex. 2 (Wheet Dep. II, pp. 55-56, 60-61); id., Ex. 7 (Goddard Dep., p. 71)).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony.

35. RMCP issued the August 24, 2010 press release because they believed the information to be "newsworthy" and necessary to "inform the public." (Jorjoladze Dec., Ex. 2 (Wheet Dep. II, p. 95)).

Response by Defendants. This paragraph is disputed because it misstates the testimony which referred to press releases in general and not specifically the August 24, 2010 press release and because the word "necessary" was not used in the testimony.

36. Between August 15, 2010 and August 29, 2010, the only press release issued by RMCP relating to its "flagship product," was the August 24, 2010 press release.

(Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-000153-163). In addition, other than the August 24, 2010 press release, no press release was issued by RMCP between August 23, 2010 and August 29, 2010. (Id.)

Response by Defendants. The first sentence is disputed because of the reference to "flagship product". RMC had an additional MRI software product as to which press releases were issued on August 16, August 18 and August 20, 2010. The second sentence is not disputed.

37. On August 23, 2010, RMCP shares price closed at .28 cents per share, with a trading volume of 37,992 shares. (Jorjoladze Dec., Ex. 14). After the August 24, 2010 press release, RMCP's share price and the volume of RMCP's traded shares began rising substantially. (Id.) On August 25, 2010, the share price closed at .29 cents per share on 87,247 shares traded; on August 26, the share price closed to.38 cents per share on 160,818 shares traded; and on August 27, the share price closed at .385 cents per share on 273,877 shares traded. (Id.)

Response by Defendants. The stock prices are not disputed, but the volumes are disputed. See App. #25 submitted by Defendants. [Doc. 56-25].

38. In their deposition testimony, RMCP and Wheet attempted to explain away the "successful completion" of the Pilot Run and "completion of the market

samples" by claiming that, notwithstanding all of the problems, RMCP and he were: happy with the "color schemes" of the syringes and their parts reduction. (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 134-37)).

Response by Defendants. The non-factual commentary and argument is disputed because it is not supported by the cited testimony and is not relevant to any issue in this case or the SEC's Motion. This paragraph is disputed because there is no testimony to the effect that there were "all of the problems" which is not supported by the cited testimony.

39. Additionally, Wheet admitted in his testimony that "Yeah, we have to have [a] final product before we can sign a distribution agreement[,]" but claimed that the "distribution agreements" in the August 24, 2010 press releases referred to non-binding expressions of interest from potential distributors. (Jorjoladze Dec., Ex. 3 (Wheet Inv. Test. I, pp. 125-29, 143-44)).

Response by Defendants. The non-factual commentary and argument is disputed because it is not supported by the cited testimony and is not relevant to any issue in this case or the SEC's Motion. See also Defendant's Joint SMF, ¶¶165, 251-270.

40. From at least January 1, 2009 through December 31, 2010, one of RMCP's primary competitors was Retractable Technologies, Inc. ("RVP"), a company that

had developed and was manufacturing and selling a working, retractable syringe. (Jorjoladze Dec., Ex 10, p. 11; id., Ex. 11, p. 11).

Response by Defendants. The first sentence is disputed because the cited reference to Ex. 10 does not use the word "primary" and Ex. 11 does make any reference to this entity and because the paragraph is not relevant to any issue in this case or the SEC's Motion.

41. In or about August 31, 2009, RVP announced it had been awarded a government contract by the Department of Health and Human Services to supply a portion of its syringes to vaccinate the US population against the H1N1 virus (swine flu). (Jorjoladze Dec., Ex. 18).

Response by Defendants. Defendants are without knowledge or information as to whether this paragraph is true or not. They note, however, that page 2 of Exhibit 18 contains a date of August 21, 2009 and not August 31, 2009 as stated in the paragraph. Defendants further object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

42. On September 1, 2009 — the day after RVP's announcement – RVP's share price and volume rose dramatically. (Jorjoladze Dec., Ex. 19). On August 31, 2009, RVP's share price and trading volume closed at $1.05 per share with a total

volume of 9,000 shares traded. (Id.) On September 1, 2009, RVP's share price closed at $2.27 per share (rising on inter-day trading to a high of $2.97) with 1,792,416 shares traded that day. (Id.)

Response by Defendants. Defendants are without knowledge or information as to whether this paragraph is true or not. Defendants further object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

43. On September 1, 2009, Wheet sent an email to select RMCP personnel and contractors noting the "huge volume on RVP and the big run-up[]" [sic] in its stock price. (Jorjoladze Dec., Ex. 20). In another email that same day, Wheet noted that RVP had received a "partial contract for the H1N1 virus from Health and Human Resources. We should spin this to our benefit with news tomorrow morning." (Id.)

Response by Defendants. The first sentence is disputed because there are no "[]" in the actual email and there is no basis for concluding the reference at the end of the quote is to the stock price. The second sentence is not disputed. Defendants further object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

44. On September 2, 2009, RMCP and Wheet issued a press release announcing that RVP had been "awarded a contract by the Department Health and Human Services to supply a portion of the safety engineered syringes" for the swine flu. The press release acknowledged that although it was a "rare case" to issue a press release based on its "competitor's achievements," RMCP was doing so because RVP's contract had "proven that major regulatory bodies are actively seeking and engaging suppliers of safety syringes, for efforts on a massive scale." (Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-000197-98).

Response by Defendants. This paragraph is not disputed, but Defendants object to this paragraph because it is not relevant to any issue in this case or the SEC's Motion.

45. Between November 2009 and 2012, the U.S. Department of the Navy administered a program, the United States Department of Defense HIV/AIDS Prevention Program ("DHAPP"), which was designed to award small monetary amounts to help reduce the risk and spread of HIV/AIDS. (See Rubenstein Dec., Ex. A).

Response by Defendants. This paragraph is not disputed.

46. During that time period, the DHAAP in the U.S. did not issue any contracts, but rather, issued only grants and cooperative agreements (joint efforts between the government and a civilian entity) to award recipients based in the U.S. (Id. at ¶ 4) During that time period, only the DHAPP in Italy issued contracts, and those contracts were generally very small in nature (usually less than $10,000 and no more than $150,000) and entered into with foreign contractors for the provision of goods and services overseas. (Id. at ¶ 5). Further, as a matter of DOD regulations, the DHAPP grants were not-for-profit and a DHAPP grantee was not permitted to obtain or retain any profit for its provision of services or goods from the grant funding. (Id. at ¶ 6).

Response by Defendants. This paragraph is disputed for the reasons set forth in Defendants Objection to Rubenstein's declaration and because it not relevant to any issue in this case or the SEC's Motion. It is also disputed because it is contradicted by Exhibit A to the Rubenstein declaration and by the language in the applicable documents which contract did not require RMC to sell at the cost of production and allowed RMC to recapture a wide variety of costs, fees and expenses over and above the actual costs of manufacturing the syringes. See, e.g., Rubenstein declaration, Exhibit A [Doc. 45-39], p. SEC-RMC-RPD-E-1-0222592 (vi. Section III: Cost); SEC-RMC-E-1-0222596, SEC-RMC-RPD-E-1-0222602.

47. The information set forth in paragraphs 44 and 45 above was generally well known by the U.S. Navy personnel working with the DHAPP in the U.S. (Id. at ¶ 7). Accordingly, it would be highly unlikely that any such personnel would ever advise or communicate to any U.S. applicant that the applicant was applying for, or would be entering into, a contract with the U.S. Department of Defense ("DOD") or DHAPP. (Id. at ¶ 7).

Response by Defendants. This paragraph is disputed for the reasons set forth in Defendants Objection to Rubenstein's declaration and because it not relevant to any issue in this case or the SEC's Motion.

48. In or about 2009, RMCP retained Ernest "Tripp" Compton, a long-time friend of Wheet's, to act as a consultant and "authorized representative" of RMCP in connection with RMCP's seeking to obtain government grants. (Jorjoladze Dec., Ex. 1 (Wheet Dep. II, pp. 16-17)).

Response by Defendants. This paragraph is not disputed.

49. In or about February or March 2010, RMCP became aware of a Broad Agency Announcement ("BAA") from the DHAPP, numbered DHAPP-BAA 10-001, announcing a request for proposals for monetary awards between $50,000 and $300,000 for fiscal year 2010. (See Rubenstein Dec. at ¶¶ 9-10, Ex. A).

Response by Defendants. This paragraph is not disputed.

50. The non-profit nature of the grants to be awarded pursuant to that BAA was expressly noted in the BAA itself; pursuant to DOD regulations and policy, "no fee or profit may be charged to this grant" (id., Ex. A, p. SEC-RMC-RPD-E-1-0222609 re "33. Profits and Fees"); any funds in excess of needs was to be returned to the government (id., p. SEC-RMC-RPD-E-1-0222604 re "10. Funds in Excess of Needs, Overpayment and Earned Interest"); and any income earned by the grantee was to be deducted from the total program cost. (Id., p. SEC-RMC-RPD-E-1-0222634 re "9. Program Income").

Response by Defendants. This paragraph is disputed because it is contradicted by Exhibit A to the Rubenstein declaration and by the language in the applicable documents which contract did not require RMC to sell at the cost of production and allowed RMC to recapture a wide variety of costs, fees and expenses over and above the actual costs of manufacturing the syringes. See, e.g., Rubenstein declaration, Exhibit A [Doc. 45-39], p. SEC-RMC-RPD-E-1-0222592 (vi. Section III: Cost); SEC-RMC-E-1-0222596, SEC-RMC-RPD-E-1-0222602.

51. In preparing RMCP's proposal in response to DHAPP-BAA 10-001, on March 25, 2010, Compton specifically asked DHAPP personnel the question of

whether RMCP would be making a proposal for a grant or a contract. (Jorjoladze Dec., Ex. 22). Compton reported to Wheet and others at RMCP that "he had talked about that very thing [t]oday" with his contact person at DHAAP, and she had specifically advised him that RMCP was "proposing to receive a grant." (Id.)

Response by Defendants. This paragraph is disputed because it is selective and does not include the entire quote which states "She said that we are proposing to receive a grant. They are going to come back and ask for a proposal that will include other countries. ***The end result will be an open-ended modifiable contract.***" (emphasis added). It also ignores the fact that the word "contract" was also used at the end of the email in which Compton stated "I don't see any way that we will not land a very large contract."

52. On or about April 13, 2010, RMCP submitted its proposal to DHAPP. (See Rubenstein Dec. Ex. B). In that proposal, RMCP specifically stated that "[w]e are requesting a grant for FY 2010 in the amount of $300,000. We are also requesting identical grants for FY 2011 and FY 2012." (Id., p. RPD-E-1-0222535).

Response by Defendants. This paragraph is not disputed.

53. In that proposal, RMCP further represented to the DHAPP that "[a]s we quickly gear up from producing 10 million syringes per month, we will be at a

level of 30 million syringes per month as the demand starts to develop. By 2013, Revolutions Medical will be capable of producing 90 million per month." (Id.)

Response by Defendants. This paragraph is disputed because there is no representation made by RMC that it was at that time producing any specific amount of syringes. It simply discusses what it believes it will be capable of producing in the future.

54. The proposal was signed by Wheet himself on April 13, 2010 with Wheet attesting by that signature that "To the best of [his] knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded." (Id., p.SEC-RMC-RPD-E-0222569). Further, Wheet testified that he reviewed the proposal, and nothing in the proposal would have entered it without his permission. (See Jorjoladze Dec., Ex. 2 (Wheet Dep. II, pp. 192-93)).

Response by Defendants. The first sentence is not disputed. The second sentence is disputed because Wheet's actual testimony was that he looked at the proposal ten months earlier and there was no further date linked to his testimony.

55. On August 12, 2010, Wheet was confronted with RMCP's misrepresentation to the DHAPP that it was presently manufacturing 10 million syringes per month. Specifically, SPD's President, by email to Wheet and Compton noted that "There is a major problem. In the response to the solicitation it was indicated that we were mfg [sic] 10m syringes a month and ramping up to 90m a month. There is not even a mfg. [sic] program underway never mind production in place." (Jorjoladze Dec., Ex. 23, p. SEC-RMCP-E-0061695).

Response by Defendants. The non-factual commentary and argument is disputed because it is not supported by the cited testimony and is not relevant to any issue in this case or the SEC's Motion. Under DHAPP, RMC simply needed to be able to provide any syringes by April, 2011. Richard Theriault consistently told RMC during 2010 and well into 2011 that MIG would be able to produce whatever amount RMC needed.

56. The DHAPP was never notified by RMCP that the representation concerning its present manufacturing of 10 million syringes per month was inaccurate. (See Rubenstein Dec. at ¶12). Rather, the DHAPP only became aware of misrepresentations concerning RMCP's "U.S. manufacturing" at a later date. (See generally Rubenstein Dec. Exs. C, D and E).

Response by Defendants. This paragraph is disputed because no representation was made as to any number of syringes being currently produced by RMC or the location of any production. Moreover, location of production was not made a condition of the proposal.

57. In a September 8, 2010 email from Wheet to select RMCP personnel and contractors, Wheet expressed his concern that "short-sellers" were seeking to artificially drive down the share price of RMCP stock by short-selling over one million shares of RMCP. In that email, Wheet outlined his plan to make the shorts "run for cover" by using the news of the DHAPP grant to increase the value of the stock:

> Just a heads up. There has been over one million shares shorted on our stock in the last week. They are trying to walk the stock down at the open this morning and walked it down towards the close yesterday. These shorters have their own market makers and play for keeps. They are hoping to cover below .50 per share. I have read two reports calling for this. **Having said this and knowing the short position already, Scott and Charles need as much help as possible today and tomorrow as we await the grant contract which we will receive any day up until next Wednesday. With that news the shorts will run for cover and we will have a short squeeze but until then we have a battle.** I am asking all of you to follow up with anyone you know who has stock or thinking about buying stock to give them the green light to buy today and tomorrow. … **Trip if you could send over your draft of our soon to be released press release on the grant with the DOD,** please do this early afternoon so we can fine tune it and be ready to go.

(See Jorjoladze Dec. Ex. 26)(emphasis added).

Response by Defendants. The first sentence is not disputed. The second sentence is disputed to the extent it suggests it was improper to announce the DHAPP contract based on the information received by RMC from the Navy itself.

58. In the September 8, 2010 email, "Scott" referred to Bryon Scott Key, a long-time friend of Wheet's who, along with his company, Stock Watch Alert, performed "investor relations" services for RMCP. (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, p. 52-54); id., Ex. 2 (Wheet Dep. II, pp. 17-23, 41-43); November 11, 2011 investigative testimony of Thomas O'Brien attached as Exhibit 9 to the Jorjoladze Dec. ("O'Brien Inv. Test."), pp. 57-59)). "Charles" referred to Charles Bingham, a stock promoter previously enjoined for federal securities violations retained by RMCP and/or Stock Watch Alert. (Id., Ex. 9 (O'Brien Inv. Test. pp. 57-59); id., Ex. 27).

Response by Defendants. The first sentence is disputed to the extent it is linked to the September 8, 2010 email because that is not supported by the cited testimony. The rest of the first sentence is not disputed. The second sentence is disputed because Bingham was never retained by RMC. Defendants further object to the second sentence because it is not relevant to any issue in this case or the SEC's Motion.

59. On September 9, 2010, Wheet gave a scheduled interview to the Wall Street Reporter. In that interview, Wheet stated, among other things that:

> **since we came out of our quiet period just a few weeks ago** with our registration statement and have access for the first time to consistent capital, **we have been implementing our plans and putting out press releases and the stock has been trading up in more volume.** During this time, the short position has grown substantially and has been a significant part of the volume on the way up. Now these shorters have become more and more desperate, bringing up all kinds of negative rumors and the like. So, from a technical standpoint, the stock could see **a significant short squeeze.**

(Jorjoladze Dec., Ex. 28)(emphasis added).

Response by Defendants. This paragraph is not disputed.

60. That same day, RMCP issued a press release touting Wheet's September 9, 2010 interview and providing a link to it. (Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-000143-44).

Response by Defendants. This paragraph is not disputed.

61. On September 10, 2010, RMCP issued a press release relating to the grant entitled "[RMCP] 3cc RevVac Safety Syringe Selected by the U.S. Department of Defense." (Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-000140-42). The press release went on to state that RMCP was "to receive **contract** with the United

States Department of Defense HIV/AIDS Prevention Program (DHAPP) for multiple countries for its … RevVac Safety Syringe." (Id.)(emphasis added).

Response by Defendants. This paragraph is not disputed.

62. Wheet, at a minimum, participated in the drafting of the press release, and reviewed and approved it prior to its issuance. (Jorjoladze Dec., Ex. 30; id., Ex. 31; id., Ex. 9 (O'Brien Inv. Test., pp. 33-34)).

Response by Defendants. This paragraph is not disputed.

63. The September 10 press release failed to mention, among other facts known to RMCP and Wheet at the time, that: (a) at most, RMCP had applied for and received initial approval for a grant, rather than a contract; (b) the total amount of the grant funding was $175,000; (c) the grant, by its nature and per DOD regulations, would not permit RMCP to make any profit; (d) RMCP had obtained this grant in part through a misrepresentation to the DHAPP that it was presently manufacturing 10 million syringes per month (a misrepresentation that had not been withdrawn or clarified); (e) as of September 10, 2010, RMCP still had not produced properly working pilot molds or syringes from the Pilot Run, and had not even begun the volume manufacturing of the syringe. (Jorjoladze Dec., Ex. 12).

Response by Defendants. This paragraph is not disputed to the extent it states that these statements were not in the September 10 press release. Defendants state that RMC had no duty to include these statements in the September 10 press release.

64. Wheet and RMCP issued the press release, in whole or in part, to drive up RMCP's share price and make the short-sellers of RMCP stock "run for cover." (Jorjoladze Dec., Ex. 26).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony.

65. Following the issuance of the September 10 press release, RMCP's stock volume and price increased dramatically. (Jorjoladze Dec., Ex. 14). On September 10, 2010, RMCP's share price closed at $0.88 per share with volume of 1,331,708 shares trading. (Id.) On September 13, 2010, the share price rose to as high as $1.74, closed at $1.215 per share, with total volume traded of 3,209,341; on September 14, 2010, the share price rose to as high as $1.47, closed at $1.15 per share, with volume traded of 2,713,834 shares; and on September 15, 2010, the share price rose to as high as $1.12, closed at $0.94 per share, with volume traded of 2,403,021. (Id.) This was the highest share price and trading volume that RMCP's shares had ever achieved. (Id.).

Response by Defendants. The stock prices are not disputed, but the volumes are disputed. See App. #25 submitted by Defendants. [Doc. 56-25]. In addition, any attempt to portray the September 10 press release as the cause of any price movement in RMC's stock is disputed because before the September 10 press release was issued, RMC's stock had been trading on heavy volume throughout August and early September, had closed up on each of the four days before the press release was issued increasing from September 2 to September 3 ($.59 to $.75), increasing another $0.01 to $.76 the next trading day (September 7), increasing another $.10 to close at $.86 on September 8, and increasing another $.11 to close at $.97 on September 9, and had doubled in price just in the last eight trading days and essentially tripled in price in the last 10 trading days. App. #25 [56-25].

66. In an interview published on September 15, 2010 in Charleston's largest circulation daily newspaper, the *Charleston Post and Courier*, Wheet admitted that "the jump in the [RMCP] share price most likely stemmed from the recent surge of news releases [RMCP] had issued since mid-August." (Jorjoladze Dec., Ex. 32). Wheet went on to state in that interview that RMCP was "under attack from 'shorts' —investors who profit when a stock falls in value" and that "shorts had

been bad-mouthing [RMCP's] business to drive down the price so they can cover their bets without a loss." (Id.)

Response by Defendants. Defendants do not dispute that these statements are attributed to Wheet but dispute that this is not the same thing as stating that a specific price increase was due to a single, specific press release (e.g., the press release issued on September 10).

67. By letter dated October 13, 2010 from the Department of the Navy/DHAPP and sent to Wheet sent via email, the Navy/DHAPP advised RMCP that, while "'conditional' approval" had been given to RMCP in connection [sic] the DHAPP-BAA 10-001, the Navy/DHAPP had concerns about the manufacturing being "relocated to China," rather than being in New Hampshire, and, hence, had "determined that it would not be appropriate to award RMC[P] a grant at this time, and the Navy thanks you for your participation in this effort." (Jorjoladze Dec., Ex. 24).

Response by Defendants. This paragraph is disputed because the not all the quoted statements appear in the letter quoted above. This statement by the Navy also contradicted a number of prior statements by it as to why the contract was withdrawn or not funded. See Defendants' Joint SMF, ¶¶194-212.

68. RMCP subsequently sought to have U.S. Senator Jim DeMint of South Carolina inquire about the DOD/DHAPP's decision not to award the grant to RMCP, with Senator DeMint's office subsequently sending a letter to the Navy Senate Liaison Office dated October 27, 2010 on behalf of his "constituent" Compton. (Jorjoladze Dec., Ex. 33).

Response by Defendants. This paragraph is not disputed.

69. On December 2, 2010, Senator DeMint's office forwarded a second letter from the DOD/DHAPP, this one dated November 16, 2010, responding to Senator DeMint's October 27 inquiry by noting that:

> RMCP's decision to manufacture syringes in China introduced additional performance and administrative risks. **NHRC also had concerns about RMC's announcement that it had already won a Government "contract."** NHRC therefore decided to use its limited grant funding for another project. On October 13, 2010, the Grant's Officer informed RMC that NHRC would not fund its grant. … In mid Fiscal Year (FY) 2011, NHRC will issue a new BAA and will solicit proposals for grants designed to address the worldwide HIV/AIDS epidemic. RMCP is welcome to re-apply for a grant.

(Jorjoladze Dec., Dec., Ex.25)(emphasis added).

Response by Defendants. This paragraph is not disputed.

70. In the cover email from Senator DeMint's office forwarding the November 16 letter to Compton, Senator DeMint's office advised that she had "spoken with

[the] Navy Senate Liaison" and that "[a]t this time, it doesn't sound like there is an appeals process, but I would be happy to facilitate a call with the Navy Program Office so that you are in the best position to apply for the next round of funding." (Id.)

Response by Defendants. This paragraph is not disputed.

71. A copy of the November 16, 2010 letter and the December 2, 2010 cover email from Senator DeMint's office advising on the lack of an appeals process was forwarded to Wheet. (Id.)

Response by Defendants. This paragraph is not disputed.

72. By letter dated February 11, 2011, the DOD/DHAPP responded to a further follow-up letter from Senator DeMint's office. (See Rubenstein Dec., Ex. E). In that letter, the DOD/DHAAP clarified that, "[a]lthough not promised in the proposal, RMC communications with NHRC personnel led Navy to believe RMC intended to manufacture in New Hampshire." (Id.) The letter went on to advise that the DOD/DHAAP had already "awarded all available fiscal-year 2010 funding under Broad Agency Announcement 10-001 to another project. While Mr. Compton desires funding for his grant proposal, NHRC informs me there is no additional funding at this time." (Id.)

Response by Defendants. This paragraph is not disputed, but the statement by the Navy contradicted a number of prior statements by it as to why the contract was withdrawn or not funded. See Defendants' Joint SMF, ¶¶194-212.

73. No press release or other public disclosure was ever issued or made by RMCP announcing that: (a) the DOD/DHAPP had advised RMCP on multiple occasions that it would not be funding the award; (b) the DOD/DHAAP always referred to the award as a "grant," rather than a contract; (c) the DOD/DHAPP had concerns about RMCP's announcement of a "Government 'contract;'" (d) Senator DeMint's office had advised that there was no appeals process to the decision not to fund the award; (e) all available fiscal-year 2010 funding had been awarded to another project, and there was no additional funding; and (f) any grant funding that RMCP might be able to obtain would be through applying for 2011 fiscal year funds pursuant to a new BAA. (See February 22, 2012 investigative testimony of Wheet attached as Exhibit 34 to the Jorjoladze Dec. ("Wheet Inv. Test. II"), pp. 66-67).

Response by Defendants. This paragraph is disputed because the assertion is not supported by the cited testimony. Defendants further state that the press release issued on July 8, 2011 address many of these points.

74. On July 8, 2011, approximately five months after the third denial letter from the Navy, RMCP issued its first press release concerning the "contract" it had previously announced in September 10, 2010. (Jorjoladze Dec., Ex. 12, p. SEC-RevMed-00087-88).

Response by Defendants. Defendants object to the characterization of the communications as denial letters because they were not. It is not disputed that RMC issued a press release on July 8, 2011 that discussed the DHAPP contract.

75. Rather than lead, in the title of the press release, with news concerning the loss of the grant, RMCP entitled the press release "Revolutions Medical's RevVac Safety Syringe Is Cleared by United States Department of Defense Logistics Agency for Inclusion in Medical Supply Catalog." (Id.)

Response by Defendants. The non-factual commentary and argument at the beginning of the statement is disputed because RMC had no obligation to caption the press release as stated. Otherwise, this paragraph is not disputed.

76. In that press release, RMCP devoted the first two paragraphs of that press release to publicize that its syringe "is now available in the medical supply chain, and customers can easily order online or directly from the Company." (Id.)

Response by Defendants. This paragraph is disputed because only the first paragraph states as claimed.

77. In fact, the syringe was not available to be sold as of that date as there had not been created a working syringe for the letter to file, much less a for-human-use sample syringe. (Jorjoladze Dec., Ex. 1 (Wheet Dep. I, pp. 164-66); id., Ex. 2 (Wheet Dep. II, pp. 84-86). Rather, as Wheet stated in his testimony, "available in the medical supply chain" and "customers can easily order online" simply referred to the ability of customers to order the syringes, not RMCP's ability to fulfill those orders. (Jorjoladze Dec., Ex. 3 (Wheet Inv. Test. I, p. 206)).

Response by Defendants. The first sentence is not disputed although Richard Theriault consistently told RMC and Wheet that MIG was or would soon be production ready. See Defendants' Joint SMF, ¶¶115-119, 122, 126, 128, 132, 148. The second sentence is disputed because the assertion is not supported by the cited testimony.

78. In its July 8, 2011 press release, RMCP also advised that:

> the Company has learned that there isn't any available grant money for our project under this project in this year's budget." [sic]. That press release stated that "In July 2010, the Company received confirmation that its grant proposal to the United States Department of Defense had been approved. This grant proposal was in response to a Broad Agency Announcement requesting creative proposals to help stop the spread of HIV/AIDS … The

> proposal was a demonstration project …. The grant was supposed to be funded by September 30, 2010, the end of the Federal government's 2009 fiscal year, but there was some confusion with the grant department and the project went unfunded for that fiscal year.

(Jorjoladze Dec., Ex. 12, pp. SEC-RevMed-00087-88).

Response by Defendants. Defendants are unable to respond to this paragraph because there appear to be typographical errors as to the substance of the statement.

79. In the July 8 press release, RMCP failed to make any reference to their earlier September 10, 2010 press release; failed to use the word "contract" altogether, failed to advise when they had learned they would not be awarded the grant; and failed to advise of the reasons given by the Navy/DHAAP for rejection of RMCP's grant proposal. (Id.)

Response by Defendants. This paragraph is disputed because the express language of the July 8 press release does address several of these items.

DEFENDANTS' ADDITIONAL UNDISPUTED FACTS IN OPPOSITION TO THE SEC'S MOTION

Defendants submit the following additional undisputed facts in opposition to the SEC's Motion.

1. The United States General Accounting Office has issued a book entitled *Principles of Federal Appropriations Law*, 3d Ed., eBook Version, March, 2014 that discusses what a grant is.

2. The September 10 press release was not issued until 2:20 p.m. that day. PX 6, p. 5. App. #37.

3. Philip Maurice Hicks wrote a series of letters to the SEC in 2010 and 2011 encouraging the SEC to investigate RMC and Wheet. App. #36.

This 15th day of September, 2014.

By: /s/ Frank A. Lightmas, Jr.
Frank A. Lightmas, Jr.
Georgia Bar No. 452325
The Law Offices of Frank A. Lightmas Jr., LLC
Suite 1150, The Peachtree
1355 Peachtree St., N.E.
Atlanta, GA 30309
(404) 876-3335 (Telephone)
(404) 876-3338 (Facsimile)
franklightmas@mindspring.com
Attorneys for Defendant Revolutions Medical Corp. and Rondald L. Wheet

By: /s/ John M. Deitch

John M. Deitch
New Jersey Bar No. 048411996
Coughlin Duffy LLP
350 Mount Kemble Avenue
P.O. Box 1917
Morristown, NJ 07962
(973)267-0058 (Telephone)
(973) 267-6442 (Facsimile)
jdeitch@coughlindiffy.com
Attorneys for Defendant Revolutions Medical Corp.

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 September, 2014.

/s/ Frank A. Lightmas, Jr.
Frank A. Lightmas, Jr.
Georgia Bar No. 452325
Suite 1150, The Peachtree
1355 Peachtree St., N.E.
Atlanta, GA 30309
(404) 876-3335 (Telephone)
(404) 876-3338 (Facsimile)
franklightmas@mindspring.com
Attorneys for Defendants Revolutions Medical Corp. and Rondald L. Wheet

CERTIFICATE OF SERVICE

I hereby certify that on September 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.

/s/ Frank A. Lightmas, Jr.
Frank A. Lightmas, Jr.
Georgia Bar No. 452325
Suite 1150, The Peachtree
1355 Peachtree St., N.E.
Atlanta, GA 30309
(404) 876-3335 (Telephone)
(404) 876-3338 (Facsimile)
franklightmas@mindspring.com
Attorneys for Defendants Revolutions Medical Corp. and Rondald L. Wheet