

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

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| IN THE MATTER OF: |) | |
| |) | |
| |) | |
| ADVENT MEDICAL PRODUCTS, INC. & |) | |
| RANDALL W. FINCKE, |) | |
| |) | |
| RESPONDENTS. |) | Docket No. E-2018-0002 |

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Advent Medical Products, Inc. and Randall W. Fincke (collectively, the “Respondents”) for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”). The Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101, 201, and 301 of the Act and the Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondents; 5) requiring Respondents to provide a verified

accounting for all losses attributable to the alleged wrongdoing; 6) requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing; 7) requiring Respondents to provide a verified accounting for all profits, direct or indirect compensation, and remuneration received by Respondents in connection with the alleged wrongdoing; 8) requiring Respondents to make rescission offers to all investors who purchased securities sold in violation of the Act; 9) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 10) taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

II. SUMMARY

Respondent Advent Medical Products, Inc. (“Advent”), founded by Respondent Randall W. Fincke (“Fincke”), is a medical technology company. While Advent’s purported product would serve to connect patients and caregivers, Advent has actually operated to separate investors from their money.

Between 1996 and the present, Fincke, a resident of Lincoln, Massachusetts, has formed three separate medical technology companies, each to manufacture defibrillators. However, lawsuits arising from Fincke’s misconduct have blighted his previous ventures. In a lawsuit against Fincke and his first company, Fincke was found to have engaged in intellectual property misuse and breached a non-compete agreement. In a lawsuit against Fincke and his second company, the court found that Fincke had misrepresented elements of his business plan, constituting securities fraud. Advent, a Delaware corporation

registered as a foreign entity in Massachusetts, was formed a mere three days after Massachusetts investors filed the securities fraud suit against Fincke in 2004.

Publically, Advent purports to develop defibrillators and other related medical-monitoring systems. Privately, Fincke has characterized Advent as a means to recoup financial losses on behalf of himself and his family. Despite Advent's true purpose, Respondents have failed to disclose the existence of Fincke's prior adverse judgments and the financial enrichment of Fincke and members of his family.

Through the issuance of promissory notes, Advent has collected more than \$2.9 million in investor capital, including more than \$1.4 million from Massachusetts residents. In exchange for their investment, investors received stock options and repayment with interest based on various sales and revenue benchmarks, pursuant to the Advent promissory notes. Although Respondents characterize these investments as "loans," they are, in fact, securities that are required to be registered or exempt from registration in the Commonwealth. Respondents have filed no such registration or exemption from registration for the issuance or sale of these securities in the Commonwealth.

Furthermore, Respondents have misrepresented the state of Advent in investor materials and correspondence. Respondents have consistently claimed that all investor capital is used for the development and manufacturing of Advent's products. Respondents have continued to represent that Advent personnel elected to receive deferred compensation. Respondents have also continued to represent that they have successfully developed a marketable product. These representations are all false.

In reality, Respondents have diverted nearly \$1 million to Fincke, Fincke's brother, and other members of Fincke's family. Fincke has transferred approximately \$450,000 from Advent's operating account to his personal checking account. He has used \$32,000 of those funds on expenses related to his boat and at least one luxury automobile. In addition, Respondents have paid more than \$400,000 to consultants. Despite contrary representations made to Advent investors, these payments to Fincke's family and other Advent personnel have continued even in the face of languishing production, culminating in a failure to successfully develop a marketable product.

Fincke testified before the Enforcement Section in connection with this matter. During his testimony, some of Fincke's answers were vacillatory while the presentation of bank records and other exhibits ultimately contradicted other answers. Bank records showing transfers of investor capital to Fincke's personal checking account contradicted Fincke's assertions that he had never received payments from Advent. Bank records showing transfers of more than \$383,000 of investor capital to Gary Fincke contradicted Fincke's assertions that Advent paid Gary Fincke \$75,000.

Following his testimony, Fincke has been unable to comply fully with the Enforcement Section's requests for information and documents. Fincke has been delinquent in providing requested information by the required compliance date. In addition to failing to comply fully with the Enforcement Section's requests, Fincke has also ignored further correspondence to provide complete responses. Among the items requested and provided to the Enforcement Section, Fincke produced promissory notes issued to members of Fincke's family in support of his assertion that the payments to his personal checking account are proper.

The promissory notes issued to Fincke's family are not notarized, formatted differently than all other Advent promissory notes, and bear a typed date to ostensibly evidence legitimacy. The terms of the promissory notes issued to Fincke's family are more favorable than promissory notes issued to other investors. The payments to Fincke and Gary Fincke, purportedly pursuant to these promissory notes, contradict Fincke's assertion that Respondents would repay investors before Fincke's family. Furthermore, Respondents failed to produce these documents prior to Fincke's testimony despite Fincke's verification of complete and correct production in writing on two occasions.

Since 2004, Respondents have failed to successfully produce one marketable product or generate a single dollar in revenue. This is a stark contrast to the more than \$2.9 million of collected investor capital, the nearly \$1 million already paid to Fincke and his family, and more than approximately \$4 million still owed to Fincke's family under the terms of their promissory notes. Although Fincke is now on his third defibrillator company, he continues to demonstrate his failure to operate a company that is accountable to its investors and in compliance with the law.

With this action, the Enforcement Section of the Division seeks to stop Respondents from defrauding investors through the offer and sale of unregistered and non-exempt securities in the Commonwealth.

III. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters relating to securities, as provided for by the Act. In part, the Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; and 2) those individuals offering and/or selling securities.

2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act.

3. This proceeding is brought in accordance with Sections 101, 201, and 301 of the Act.

4. The Enforcement 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

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of July 9, 2004, to the present (the “Relevant Time Period”).

V. RESPONDENTS

6. Advent Medical Products, Inc. (“Advent”) is a Delaware corporation incorporated on July 9, 2004, and registered as a foreign corporation in Massachusetts on April 20, 2010. Advent lists a mailing address located at the Cambridge Innovation Center, 101 Main Street, 14th Floor, Cambridge, Massachusetts 02142. Advent’s principal place of business is located in Davis Square, Somerville, Massachusetts.

7. Randall Warren Fincke (“Fincke”) is a resident of Lincoln, Massachusetts. Fincke is the president, treasurer, secretary, CEO, and CFO, and director of Advent.

VI. RELATED PARTY

8. Gary Nelson Fincke (“Gary Fincke”) is a resident of Hampton Falls, New Hampshire. Gary Fincke is the brother of Fincke and was the Executive Vice President of

Marketing and Sales of Advent. Gary Fincke is the president of Virtual Marketing International, Inc., a New Hampshire corporation. Gary Fincke was also a former Master Distributor for The Trump Network, a now defunct Massachusetts-based multi-level marketing company that sold health supplements under an agreement to license Donald Trump's surname. In addition, Gary Fincke was also a District Director for another multi-level marketing company.

VII. STATEMENT OF FACTS

A. Respondents

i. **Fincke: The Director**

9. Fincke, age 63, is a resident of Lincoln, Massachusetts. Fincke testified before the Enforcement Section in connection with this matter on May 11, 2018.

10. Fincke has never been registered in any capacity in the securities industry in the Commonwealth of Massachusetts.

11. Fincke is the president, treasurer, secretary, CEO, CFO, and director of Advent. Before creating Advent, Fincke formed two previous companies.

12. Cadent Medical Corporation ("Cadent") is a Delaware corporation, registered as a foreign corporation in Massachusetts on September 25, 1996. Cadent developed wearable defibrillators.

13. While working for Cadent, one of Fincke's previous employers sued and alleged that Fincke and Cadent misused intellectual property and violated a non-compete agreement. The lawsuit resulted in a \$650,000 judgment against Fincke.

14. Following the conclusion of that lawsuit in 2000, Fincke sold Cadent and formed Access Cardiosystems, Inc. ("Access"), a Delaware corporation registered as a foreign

entity in Massachusetts on September 19, 2001. Access developed and sold an automated external heart defibrillator (“AED”). To raise capital, Access sold promissory notes to approximately one dozen investors, collecting at least \$20 million in investor capital through the issuance of promissory notes, stock, and other methods.

15. In November 2003, after years of significant financial and manufacturing turbulence and a second intellectual property lawsuit, Access’s board of directors, who were also Access investors, voted to remove Fincke as president and CEO. The board of directors offered Fincke another role, but Fincke declined. Fincke returned to take files and equipment from Access’s office and later alleged product defects to the United States Food and Drug Administration. Following this, Access’s board of directors exercised its option pursuant to the Access Stockholder’s Agreement and repurchased all shares of Fincke’s stock at book value. The book value of Fincke’s stock was approximately negative \$4.4 million, and the Access board of directors repurchased all Fincke’s shares for one dollar.

16. On July 6, 2004, the other four members of Access’s board of directors brought a lawsuit against Fincke, alleging violations of MASS. GEN LAWS. ch. 110A, § 410(a)(2) (the “Shareholder Action”).¹ In 2005, Access filed for Chapter 11 bankruptcy protection. Fincke removed the Shareholder Action to the United States Bankruptcy Court for the District of Massachusetts (the “Bankruptcy Court”).²

¹ Access Cardiosystems, Inc. v. Fincke, No. 0484CV02976 (Mass. Super. Ct. filed July 6, 2004).

² In re Access Cardiosystems, Inc., 404 B.R. 593, 609-34 (Bankr. D. Mass. 2009) aff’d In re Access Cardiosystems, Inc., 488 B.R. 1 (Bankr. D. Mass. 2012).

17. In relevant part, the Bankruptcy Court found that Fincke had made a material and false statement by misrepresenting Access’s intellectual property in its business plan.³ The Bankruptcy Court found Fincke liable for fraud, negligent misrepresentation, and securities fraud pursuant to MASS. GEN. LAWS ch. 110A, § 410(a)(2). The Bankruptcy Court also found that Fincke violated his duty of care and loyalty to Access.⁴ Accordingly, in 2011, the Bankruptcy Court entered judgment against Fincke for \$1.5 million to an Access investor and \$281,534.62 to Access.⁵

ii. Advent: Fincke’s AED Company Today

18. Three days after the Access board of directors filed the Shareholder Action in Massachusetts Superior Court, Concord Medical Products (“Concord”), Fincke’s third medical technology company, was incorporated in Delaware. Concord later amended its corporate filings, changing its name to Advent Medical Products. Advent registered as a foreign corporation in Massachusetts on April 20, 2010.

19. Publically, Advent’s purported purpose is to develop AEDs and related technology. However, Fincke stated to the Enforcement Section that he formed Advent to recover the “million dollars [the Fincke family] had lost and all of the effort [they] had put into building [Access] which had been stolen from [Fincke].”

20. Advent represents its mailing address to be in Cambridge, Massachusetts. However, Advent’s offices are currently located in a two-desk, shared office location in Somerville, Massachusetts.

³ Id. at 666.

⁴ Id.

⁵ In re Access Cardiosystems, Inc., 460 B.R. 67, 83-84 (Bankr. D. Mass. 2011) aff’d In re Access Cardiosystems, Inc., 488 B.R. 1 (Bankr. D. Mass. 2012) (affirming damages).

21. Advent's product is an integration of real-time patient monitoring, data analytics, and a defibrillator, marketed recently as "CORTEX Fusion."

22. To date, Advent has not successfully manufactured a single marketable product, has not sold a single product, and has generated zero dollars in revenue.

23. However, Advent has continued to collect millions of dollars from investors through the sale of promissory notes. To date, Advent has collected more than \$2.9 million in investor capital. Of that sum, Advent has collected more than \$1.4 million through issuance of promissory notes to Massachusetts residents.

B. Respondents' Promissory Note Offering

24. Advent has issued promissory notes that provide for the provision of investor capital to Advent in exchange for stock options and repayment with interest.

25. Holders of the Advent promissory notes reside in Massachusetts as well as New Hampshire, Rhode Island, Maine, New York, California, Texas, Pennsylvania, Arizona, Florida, Georgia, Illinois, Montana, North Carolina, South Carolina, and Oklahoma.

26. There are no restrictions on the sale of the promissory notes to accredited investors. Advent has not established a minimum amount accepted as an investment.

27. Respondents incentivize current investors to recruit new investors by offering an increased return if a referred individual invests in Advent.

28. Fincke is responsible for the sale of all the Advent promissory notes in Massachusetts. Fincke has also solicited current investors to reinvest, requested current investors to refer him to new investors, and solicited new investors.

29. In total, at least 29 Massachusetts residents have invested in Advent.

30. Each promissory note is comprised of three documents: a note; a non-statutory stock option certificate; and an attached memorandum as a stock buyback agreement.
31. The Advent promissory notes have never been registered in Massachusetts.
32. The note is typically a three-page document that includes terms regarding interest, repayment, and rights of the parties.
33. While the format of the Advent promissory notes has largely remained unchanged, the interest on notes held by Massachusetts residents has varied between ten and fifteen percent.
34. In addition, benchmarks of Advent sales, which trigger repayment, vary. For example, Advent will repay some notes held by Massachusetts investors from portions of every sale made. However, for other notes, repayment begins when Advent reaches \$1 million in product sales or for others when Advent reaches \$2 million in product sales.
35. The non-statutory stock option certificate is a one-page document that allows an investor to purchase shares of Advent common stock at \$.01 per share. The investor may exercise this option at any point in the ten years between the date on the note and the expiration of the option.
36. The stock buyback agreement is a one-page document in which Advent agrees to repurchase common stock purchased by investors pursuant to the non-statutory stock option certificate. Similar to the note, the stock buyback agreement has largely remained unchanged since its first issuance except for the repurchase provisions.
37. For example, the repurchase price of each share of common stock can be \$1, \$2 or \$2.50. In addition, benchmarks of Advent sales, which trigger repurchase, vary. Under some agreements, Advent will agree to repurchase common stock only when it has

shipped more than 3,000 units in a fiscal quarter. Under other agreements, Advent will agree to repurchase common stock only when it has a fiscal quarter of more than \$13.5 million in sales. Still, under other agreements, Advent will agree to repurchase common stock in any fiscal quarter where it ships at least one unit and generates revenue.

38. In conjunction with the Advent promissory notes, Massachusetts residents provide funds to Respondents typically through check or electronic wire transfer. These transactional instruments often bear attached annotations such as “Investment.”

C. Respondents’ Promissory Notes Are Securities

i. Advent Investors Invested in a Common Enterprise

39. Advent’s investor materials refer to the sale of promissory notes as an “Investment Program” and describe promissory note returns in a section titled, “Investment Summary.” Respondents titled correspondence to promissory note holders as “Investor Update Reports.”

40. Advent’s investor materials represented that Advent allocates investor funds to manufacturing, sales, and marketing costs associated with Advent’s product. Bank records of accounts held in Advent’s name indicate that Respondents have pooled investor funds together primarily in one account, held at a single banking institution.

41. Respondents represent that Advent will repay investors on a pro rata basis directly from gross sales and proportional to their amount invested. In addition to sharing in profits, Advent’s investors also share in the risks associated with Advent.

ii. Advent Investors Reasonably Expected to Profit From Their Investment

42. As it collected investor capital, Respondents and Gary Fincke represented that marketable products were forthcoming, sales would follow, and investor repayment with interest would begin.

43. Advent's investor materials represented that it had a "deep pipeline of core technology with products ready for market launch." In an email from Gary Fincke dated September 17, 2014, Gary Fincke represented to investors that the products were "operational and ready to go to market."

44. In an Investor Update Report dated June 9, 2014, Fincke represented that Advent had engaged "experienced financial brokers who have successfully matched private investors with startup companies." Fincke represented that this engagement would accelerate the raising of capital to allow Advent to contract with sales distribution groups to "initiate the marketing and sales."

45. In a letter to investors dated November 14, 2016, Fincke stated that providing additional investment would put "Advent firmly on the path to early product sales in Q2 of 2017 and investment returns following shortly thereafter."

46. Further, Advent represented that investment in Advent offered financial upside.

47. Advent has consistently represented that "[s]tock options offer an additional rate of return of 4x." Advent's investor materials illustrated that by exercising the stock buyback option, a \$20,000 investment could result in a \$101,000 return, a \$50,000 investment could result in a \$252,500 return, and a \$100,000 investment could result in a \$505,000 return.

48. Advent's investor materials represented that the promissory notes offered "a very attractive opportunity to participate in the upside growth with over 4 X return on investment" in a "\$6 [b]illion market."

49. Advent's investor materials represented that "our product can satisfy our company's financial gross margin needs and offer a higher rate of return for our investors," adding "[w]e want this to be a win for everyone."

iii. Advent Investors Reasonably Expected to Profit Based on the Efforts of Respondents

50. Repayment of investor capital and repurchase of stock through the exercise of the stock option is necessarily contingent on Advent consistently manufacturing a marketable product and generating revenue.

51. Advent has no board of directors, investors have no voting rights, and investors have neither the obligation to participate in the decision-making of Advent nor the ability to dictate the actions of Advent management.

52. Fincke alone is the decision maker for Advent's day-to-day operations and business decisions.

53. Respondents are solely responsible for the ability to manufacture a marketable product and generate revenue to repay Advent investors.

D. Respondents' Violative Conduct

i. Respondents Have Failed to Register the Advent Promissory Notes for Offer or Sale in the Commonwealth

54. Respondents' offers to sell the Advent promissory notes originate from the Commonwealth of Massachusetts.

55. To date, Fincke has not and has never registered Advent or the Advent promissory notes in the Commonwealth of Massachusetts. Respondents have filed no registration or

exemption from registration for the issuance or sale of the Advent promissory notes in the Commonwealth.

56. To date, Fincke has not and has never disclosed to investors the Bankruptcy Court's finding that Fincke was liable for fraud, negligent misrepresentation, and securities fraud pursuant to MASS. GEN. LAWS ch. 110A, § 410(a)(2) by falsely misrepresenting elements of Access's business plan to investors.

ii. Fincke Has Failed to Register as an Issuer Agent of Advent

57. Fincke has never been registered in any capacity in the securities industry in the Commonwealth of Massachusetts.

58. Fincke has never been registered as an issuer agent or in any other capacity in connection with Advent's issuance of securities in the Commonwealth of Massachusetts.

iii. Respondents Have Failed to Disclose Payments to Fincke and Others

59. Respondents have failed to disclose compensation of Advent personnel to current and prospective investors, concealing more than \$985,000 in investor funds that Fincke diverted from the investor funds account to himself, Gary Fincke, and Fincke's son.

60. During his testimony before the Enforcement Section, Fincke stated that he had not received any payment from Advent.

61. However, more than \$491,500 of investor capital has been transferred from Advent's account to Fincke's personal checking account. Of that amount, Fincke spent more than \$32,000 on expenses associated with his boat and a luxury automobile.

62. Prior to Fincke's testimony before the Enforcement Section, Respondents provided a list of all Massachusetts residents to whom Respondents issued promissory notes between January 1, 2004, and March 20, 2018. Neither Fincke, Gary Fincke, nor

any other member of Fincke's known family are listed as a purchaser of promissory notes. Fincke twice verified in writing the accuracy and completeness of this list.

63. During his testimony before the Enforcement Section, Fincke stated that he had not made any loans to Advent.

64. During Fincke's testimony, the Enforcement Section presented Fincke with bank records showing the sums of investor funds transferred to his personal account.

65. In response, Fincke characterized these payments as repayment on a "bridge loan" made to Advent. Fincke stated that the total balance of the loan was approximately \$1.1 million and that there was no interest on the loan.

66. Despite stating that repayment on bridge loans made to Advent had already begun, Fincke stated a short time later that Respondents would repay investors before Fincke and his family.

67. Following Fincke's testimony, Respondents produced ten promissory notes totaling more than \$4.1 million, issued to Gary Fincke, Fincke's wife, Fincke's son, and Fincke's sister between January 2005 and December 2017, of which \$115,000 has been purportedly repaid. The promissory notes issued to Fincke's sister and son are unsigned.

68. The promissory notes are subject to repayment with interest rates varying between ten and twelve percent with an additional "fee" of ten percent of the initial loan principal. No promissory note issued to an Advent investor provides for repayment with the additional fee.

69. The amounts of these promissory notes, which were not included in Respondents' first two responses to the Enforcement Section's subpoenas, are not in the financial representations that Advent has provided in its investor materials.

70. Advent has represented that between 2004 and 2014, total proceeds to Advent amounted to \$2,850,000. This figure does not comport with the amount of family loans purportedly provided to Advent and the amount of investor funds received during those years. The amount of promissory notes issued to Fincke's family by the end of 2014 purportedly totaled more than \$3 million. The amount of promissory notes issued to other investors by the end of 2014 totaled more than \$2.4 million.

71. When the Enforcement Section presented Fincke with bank records showing a series of payments to Gary Fincke, Fincke characterized a portion of the payments to Gary Fincke as compensation, stating that, in total, Advent paid Gary Fincke approximately \$75,000.

72. In fact, Respondents paid more than \$383,000 in investor capital to Gary Fincke and Virtual Marketing International, Inc. ("VMI"), owned by Gary Fincke.

73. During his testimony before the Enforcement Section, the Enforcement Section presented Fincke with a check payable to Gary Fincke followed by what appeared to be "VMI." Fincke stated that he did not recognize VMI as an entity to which Gary Fincke was associated. Fincke also stated that, other than Advent, Advent had no business relationship with any business with which Gary Fincke is associated.

74. VMI is a New Hampshire corporation and is no longer in good standing for failure to file its 2018 annual report. VMI's principal purpose is the marketing and distribution of healthcare products. Gary Fincke is the president and director of VMI.

75. Upon information and belief, at least ten checks between 2013 and 2014 were hand-written by Fincke and made payable to VMI.

76. Respondents failed to disclose both the purported repayments and the significant amount purportedly owed to Fincke's family to Advent investors despite the continued use of investor capital in contravention of Respondents' use of proceeds representations.

a. *Investor One*

77. Investor One, age 48, is a resident of Lenox, Massachusetts. Investor One is a medical doctor and has invested \$20,000 in Advent. Investor One's father has a severe cardiac condition, making Advent an attractive investment.

78. Investor One provided his investment to Advent's business checking account via electronic wire transfer on January 10, 2013. Investor One also referred Gary Fincke to solicit his mother to invest in Advent. Investor One's mother provided \$35,000 via electronic wire transfer shortly after Investor One.

79. Upon information and belief, of the four credits reflected in Advent's checking account prior to Investor One's electronic wire transfer, each represents investor capital.

80. Between June 29, 2012, the date of the account opening, and January 14, 2013, four days after Investor One's electronic wire transfer, there are only two purchases reflected in Advent's business checking account: one to a car dealership in Boston, Massachusetts, and the other to a luxury car dealership in Sudbury, Massachusetts.

81. Respondents represented to Investor One that Investor One's funds were to be used for the manufacturing and distribution of Advent products.

82. Furthermore, since Investor One made his investment, Advent has relocated its place of business least two times. Respondents have failed to provide any notification to Investor One regarding the change in address or updates regarding Investor One's investment since approximately April 2016.

b. *Investor Two*

83. Investor Two, age 64, is a resident of Dover, Massachusetts. Investor Two is a medical doctor and has invested at least \$290,000 in Advent between July 2014 and October 2014.

84. Three days after Investor Two's final investment was deposited in Advent's commercial bank account, Fincke initiated a \$3,000 transfer from Advent's commercial bank account to Fincke's personal checking account. Three days after that, Fincke wrote two checks, each for \$25,000, to Gary Fincke.

85. In total, during the 26 days following Investor Two's final investment, Fincke transferred a total of \$18,000 from Advent's commercial bank account to his own personal checking account. During that same time, Fincke wrote a \$12,000 check to his son and wrote three checks, totaling \$54,000, to Gary Fincke or his company, VMI.

86. Respondents represented that investor funds solicited in September 2014 would be used for the development of marketable products. Respondents failed to disclose the payment to Fincke and Gary Fincke to Investor Two, any prior investor, or any subsequent investor.

iv. Respondents Have Made Material Misrepresentations to Current and Prospective Investors

87. In addition to failing to disclose the payments to Fincke, Gary Fincke, and others, Respondents have made materially false representations to current and prospective investors in Advent's investor materials.

88. Advent has represented that "current personnel work on deferred compensation."

89. In fact, several Advent personnel, including Fincke, Gary Fincke, and other individuals, have received contemporaneous compensation for several years.

90. Since April 2011, Advent has continued to compensate two individuals identified as “consultants” in regular intervals nearly every month. Together, these consultants have been paid \$411,000. This directly contradicts Respondents’ representation that personnel work on “deferred compensation.”

91. To further compensate the consultants, Advent has issued promissory notes to the two individuals, valued at more than \$1.1 million. These promissory notes, characterized as deferred compensation, are equipped with stock options and stock buyback agreements.

92. If the two consultants and Respondents exercise all options, the consultants are eligible for a total windfall of \$6 million under the terms of the promissory notes alone.

93. Advent has represented that all investor funds would be used to develop its product.

94. In fact, Fincke transferred large sums of investor capital to himself and Gary Fincke in contravention of Respondents’ use of proceeds representations.

95. Respondents and Gary Fincke represented that Respondents developed “products ready for market launch” and that were “operational and ready to go to market.”

96. In fact, Advent has not successfully developed a product that Respondents could readily and immediately market and sell to consumers.

97. Respondents represented that Respondents had engaged “experienced financial brokers” to further facilitate investment from other private investors.

98. In fact, Respondents never engaged such individuals.

99. Respondents have failed to disclose both the contemporaneous compensation to the consultants to current or prospective Advent investors.

100. Advent's investor materials fail to disclose a business relationship involving payments to Gary Fincke's company, VMI.

101. Advent's investor materials fail to disclose the promissory notes issued to members of Fincke's family totaling more than \$4.1 million. Advent's investor materials fail to disclose the ongoing purported repayments of these loans despite Fincke's assertion that Respondents would repay investors first.

102. Advent's investor materials fail to disclose Fincke's history of legal issues arising from his conduct with his previous AED ventures. Specifically, Advent's investor materials fail to disclose that Fincke has furnished disclosure of the federal judgment entered by the Bankruptcy Court finding that Fincke's conduct constituted securities fraud, pursuant to MASS. GEN. LAWS ch. 110A, § 410(a)(2), and a violation of his duty of care and loyalty.

103. Advent's investor materials fail to disclose the \$1.5 million judgment against Fincke for the Access investor following the Shareholder Suit. Advent's investor materials also fail to disclose the \$281,534.62 judgment against Fincke for Access following the Shareholder Suit.

104. Following his testimony before the Enforcement Section in connection with this matter, on May 11, 2018, Fincke has been unable to comply fully with the Enforcement Section's requests for information and documents.

VIII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 101

105. Section 101 of the Act provides:

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

- (1) to employ any device, scheme, or artifice to defraud,
- (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.

MASS. GEN. LAWS ch. 110A, § 101.

106. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

107. The conduct of Respondent Advent Medical Products, Inc., as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

108. The conduct of Respondent Randall W. Fincke, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

Count II – Violations of MASS. GEN. LAWS ch. 110A, § 201

109. Section 201(a) of the Act provides:

- (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.

MASS. GEN. LAWS ch. 110A, § 201(a).

110. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

111. The conduct of Respondent Randall W. Fincke, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201.

Count III – Violations of MASS. GEN. LAWS ch. 110A, § 301

112. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:–

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

113. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VII above.

114. The conduct of Respondent Advent Medical Products, Inc., as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

IX. STATUTORY BASIS FOR RELIEF

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

(a) 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.

X. 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].”

XI. RELIEF REQUESTED

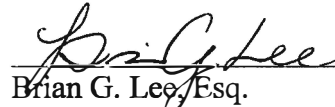
The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact the allegations set forth in Section VII of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations;
- D. Censuring Respondents;
- E. Requiring Respondents to provide a verified accounting for all losses attributable to the alleged wrongdoing;
- F. Requiring Respondents to pay restitution to fairly compensate investors for all losses attributable to the alleged wrongdoing;
- G. Requiring Respondents to provide a verified accounting for all profits, direct or indirect compensation, and remuneration received by Respondents in connection with the alleged wrongdoing;
- H. Requiring Respondents to make rescission offers to all investors who purchased securities sold in violation of the Act;
- I. Imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

- J. Taking any such further action which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By and through its attorneys,



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Dated: July 12, 2018