

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:)
)
MOSER CAPITAL MANAGEMENT, LLC) Docket No. R-2017-0019
AND)
NICKLAUS J. MOSER)
)
RESPONDENTS.

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Registration, Inspections, Compliance and Examinations Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “RICE Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Moser Capital Management, LLC and Nicklaus J. Moser (together “Respondents”), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00-14.413 (the “Regulations”). The RICE Section alleges the Respondents engaged in fraudulent conduct, acted dishonestly and unethically and breached their fiduciary duties by: providing misleading information regarding Respondents’ advisory business; assessing a performance fee to a non-qualified advisory client account; failing to obtain valid investor signatures when accepting additional capital contributions; and making false and misleading statements, and omitting material facts in connection with the offer and sale of two funds, Moser Capital Fund, LLC and Moser Capital Fund II, LLC, advised and managed by Respondents in violation of the Act, and Regulations.

The RICE Section seeks an order: 1) finding as fact the allegations set forth below; 2) requiring Respondents to permanently cease and desist from further conduct in violation of Sections 101, 102, 201, and 204 of the Act and Regulations in the Massachusetts; 3) censuring Respondents; 4) revoking Respondent Moser Capital Management LLC's registration as an investment adviser in Massachusetts; 5) revoking Respondent Nicklaus J. Moser's registration as an investment adviser representative in Massachusetts; 6) prohibiting Respondents from acting as an exempt reporting adviser ("ERA") or adviser to any fund; 7) requiring Respondents to disgorge all proceeds and other direct or indirect remuneration received as a result of the alleged wrongdoing; 8) ordering rescission by Respondents to all investors from whom they have received funds or fees; 9) imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; 10) finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; and 11) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

The RICE Section uncovered during an investigation of a Waltham based investment adviser, Moser Capital Management, LLC ("MCM"), and its principal, Nicklaus J. Moser ("Moser"), who is a Chartered Financial Analyst ("CFA") charterholder, that MCM and Moser engaged in fraudulent conduct, acted dishonestly and unethically, and breached their fiduciary duties by: 1) providing misleading information regarding the Respondents' advisory business; 2) assessing a performance fee to a non-qualified advisory client account; 3) failing to obtain valid investor signatures when accepting additional capital contributions; 4) making false and misleading statements and omitting material facts in connection with the offer and sale of two

venture capital funds advised and managed by Respondents, Moser Capital Fund, LLC (“MCF”) and Moser Capital Fund II, LLC (“MCF II”).

First, MCM and Moser made misleading statements to investors regarding Moser’s prior advisory business. MCM and Moser state to investors in MCM’s advisory brochure that MCM is involved in managing endowment funds. However, MCM has never managed endowment funds. Moreover, Moser publicly disclosed on the website of the company MCF invested in that MCM, along with other individuals, collectively manages over two billion dollars of equity and fixed income assets. In actuality, Moser manages less than 1% of those funds.

Second, MCM and Moser improperly assessed performance fees to a senior citizen who is a non-qualified advisory client. Moser testified that he “householded” the client’s net worth with that of the client’s nephew in order for the client to meet the requisite net worth requirement for MCM and Moser to charge a performance-based fee. However, under federal and Massachusetts securities laws, MCM and Moser may only household a spouse for the purpose of calculating net worth. At no time did the client individually have the requisite net worth or initial assets under management in order for MCM and Moser to charge a performance-based fee.

Third, in contravention of the CFA Institute’s Code of Ethics and Standards of Professional Conduct and generally accepted business practices, Moser reused investor signature pages when accepting additional capital contributions to MCF via MCF investors’ self-directed IRAs. Instead of obtaining new signatures, MCM and Moser utilized previously signed and dated signature pages, by crossing out the old capital contribution amount and adding the new contribution amount.

Fourth, MCM and Moser fraudulently made false and misleading statements and omitted material facts in connection with the offer and sale of two funds advised and managed by

Respondents. MCM and Moser raised money from investors for MCF and MCF II in order to sell promissory notes to a Cybersecurity Company and Medical a Device Company. In connection with the offer and sale of the interest of the two funds, MCM and Moser failed to disclose his financial incentives arising from his role as a sales representative of a company that sells products to the Cybersecurity Company and the Medical Device Company. MCM and Moser failed to disclose to investors that MCM and Moser had an incentive to ensure that the Cybersecurity Company and Medical Device Company were continually infused with investor funds, since Moser could earn commissions from purchases made by the Cybersecurity Company and the Medical Device Company. Moreover, in order to help solicit investors, Moser touted the fact that he would become a member of the Board of Directors of each company, thereby giving him particular insight into the companies and allowing him to better protect investors. In reality, MCM and Moser did not have meaningful involvement in the companies. For example, MCM and Moser had no access key financials, including but not limited to: balance sheets, bank statements, and other financial documents. Furthermore, Moser's position on the Medical Device Company's Board of Directors was never approved by the board. Additionally, MCM and Moser omitted material information by selectively disclosing material information to only some investors. When the promissory notes matured, and the two companies could not pay, Moser sought to extend the notes. However, this information was only disclosed to select investors.

When MCM and Moser were not omitting information material to investor decisions, MCM and Moser were making false statements about the Cybersecurity Company and the Medical Device Company. For example, MCM and Moser referred to certain prominent technology businesses as the Cybersecurity Company's "customers," in order to make the

Cybersecurity Company look like a major player in the technology field. In reality, these businesses were never paying customers. In addition, MCM and Moser told investors that a \$6,000,000 offer of outside funding was made to the Cybersecurity Company. However, this offer never occurred, and talks never moved beyond informational sessions. Likewise, MCM and Moser also fraudulently claimed that the Medical Device Company had been offered \$1,000,000 of “bridge funding.” This offer never occurred. Moser even went so far as to claim that he was elected over Goldman Sachs, even though Goldman Sachs was never going to partner with Medical Device Company.

MCM and Moser continued to make false statements to MCF II investors about the Medical Device Company and the value of their investments in MCF II. Moser informed investors that MCF II funds were being used to build products to meet large contracts, when in reality the proceeds raised by MCF II were used to: pay off its business debts; to loan a Medical Device Company executive over \$100,000; to pay over \$45,000 of bonuses to Medical Device Company executives in 2016, and; to spend over \$76,000 on grocery deliveries, airfare, restaurants, and hotels. Moser also falsely claimed to investors that Medical Device Company had secured a three-year \$45,000,000 contract from a hospital in India, and had already received an \$18,000,000 purchase order to install its units on a large hospital network in India. Moser failed to disclose that no such contracts or purchase orders ever existed, and that the hospitals involved in the alleged contract had not been fully constructed. Moser, however, doubled down on Medical Device Company’s contracts, claiming that it had contracts collectively worth over \$300,000,000, and had agreements to install over thirty-six thousand units on hospital beds in India. None of these agreements, whether verbal or written, ever existed. In addition to falsely claiming that Medical Device Company had all these agreements, Moser falsely claimed that he

was involved with the technical design of the Medical Device Company's product. Moser was not. He also grossly exaggerated the amount of funding the Medical Device Company has received from the Department of Defense and National Institute of Health. In statements to investors, Moser claimed the Medical Device Company had received roughly \$38,000,000 from the Department of Defense and National Institute of Health. This was not the case. The Medical Device Company had only received about \$13,000,000. Moser even claimed that a large accounting firm had given the Medical Device Company a potential \$1,000,000,000 valuation. The Medical Device Company never provided the accounting firm any information on contracts, and never discussed any potential valuation with the firm.

Investment advisers owe a fiduciary duty to their clients. Inherent in this fiduciary duty is a duty of care and a duty of loyalty, where investment advisers are obligated to put their clients' interests ahead of their own. MCM and Moser failed to meet this duty by: 1) providing misleading information regarding the Respondents' advisory business; 2) assessing a performance fee to a non-qualified advisory client account; 3) failing to obtain valid investor signatures when accepting additional capital contributions; 4) making false and misleading statements and omitting material facts in connection with the offer and sale of two venture capital funds advised and managed by Respondents, MCF and MCF II. The allegations set forth in this Complaint demonstrate that in the interest of protecting Massachusetts investors, the Division should be granted the relief requested, and MCM and Moser should be prohibited from conducting all securities related business in the Commonwealth of Massachusetts.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The RICE Section brings this action pursuant to the authority conferred upon the Division by Section 101, 201, 204, 407A, and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.

3. The RICE Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred between June 2015 and the present date (the “Relevant Time Period”).

V. RESPONDENTS

5. Moser Capital Management, LLC (“MCM”) is an investment adviser with a principal place of business at 24 Clements Road, Waltham, MA 02453. MCM is solely owned and operated by Nicklaus J. Moser, and is assigned Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number 168117. MCM’s registration as an investment adviser in Massachusetts was allowed on February 11, 2015 pursuant to a Consent Order.

6. Nicklaus J. Moser (“Moser”), a Massachusetts resident, has a FINRA CRD number of 6331578. Moser’s registration in the Commonwealth as the sole investment adviser representative of MCM was allowed on February 11, 2015 pursuant to a Consent Order. Moser has been an employee of Massachusetts based Sales and Consulting Firm from 2003 through the present. Moser has held the Certified Financial Analyst (“CFA”) designation throughout the Relevant Time Period.

RELATED PARTIES

7. Moser Capital Fund, LLC (“MCF”) is a limited liability company and venture capital fund that was incorporated in Delaware on September 17, 2015. MCM is the sole manager and investment adviser to MCF. MCF is not registered in Massachusetts, nor has MCF filed any notice indicating that MCF is exempt from registration with either the U.S. Securities or Exchange Commission (“SEC”) or the Division.
8. Moser Capital Fund II, LLC (“MCF II”) is a limited liability company and venture capital fund that was incorporated in Delaware on March 14, 2016. MCM is the sole manager and investment adviser to MCF II. MCF II is not registered in Massachusetts, nor has MCF II filed any notice indicating that MCF II is exempt from registration with either the SEC or the Division.
9. Sales and Consulting Firm (“S&CF”) is a sales consulting company with a principal place of business in Massachusetts that represents data network and electrical product manufacturers and matches them with customers.
10. Cybersecurity Company (“Cybersecurity Company”) is a cybersecurity software company that has a principal place of business in Massachusetts. Cybersecurity Company received investments from MCF.
11. Cybersecurity Company’s CEO (“Cybersecurity CEO”) is Cybersecurity Company’s co-founder and Chief Executive Officer.
12. Cybersecurity Company’s Co-Founder (“Cybersecurity Co-Founder”) is Cybersecurity Company’s co-founder, who formerly served as Cybersecurity Company’s Chief Strategy Officer.

13. Medical Device Company (“Medical Device Company”) is a medical device company that has a principal place of business in Massachusetts. Medical Device Company received investments from MCF II.

14. Medical Device Company CEO (“Medical Device CEO”) is Medical Device Company’s founder and Chief Executive Officer.

15. Medical Device Company CFO (“Medical Device CFO”) is Medical Device Company’s Chief Financial Officer.

VI. STATEMENT OF FACTS

A. Introduction

Moser Capital Management, LLC and Nicklaus J. Moser

16. MCM was formed as a limited liability company in Delaware on December 6, 2010.

17. MCM and Moser conducted unregistered investment advisory activity in Massachusetts between December 2010 and February 2015.

18. Pursuant to a February 11, 2015 Consent Order with the Division, MCM’s and Moser’s registration in Massachusetts as an investment adviser and investment adviser representative, respectively was allowed.

19. MCM’s clients include seven households and two venture capital funds: MCF and MCF II.

20. MCF is invested in Cybersecurity Company.

21. MCF II is invested in Medical Device Company.

22. On March 15, 2017 RICE examiners conducted a routine books and records examination of MCM at its principal place of business.

23. After the books and records examination, the Division opened an investigation into MCM and Moser.

MCM and Moser made misleading statements regarding
i. Moser's advisory business experience

24. Moser testified that he had been involved with the Babson Endowment Fund.
25. Moser testified that he “moved to Boston for a job transfer and managed part of the Babson Endowment Fund as a class” while attending Babson University.
26. Item 2 of MCM’s Form ADV Part 2B, dated March 31, 2017, indicates that Moser ended his association with the Babson Endowment Fund in 2006.
27. However, Item 4 of MCM’s Form ADV Part 2A Investment Adviser Brochure, dated March 31, 2017, states that “[MCM] manages [...] endowment funds[.]”
28. Moser also drafted his biography for Cybersecurity Company’s website, publically available, which states:

[MCM] has an early-stage private equity investment arm focused on the technology sector, which complements the primary focus on public equity investments in the technology sector. Investors participating in early stage investments with [MCM] collectively manage over \$2B of equity and fixed income assets.

29. Moser inflated his experience, however, acknowledging to the Division that MCM manages “sub one percent” of the two billion dollars (\$2,000,000,000.00).

ii. MCM and Moser improperly assessed performance fees to a senior citizen advisory client

30. MCM and Moser improperly assessed a performance fee¹ on a senior citizen advisory client’s (“Advisory Client 1”) account in 2015.
31. When asked how many assets Moser and MCM initially managed for Advisory Client 1 Moser, testified “it was around, when we started, \$50,000 maybe.”

¹ Rule 205-3 of the Investment Advisers Act of 1940 provides an exception to the general prohibition on charging performance based fees when the client is “qualified.” The definition of qualified client includes an individual having \$1,000,000 under the management of the adviser, or having a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of \$2.1 million. In 2015, the net worth requirement under Rule 205-3 was \$2 million.

32. When asked about Advisory Client 1's net worth, Moser testified that it was in the "five to seven hundred and fifty [thousand] range."

33. Moser testified that he "household[s] the net worth because [Advisory Client 1's nephew] has power of attorney over her accounts. So, the net worth is roughly around 2.5 million, 2.6 million."

34. Advisory Client 1 did not meet the requisite \$2 million net worth or \$1 million in assets under MCM's management on her own accord in order for MCM to assess a performance fee.

iii. MCM and Moser did not obtain valid investor signatures when accepting additional capital contributions to MCF

35. On October 22, 2015, Investor 1 signed a Private Equity Investment Authorization document for a self-directed IRA custodian to authorize twenty-two thousand, five hundred dollars (\$22,500.00) in his self-directed IRA to be sent to MCF.

36. In November 2015, Moser re-used Investor 1's signed October 22, 2015 Private Equity Investment Authorization form, crossed out the capital commitment amount of twenty-two thousand, five hundred dollars (\$22,500.00), and handwrote in seven thousand, five hundred dollar (\$7,500.00) in order for Investor 1 to make an additional investment in MCF.

37. On October 23, 2015, Investor 2 signed a Private Equity Investment Authorization document from a self-directed IRA custodian authorizing twenty-two thousand, five hundred dollars (\$22,500.00) in his self-directed IRA to be sent to MCF.

38. In November 2015, Moser re-used Investor 2's signed October 23, 2015 Private Equity Investment Authorization document for a self-directed IRA custodian, crossed out the capital commitment amount of twenty-two thousand, five hundred dollars (\$22,500.00), and handwrote in seven thousand, five hundred dollar (\$7,500.00) in order for Investor 2 to make an additional investment in MCF.

39. When asked why Moser did not use a new document for Investor 1 and Investor 2's investments, Moser testified "I spoke to [self-directed IRA custodian] to figure out the easiest way to do this and my recollection is they said, 'Well, you can just use the existing agreement and put in the amount that the investor wants to invest.'"

B. MCM, Moser, MCF, and Cybersecurity Company

40. Moser first became acquainted with Cybersecurity CEO when Moser, as an employee of S&CF, serviced Cybersecurity CEO's prior employer's S&CF account.

41. In May 2015, Moser learned that Cybersecurity CEO was starting Cybersecurity Company and was raising capital.

42. In June 2015, Moser discussed the prospect of providing funding for Cybersecurity Company.

43. One of the terms of the convertible promissory notes with Cybersecurity Company was that Moser would become a member of Cybersecurity Company's Board of Directors.

44. Moser solicited friends and family to invest in Cybersecurity Company.

45. On September 21, 2015 MCM and Moser established MCF.

46. MCF was established as a vehicle to invest in Cybersecurity Company.

47. Moser testified that he became a member of Cybersecurity Company's Board of Directors during the second half of 2015.

48. MCF has forty investors, not including MCM and Moser.

49. At the time of the fund's investment in Cybersecurity Company, six of the MCF's forty investors were MCM advisory clients.

50. MCF and Cybersecurity Company entered into the following four Convertible Promissory Notes between September 2015 and November 2015 (“MCF Convertible Promissory Notes”) pursuant to the September 25, 2015 Convertible Note Purchase Agreement:

Company	Purchase Date	Maturity Date	Interest	Amount
Cybersecurity Company	9/25/2015	9/25/2016	5%	\$50,000.00
Cybersecurity Company	10/5/2015	10/5/2016	5%	\$200,000.00
Cybersecurity Company	10/31/2015	10/31/2016	5%	\$850,000.00
Cybersecurity Company	11/30/2015	11/30/2016	5%	\$750,000.00
				Total: \$1,850,000.00

51. MCF accepted one million, eight hundred ninety-four thousand, three hundred and sixteen dollars and thirty-nine cents (\$1,894,316.39) from forty investors, not including Moser or MCM.

C. MCM and Moser breached their fiduciary duty to MCF investors by failing to disclose material information and by making false statements

i. MCM and Moser breached their fiduciary duty by failing to disclose material information to MCF investors

MCM and Moser failed to disclose to MCF investors that MCM and Moser has a vested financial interest separate from MCF’s investors’ interest

52. As a components salesman for S&CF, Moser finds software and hardware vendors for companies.

53. S&CF’s CEO testified that Moser is paid a “base salary, and then every quarter [S&CF] calculate[s] the commissions that come in for each salesperson, and [S&CF] take[s] 40 percent of the commissions and...associate[s] that to the salesperson.”

54. S&CF's CEO also identified Cybersecurity Company as a "target customer," and noted that S&CF had "attempted to make them a larger customer."

55. S&CF's CEO testified: "We sold [Cybersecurity Company] some servers... -- there have been some sales to Cybersecurity Company from [Partner Company]."

56. S&CF's CEO confirmed that Moser services Cybersecurity Company's S&CF account.

57. MCF investors were provided with a September 4, 2015 offering document titled "[Cybersecurity Company] Angel Investment Questions & Answers" and a September 28, 2015 offering document titled "[Cybersecurity Company] Series Seed Investment Questions & Answers" (collectively the "Cybersecurity Company Q&As").

58. The Cybersecurity Company Q&As do not disclose that Moser has a financial interest in Cybersecurity Company independent from his interest in MCF, as S&CF suppliers could provide Moser additional commissions based on Cybersecurity Company purchasing products from S&CF suppliers.

Moser failed to disclose the limitations of his position as a member of Cybersecurity Company's Board of Directors to MCF investors

59. When MCM and Moser distributed the Cybersecurity Company Q&As to potential MCF investors, Moser wrote in a section titled "How to prevent investors from losing their investment?" that "I am taking an active board seat with voting rights."

60. Moser became a member of Cybersecurity Company's Board of Directors in December 2015.

61. However, despite Moser being a member of Cybersecurity Company's Board of Directors since December 2015, when asked by the Division in testimony if Moser had seen income statements, whether audited or not audited, he testified "I have not."

62. When asked by the Division if Moser had seen any balance sheets, whether audited or not audited, he testified “I have not.”

63. In addition, Moser testified to the Division that he had “never seen financial statements at board meetings[.]”

64. When asked if he knew if such documents even existed, Moser testified, to the Division “[t]hey exist. I’ve asked for them, but they haven’t provided them to me.”

65. Moser also testified to the Division that “I have not seen audited financials.” When asked whether Moser had reviewed any documents to verify Cybersecurity Company’s burn rate prior to extending the MCF convertible promissory notes, Moser stated that he “did not have financials to verify that.”

66. Furthermore, when Moser was asked during his testimony if has ever reviewed Cybersecurity Company’s bank statements, he testified “[b]ank statements. They were not offered to me, no.”

67. When asked by the Division if he requested bank statements, Moser testified “I’ve asked the [Cybersecurity CEO] for information regarding financials but not bank statements.”

68. The Division asked Cybersecurity Co-Founder if Moser had viewed any of Cybersecurity Company’s bank statements in 2016, to which Cybersecurity Co-Founder testified “[n]ot to my knowledge, no.”

69. Moser failed to disclose the limitations of his position as a member of Cybersecurity Company’s Board of Directors to MCF investors.

MCM and Moser failed to disclosed to all MCF investors information regarding the maturity of the MCF Convertible Promissory Notes

70. Each of the MCF Convertible Promissory Notes state:

In the event the Conversion Amount of the Notes shall not have been converted by reason of a Change of Control or an Equity Financing pursuant to the terms of the Note on or prior to the Maturity Date, the Conversion Amount shall be due and payable on the Maturity Date as set forth the first paragraph of this Note.

71. In addition, each of the MCF Convertible Promissory Notes state that “the Maturity Date may be extended upon written notice to the Company by the Holder.”

72. The maturity dates of the four MCF Convertible Promissory Notes that MCF entered into with Cybersecurity Company were: September 25, 2016, October 5, 2016, October 31, 2016, and November 30, 2016.

73. When the MCF Convertible Promissory Notes matured, Cybersecurity Company could not honor the notes.

74. Moser testified to the Division that “if we had called the note, it would be detrimental to the company [...] they do not have a big balance sheet to pay off loans at this stage[.]”

75. However, on or prior to the maturity date of each of the MCF Convertible Promissory Notes, MCM and Moser did not provide written notice to Cybersecurity Company to extend the maturity dates of any of the four Convertible Promissory Notes.

76. On or prior to the maturity date of each of the MCF Convertible Promissory Notes, the notes did not convert to equity, as there was no initial public offering, Series A investment, or buyout, nor did MCF investors receive any interest payments.

77. Two days prior to the maturity date of the September 25, 2015 MCF Convertible Promissory Note, Moser contacted the largest MCF investors.

78. Moser testified “I spoke with over 50 percent of the shareholders of the fund so that we have a majority vote on what we want to do, is how I did it, and I called them.”

79. In a September 23, 2016 e-mail to Cybersecurity CEO and Cybersecurity Co-Founder (the “September 23, 2016 e-mail”), Moser wrote that “[MCF investors] are furious about

Cybersecurity Company basically lying to investors about the state of [their] product and Series of prospects when none of them are real.”

80. In the same e-mail, Moser wrote “[s]ure you say there are lots of deals in the pipeline but [MCF investors] are going to come back and say you have been saying this since June of 2015 and why are not deals closing and what is the problem?”

81. Regardless, Moser solely asked for positive information to provide to investors, writing in the September 23, 2016 e-mail that “my largest investors want me to call the 9/30/2015 and 10/5/2015 notes (250k total). They have over 50% ownership in the fund so I need to talk them out of it and that is why I need positive talking points.”

82. Moser did not disclose to all MCF investors, including MCM advisory clients, that he was in discussions with Cybersecurity Company about extending the maturity dates of the MCF Convertible Promissory Notes.

83. When asked about why he did not speak with all MCF investors, Moser explained that “it was my understanding that you didn’t need to as long as you had over 50 percent majority.”

84. When asked why he had not notified all MCM advisory clients who were investors in MCF, Moser testified that it was “an oversight. I was not aware I needed to do it on the private fund side.”

85. Despite not contacting all MCF investors, including MCM advisory clients, Moser extended the maturity dates of the MCF Convertible Promissory Notes. Notwithstanding Moser’s concerns about Cybersecurity Company as outlined in the September 23, 2016 email, under the direction of MCM and Moser, MCF entered into an agreement titled “Amendment to Convertible Promissory Notes” with Cybersecurity Company on December 28, 2016.

86. MCF entered into the Amendment to Convertible Promissory Notes despite MCM and Moser not seeing: audited or unaudited income statements, any audited or unaudited balance sheets, never seeing financial statements at board meetings, never seeing audited financials, never having documents to verify Cybersecurity Company's burn rate, and not reviewing Cybersecurity Company bank statements.

87. MCF entered into the Amendment to Convertible Promissory Notes despite Cybersecurity Company's loss of key personnel that Moser had identified in the September 28, 2015 Seed Investment Q&A.

88. MCM and Moser failed to disclose to all MCF investors information regarding the maturity of the MCF Convertible Promissory Notes.

ii. MCM and Moser made false statements to MCF investors

MCM and Moser made false statements about Cybersecurity Company customers

89. Moser testified that he alone had drafted the Cybersecurity Company Q&As [referred to as the "questionnaire" by Moser], and that no one else had edited the documents.

90. When the Division asked Moser who drafted the questionnaire, he testified "I did."

91. When the Division asked Moser if anyone edited the questionnaire, he testified "no."

92. The Division asked Cybersecurity CEO if he reviewed the September 28, 2015 "[Cybersecurity Company] Series Seed Investment Questions & Answers," to which Cybersecurity CEO testified "no."

93. Furthermore, when Cybersecurity Co-Founder was asked if had ever seen the September 28, 2015 "[Cybersecurity Company] Series Seed Investment Questions & Answers," Cybersecurity Co-Founder testified "no."

94. Cybersecurity Co-Founder also testified that Cybersecurity Company has not placed restrictions on what MCM and Moser can communicate to MCF investors.

95. Cybersecurity Co-Founder also testified that Moser has never sought guidance or opinions on what MCM and Moser are allowed to tell to MCF investors.

96. The Cybersecurity Company Q&As included a section titled “Customers” stating that Cybersecurity Company’s “lead customer is Apple. Other lead customers are Bloomberg, Microsoft, Facebook, Salesforce, UC Davis, LinkedIn[.]”

97. When asked whether he had characterized Bloomberg, Microsoft, Facebook, Salesforce, UC Davis, or LinkedIn as Cybersecurity Company’s customers as of September 28, 2015, Cybersecurity CEO testified: “No. [...] [T]hose are the prospect[s], not the customer[s] at that point.”

98. Cybersecurity CEO and Cybersecurity Co-Founder both testified that Cybersecurity Company has never generated any revenue from Apple, Bloomberg, Microsoft, Facebook, Salesforce, UC Davis, or LinkedIn.

99. When asked if as of September 28, 2015 he would have characterized Apple as a customer, Cybersecurity CEO stated: “no. you cannot characterize anybody as a customer [...] until you get revenue from them.”

100. Cybersecurity Co-Founder testified that “lead customers” was an industry term, and that “there is no expectation that [lead customers] will become paying customers at that point.”

101. MCM and Moser did not define “lead customer” in the Cybersecurity Company Q&As or in a document titled “[Cybersecurity Company] Term Sheet, Convertible Debt Investment” provided to MCF investors on October 2, 2015.

102. MCM and Moser did not indicate that the lead customers Moser identified in the Cybersecurity Company Q&As were not paying Cybersecurity Company for its product.

103. Moser also wrote in the Cybersecurity Company Q&As “Customers” section that “[Cybersecurity Company] believes they will be able to achieve ~\$500k-\$1M of revenue from [New Hampshire technology company].”

104. Cybersecurity Co-Founder testified, however, that Cybersecurity Company did not make any revenue projections pertaining to its relationship with [New Hampshire technology company].

MCM and Moser made false statements about Series A investments in Cybersecurity Company

105. In an August 14, 2015 e-mail to investors, Moser wrote that he “just got a call from [Cybersecurity CEO] of [Cybersecurity Company] and he claims Juniper Networks contacted him today and they want to put in \$6M.”

106. When the Division asked if Juniper Networks ever provided any term sheets to Cybersecurity Company reflecting a Series A offer, Cybersecurity CEO testified “[n]o term sheet was produced.”

107. Cybersecurity CEO further testified that “[w]e never told [investors] that we had a Series A funding or [that] we have terms or anything like that.”

108. Cybersecurity Co-Founder also testified that Juniper Networks “didn’t get to the offer stage. I would say there was interest, but it didn’t develop into an offer or terms and conditions.”

109. When asked if Juniper ever presented Cybersecurity Company with a term sheet, Cybersecurity Co-Founder testified “[n]ot to my knowledge.”

110. In a September 22, 2016 e-mail to Cybersecurity CEO and Cybersecurity Co-Founder, Moser noted: “[Cybersecurity Company] has not secured funding when they told investors they had Series A funding from Juniper a year ago[.]”

111. In a September 23, 2016 e-mail, Moser told Cybersecurity Co-Founder that MCF investors were “furious about [Cybersecurity Company] basically lying to investors about the state of the product and the Series A prospects when none of them were real.”

112. Cybersecurity Co-Founder, however, when asked if he had no knowledge of Cybersecurity Company ever receiving any informal or formal Series A offers, testified “[n]ot to my knowledge.”

113. Cybersecurity Co-Founder also testified that he had no knowledge of any Series A entities conducting due diligence on Cybersecurity Company.

114. Cybersecurity Co-Founder was also asked if he had knowledge of any written or verbal communications to Moser about whether there had been offers for Series A funding for Cybersecurity Company, to which he testified “[n]ot to my knowledge.”

115. In addition, Cybersecurity CEO was also asked if he ever communicated to Moser that Cybersecurity Company had secured terms for Series A funding, to which he replied “no”.

D. MCM, Moser, MCF II, and Medical Device Company

116. Moser learned of Medical Device Company from an S&CF supplier.

117. An employee of an S&CF supplier contacted Moser about going together to visit Medical Device Company, who at the time was a target customer of S&CF, to learn more about Medical Device Company.

118. Moser and the S&CF supplier talked with Medical Device CEO, and Moser explained he “just closed a private fund with [Cybersecurity Company]” and could reach out to fund investors to see if they would be interested in investing in Medical Device Company.

119. Moser began soliciting investors for Medical Device Company primarily from MCF investors.

120. MCM and Moser established MCF II as a vehicle to invest in Medical Device Company.
121. MCF II has forty-one investors.
122. At the time of the fund's investment in Medical Device Company, at least six of MCF II's forty-one investors were MCM advisory clients.
123. MCF II and Medical Device Company entered into the following twelve Medical Device Company convertible promissory notes ("MCF II Convertible Promissory Notes") between March 2016 and February 2017:

Company	Purchase Date	Maturity Date	Interest	Amount
Medical Device Company	3/31/2016	3/31/2017	5%	\$300,000.00
Medical Device Company	4/11/2016	4/11/2017	5%	\$400,000.00
Medical Device Company	4/30/2016	4/30/2017	5%	\$400,000.00
Medical Device Company	5/31/2016	5/31/2017	5%	\$250,000.00
Medical Device Company	6/30/2016	6/30/2017	5%	\$690,000.00
Medical Device Company	8/31/2016	8/31/2017	5%	\$300,000.00
Medical Device Company	9/30/2016	9/30/2017	5%	\$250,000.00
Medical Device Company	10/28/2016	10/28/2017	5%	\$200,000.00
Medical Device Company	11/15/2016	11/15/2017	5%	\$610,000.00
Medical Device Company	2/3/2017	8/15/2017	10%	\$75,000.00
Medical Device Company	2/10/2017	8/15/2017	10%	\$50,000.00
Medical Device Company	2/15/2017	8/15/2017	10%	\$950,000.00
				Total: \$4,475,000.00

124. MCF II had accepted four million, three hundred seventy-six thousand, five hundred fifty-two dollars and seventy cents (\$4,376,552.70) from forty-one investors.

125. Between March 31, 2016 and April 13, 2017 MCF II transferred four million, two hundred and fifty thousand dollars (\$4,250,000.00) to Medical Device Company.

E. MCM and Moser breached their fiduciary duty to MCF II investors by failing to disclose material information and by making false statements

- 1. MCM and Moser breached their fiduciary duty by failing to disclose material information to MCF II investors**

MCM and Moser failed to disclose to MCF II investors that MCM and Moser has a vested financial interest separate from MCF II's investors interest

126. As with Cybersecurity Company, Moser's employment with S&CF allows him to earn commissions based on sales made between Medical Device Company and S&CF suppliers.

127. Medical Device CEO testified that she first met Moser in February 2016 in his capacity as "an [S&CF] sales rep, third-party representative to [Medical Device Company] as a company[.]"

128. S&CF's CEO testified that "Moser was trying to sell...our goods and services into [Medical Device Company]."

129. S&CF's CEO confirmed that Medical Device Company is a current customer, stating: "They're sourcing the hardware. We are selling to [Medical Device Company]...most of...the business is being sourced through a company called [S&CF Supplier 1], and that's the majority of it. I believe there's another company that we sell called [S&CF Supplier 2]."

130. While Moser informed MCF II investors that he was employed by S&CF, Moser failed to disclose that his employment posed a conflict of interest with MCF II investors.

131. MCM and Moser did not disclose in any fund offering documents for MCF II that Moser had a financial incentive to raise money for Medical Device Company because he serviced Medical Device Company's account at S&CF.

132. Moser testified that he disclosed his receipt of bonus commissions from sales made through S&CF suppliers to MCF II investors in documents Moser described as "investor questionnaires".

133. Moser testified to the Division that he referred to the February 29, 2016 "[Medical Device Company] Convertible Note Investment Questions & Answers" and the May 10, 2016

“[Medical Device Company] Convertible Note Investment Questions & Answers” (collectively the “Medical Device Company Q&As”) as the investor questionnaires.

134. However, the Medical Device Company Q&As, which were presented directly to MCF II investors, do not disclose that Moser receives bonus commissions from sales made through S&CF suppliers, nor do they contain statements outlining the inherent conflict of interest arising from Moser’s ability to receive commission and/or bonuses from sales made through S&CF suppliers.

MCM and Moser failed to disclose to MCF II investors that he was not a formal member of Medical Device Company’s Board of Directors and thus the limitations that followed by not being on the board

135. Medical Device CEO and Medical Device CFO both testified that one requirement for Moser to become a member of Medical Device Company’s Board of Directors was a one million, five hundred thousand dollar (\$1,500,000.00) investment into Medical Device Company by MCF II.

136. By June 2016, Moser, through MCF II, had raised the necessary funds to become a Medical Device Company board member, however as of September 1, 2017, Medical Device Company had not appointed Moser.

137. When asked if he served on the board of any entities, Moser testified that he serves on “[t]he board of [Cybersecurity Company] and the board of [Medical Device Company].”

138. When the Division asked Moser when he became a member of Medical Device Company’s Board of Directors, Moser testified “Q[uar]ter 3, 2016”

139. However, Medical Device CEO testified on August 2, 2017: “[w]e haven’t officially placed him on the Board of Directors[.]”

140. Despite Medical Device Company not approving Moser's addition to its board, Moser continually told MCF II investors that he is a member of Medical Device Company's Board of Directors.

141. For example, in a November 9, 2016 e-mail, Moser told MCF II investors "I am on their board so [I] will get to review any buyout offer they receive and will run it past you if we should accept or reject."

142. When asked if he had seen payments from the U.S. Government for the Department of Defense contracts Moser testified "I have not."

143. When asked whether he had asked to see Medical Device Company's financial statements, Moser testified "I did not."

144. When the Division asked Moser how he knew what Medical Device Company was spending, Moser testified that the "[Medical Device CEO] and [Medical Device CFO] told me."

145. Moser failed to disclose to MCF II investors that he was not a member of Medical Device Company's Board of Directors and had no meaningful inside corporate information.

MCM and Moser failed to disclose information to all MCF II investors about extending the maturity date of the convertible promissory notes

146. Each of the MCF II Convertible Promissory Notes state:

In the event the Conversion Amount of the Notes shall not have been converted by reason of a Change of Control or an Equity Financing pursuant to the terms of the Note on or prior to the Maturity Date, the Conversion Amount shall be due and payable on the Maturity Date as set forth in the first paragraph of this Note.

147. In addition, each of the MCF II Convertible Promissory Notes state that "the Maturity Date may be extended upon written notice to the Company by the Holder."

148. The maturity dates of first two MCF II Convertible Promissory Notes were March 31, 2017 and April 11, 2017.

149. However, on or prior to the maturity date of the first two MCF II Convertible Promissory Notes, MCM and Moser did not provide written notice to Cybersecurity Company to extend the maturity dates of each respective note.

150. On or prior to the maturity date of the first two MCF II Convertible Promissory Notes, the notes did not convert to equity, as there was no initial public offering, Series A investment, or buyout, nor did MCF investors receive any interest payments.

151. Had MCM and Moser called the first two MCF II Convertible Promissory notes, Medical Device Company would not have had sufficient cash on hand to honor the notes.

152. Moser did not disclose to all MCF II investors, including MCM advisory clients, that he was in discussions with Medical Device Company about extending the maturity dates of MCF II convertible promissory notes.

153. When asked by the Division about why he did not speak with all MCF II investors prior to extending the maturity date of the first two MCF II Convertible Promissory Notes, Moser explained that his “understanding is I just need 50 percent approval of people in my fund. So, I talked to the larger shareholders and came to a decision.”

154. Moser confirmed that there were MCM advisory clients who were also MCF II investors with whom he did not speak to regarding extending the maturity dates of the first two MCF II Convertible Promissory Notes.

155. Moser testified that as of April 28, 2017, he had not received audited financials for Medical Device Company.

156. When asked if he would still extend one of the convertible promissory notes even though he had not received audited financials, Moser testified “[w]e would still extend the note because the company is doing very well.”

157. MCM and Moser did not disclose in any offering documents that the first two MCF II Convertible Promissory Notes would be extended without receipt of audited financials.

ii. MCM and Moser made false statements to MCF investors

MCM and Moser made false statements to MCF II investors regarding use of proceeds

158. MCM's initial solicitation for MCF II was sent to potential investors in an e-mail dated February 29, 2016 (the "February 29, 2016 e-mail").

159. Moser also drafted a document titled "[Medical Device Company] Convertible Note Question and Answer" (the "February 29, 2016 Q&A") to solicit MCF II investments and attached it to the February 29, 2016 e-mail.

160. Medical Device CEO testified that she "never reviewed documentation prior to [Moser] sending it to [MCF II] investors[.]"

161. Medical Device Company's use of MCF II investors' money was not restricted by MCM or Moser.

162. When Medical Device CEO was asked whether Moser imposed restrictions on the use of funds provided by MCF II, she responded "no."

163. In the February 29, 2016 Q&A's "Use of \$1M proceeds" section MCM and Moser wrote: "50% will be used to ramp production for [Hospital 1] and 50% will be used to accelerate development of medical app's to run on the Medical Device Company ICE platform."

164. Medical Device Company, however, used MCF II investors' money to pay off its business debts; to make loans to Medical Device CFO for over \$112,000; to pay bonuses to Medical Device CEO totaling nineteen thousand, three hundred seventy-one dollars and eleven cents (\$19,371.11) and bonuses to Medical Device CFO totaling twenty-five thousand, eight hundred nineteen dollars and one cent (\$25,819.01) in 2016; and to pay over seventy-six thousand dollars (\$76,000.00) for grocery deliveries, airfare, restaurants, and hotels.

False Statements regarding Hospital 1's Purchase Order

165. The February 29, 2016 Q&A stated:

These contracts are so large they are hard to believe in my view but [Medical Device Company] claims they are real and we do know they were awarded their first \$18.25M PO from [Hospital 1]...[Medical Device Company is] telling my suppliers the same story so based on my information this is very real.

166. Moser testified that Medical Device Company “signed a fifty million dollar contract from [a] customer.”

167. When the Division asked Moser if he reviewed the fifty million dollar contract Moser testified “We asked for that, and [Hospital 1] in India would not – did not want to share that with investors.”

168. The February 29, 2016 e-mail stated: “[Medical Device Company] plan[s] to obtain a \$9M line of credit from a bank against their first \$18M purchase order.”

169. When asked whether he told Moser that Medical Device Company planned to obtain a nine million dollar line of credit from a bank, Medical Device CFO testified “[n]ot \$9 [million], no. He knows I was investigating about what it takes to do a line of credit.”

170. When asked whether Medical Device Company had an eighteen million dollar purchase order, Medical Device CFO testified: “[W]e did not have a purchase order for \$18 million.”

171. The February 29, 2016 e-mail stated: “[Medical Device Company’s] first major customer, [Hospital 1], just contacted [Medical Device Company] two weeks ago and said instead of doing the first install in 18 months, they want to pull in the first 1,250 hospital bed install to 180 days.”

172. When asked about that 180-day timeline for the installation of Medical Device Company systems for 1,250 hospital beds, Medical Device CFO testified: “I don’t agree with six months.”

173. When asked about the 1,250-bed installation timeline for [Hospital 1], Medical Device CEO testified “right now, they’re under the expectation that once we get rolling it would be somewhere between that 18 to 20 months.”

174. Months later, in an August 16, 2016 e-mail, Moser requested a copy of the Hospital 1 purchase order from Medical Device Company, asking: “do you have any signed contractual agreement for follow-on orders from [Hospital 1] after the initial 24 bed install?”

175. Medical Device CFO replied to Moser the next day, stating: “[w]e can show you physically, but we cannot email a copy due to [a nondisclosure agreement].”

176. In the same reply, Medical Device CFO also said: “the contracted party is [large healthcare company] that owns all the hospitals under the [Hospital 1] Brand. [Hospital 1] has the right to order up to 4,500 beds at a fixed price.”

177. In a November 10, 2016 e-mail to investors, Moser wrote: “[Medical Device Company] has full \$45M 3 year contract (\$60M over 5 years) signed from [Hospital 1] in India[.]”

178. When asked whether Hospital 1 was required to purchase any Medical Device Company systems under that contract, Medical Device CFO testified: “[t]hey're not forced to do it, no.”

False statements regarding Moser’s involvement with the technical design of Medical Device Company’s product and additional investors

179. In the February 29, 2016 e-mail, Moser told investors: “I have been very involved with [Medical Device Company] from a technical design perspective as I have been doing a lot of the [Medical Device Company] hardware platform design via the sales firm I work for.”

180. When asked, however, whether Moser has been “very involved with [Medical Device Company] from a technical design perspective[.]” Medical Device CEO testified: “No.”

False statements regarding other potential funding from outside sources

181. In the February 29, 2016 e-mail, Moser stated:

[L]ast Friday Medical Device Company met with both Goldman & Maverick. Maverick brought the chief medical technologist from Apple to the meeting and after Maverick heard this story they offered Medical Device Company a \$1M bridge loan and a Series A investment on the spot.

182. When asked whether Maverick offered a one million dollar bridge loan at a meeting with the chief technologist from Apple, Medical Device CFO testified “[n]o. On the spot, no.”

183. The February 29, 2016 e-mail stated further:

[The] good news is that as of an hour ago, Medical Device Company has agreed to let me invest via convertible note like we did for Cybersecurity Company! The reason they are going with me over a Goldman or Maverick is because they said I've been a great trusted advisor for them on both the technology design front and investment front.

184. When asked whether Goldman Sachs ever offered to provide funding to Medical Device Company, Medical Device CFO testified: “Goldman Sachs wouldn't invest into a company like us. We're too small.”

False statements regarding Medical Device Company's government funding

185. The February 29, 2016 e-mail stated: “This investment is completely different than [Cybersecurity Company] as [Cybersecurity Company] is an early stage startup and [Medical Device Company] has been around 9 years and is a much more mature company with revenue (~3M/yr).”

186. When asked whether Medical Device Company had revenue of \$3 million a year, Medical Device CFO testified: “Not yet.”

187. The February 29, 2016 e-mail continued: “[Medical Device Company] has been funded by the [Department of Defense] and [National Institute of Health] to the tune of ~38M the past 9 years. [Medical Device Company] received ~8M and the other funds were used for [Medical Device Company] collaboration partners.”

188. When asked how much Department of Defense funding Medical Device Company had received, Medical Device CFO testified: “[s]o it would have been...\$6 [million]. We've got [another] \$6 [million] now going forward, so that's \$12 [million]...before there was another \$1 [million], so that's \$13 [million.]”

189. Medical Device CEO corroborated that Medical Device Company had received about “[t]hirteen million, yes, directly from the Department of Defense, yes.”

190. When asked how much National Institute of Health funding Medical Device Company had received, Medical Device CFO testified: “I think it's hundreds of thousands [of dollars].”

191. The February 29, 2016 e-mail misrepresented the amount of funding Medical Device Company had received from both the Department of Defense and the National Institute of Health.

False statements regarding Food and Drug Administration approval of Medical Device Company's product

192. The February 29, 2016 e-mail noted: “[Medical Device Company] has developed a [Food and Drug Administration] approved software base platform called the Integrated Clinical Environment (ICE) platform.”

193. When asked whether Medical Device Company's base platform needed to be approved by the Food and Drug Administration, Medical Device CFO testified: “[The Food and Drug Administration] wrote to us letting us know that the baseline doesn't need to be approved.”

194. MCM and Moser received confirmation that the platform did not need to be approved.

195. In addition, Medical Device CFO indicated in his testimony to the Division in July 2017 that Medical Device Company's applications required Food and Drug Administration approval, and that the formal applications had not been submitted nor approved.

False statements regarding Medical Device Company's contract wins and valuation

196. The February 29, 2016 e-mail stated: “[Medical Device Company] just won \$300M plus in contracts and is looking for working capital to quickly ramp up production.”

197. When Medical Device CFO was asked whether Medical Device Company had contracts that added up to \$300 million in or prior to March of 2016, Medical Device CFO testified “no.”

198. The February 29, 2016 e-mail also stated that Medical Device Company “[w]on 26k patient monitor bed install with [Hospital 1] in India.”

199. When asked whether this was true, Medical Device CFO testified: “Not 26,000 patient-monitored bed.”

200. The February 29, 2016 e-mail also mentioned that Medical Device Company “[w]on 10k patient monitor bed install at [Hospital 2] in India[,]” and that it “[w]ill charge \$18 per patient per day. Will bring in ~\$60M/yr of recurring revenues[.]”

201. Medical Device CFO, however, testified “[w]e didn't win [the Hospital 2 contract]. We had a discussion with them. We presented it to them.

202. Medical Device CFO was also asked whether Hospital 2 provided Medical Device Company with a purchase order for 10,000 beds, to which Medical Device CFO testified “no.”

203. Moser failed to disclose that no such contracts or purchase orders ever existed, and that the all alleged hospitals involved in the alleged contract had not even been constructed.

204. When the Division asked Medical Device CEO about the state of the hospitals, she testified “one of the hospitals is currently in existence, the other hospital, I believe, opens in the spring [of 2018], and the third hospital is in construction.”

205. The February 29, 2016 e-mail also stated: “[Medical Device Company] consulted with [Accounting Firm 1] and said if all these contracts come to fruition it is possible they could get a

\$1B valuation in 5 years with a three year earnout at a year 2 buyout.” Moser repeated this potential valuation \$1B in the February 29, 2016 Q&A.

206. When Medical Device CFO was asked whether Medical Device Company had any discussions with Accounting Firm 1 about a possible valuation for Medical Device Company, Medical Device CFO testified “no.”

207. Medical Device CFO further testified that Medical Device Company’s only dealings with [Accounting Firm 1] involved “two things, potentially being an auditor, and at the same time, I think we're great for their forensic department.”

208. When the Division asked Medical Device CFO “did you ever provide potential hospital contract wins in order for them to come up with a valuation in their company?” Medical Device CFO testified to the Division “[Accounting Firm 1] didn't come up with a valuation.”

209. When asked whether there was anything in the February 29, 2016 e-mail and the February 29, 2016 Q&A sent to MCF II investors that was not entirely truthful, Medical Device CFO testified “[y]es.”

210. The February 29, 2016 e-mail’s above misrepresentations, crafted by Moser, were also included in the February 29, 2016 Q&A Moser drafted and distributed to MCF II investors.

MCM and Moser continued to make false statements in Moser’s May 10, 2016 Q&A offering document

211. Moser drafted the May 10, 2016 Q&A and distributed it to potential investors for MCF II.

212. The February 29, 2016 Q&A stated that “[Medical Device Company] won 26k unit patient bed install over 20 hospitals via Hospital 1... [.]” In the May 10, 2016 Q&A, however, Moser decreased the number of patient beds, stating: “[Medical Device Company] won 10k (up to 26k) patient bed install over 20 hospitals via Hospital 1... [.]”

213. Medical Device CFO's testimony, however, confirmed that Medical Device Company did not win either a ten thousand or a twenty-six thousand unit patient install.

214. The May 10, 2016 Q&A continues:

[Hospital 1] pulled in their deployment of the first 1,250 install at [Health Management Company] from 18 months to 180 days. [Medical Device Company] is scrambling to deliver on this and that is why they need a convertible note bridge loan...they plan to borrow \$9 [million] to \$20 [million] as a bank loan that is against [Hospital 1]'s purchase orders.

215. When asked if Medical Device Company agreed to Hospital 1's 180 day timeline, Medical Device CFO testified: "I don't agree with six months."

216. Medical Device CEO testified that in or around April 2016 discussions with Hospital 1, Medical Device Company "came to the fact that it would be right around 18 to 20 months to do the first 1,250 beds[.]" This is clearly contrary to the 180 days Moser continued to assert in the May 10, 2016 Q&A.

217. The May 10, 2016 Q&A also misleadingly continued to state: "[Medical Device Company] won a new 10k patient bed install with [Hospital 2] in India worth \$60 [million] per year."

218. Medical Device CFO testified that Medical Device Company did not win a 10,000 bed install with Hospital 2.

219. When asked if Medical Device Company had ever generated revenue from its products, Medical Device CFO testified "[f]rom a paying customer like Hospital 1, no."

VII. VIOLATIONS OF LAW

Count I. Nicklaus J. Moser and Moser Capital Management, LLC Violations of MASS.

GEN. LAWS ch. 110A, § 101

220. Section 101 of the Act provides, in pertinent part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

[...]

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

221. The RICE Section realleges and incorporates the allegations of paragraphs 1 through 219 above.

222. The conduct of Nicklaus J. Moser and Moser Capital Management, LLC as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

Count II. Nicklaus J. Moser and Moser Capital Management, LLC Violations of MASS.

GEN. LAWS ch. 110A, § 201

223. Section 201 of the Act provides, in pertinent part:

(a) It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the secretary.

224. The RICE Section realleges and incorporates the allegations of paragraphs 1 through 219 above.

225. The conduct of Nicklaus J. Moser and Moser Capital Management, LLC as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201.

226. Section 204 of the Act provides, in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds [...] (2) that the applicant or registrant [...]:

G. has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

950 MASS. CODE REGS. 12.205(9) provides in pertinent part:

(9) Fraudulent Practices/Dishonest or Unethical Practices.

[...]

(c) The following practices are a non-exclusive list of practices by an adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

[...]

17. Receiving any compensation on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of a client unless such compensation is received in compliance with Rule 205-3 under the Investment Advisers Act of 1940 (17 CFR 275.205-3).

227. The RICE Section realleges and incorporates the allegations of paragraphs 1 through 219 above.

228. The conduct of Nicklaus J. Moser and Moser Capital Management, LLC as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

229. The RICE Section realleges and incorporates the allegations of paragraphs 1 through 219 above.

230. The conduct of Nicklaus J. Moser and Moser Capital Management as described above, constitutes violations of 950 MASS. CODE REGS. 12.205(9).

VIII. STATUTORY BASIS FOR RELIEF

Section 407A. of the Act provides, in pertinent part:

If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A(a).

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

X. RELIEF REQUESTED

The RICE Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in paragraphs 1 through 219, inclusive of the Complaint;

- B. Requiring Respondents to permanently cease and desist from further conduct in violation of Section 101 of the Act and the attendant Regulations in the Commonwealth;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of Section 201 of the Act and the attendant Regulations in the Commonwealth;
- D. Requiring Respondents to permanently cease and desist from further conduct in violation of Section 204 of the Act and the attendant Regulations in the Commonwealth;
- E. Censuring Respondents;
- F. Revoking Respondent Moser Capital Management LLC's registration as an investment adviser in the Commonwealth;
- G. Revoking Nicklaus J. Moser's registration as an investment adviser representative in the Commonwealth;
- H. Prohibiting Respondents from acting as an exempt reporting adviser ("ERA") or adviser to any fund;
- I. Requiring Respondents to disgorge all proceeds and other direct or indirect remuneration received as a result of the alleged wrongdoing;
- J. Ordering rescission by Respondents to all investors from whom they have received funds or fees;
- K. Imposing an administrative fine on Respondents in an amount and upon such terms and conditions as the Director or Presiding Officer may determine;

- L. Finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; and
- M. Taking any such further actions which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES
DIVISION RICE SECTION**

By its attorneys,



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Dated: October 19, 2017

*Lauren Munschauer is scheduled to be formally admitted to the Massachusetts Bar on November 16, 2017.